

THE LIBRARY
OF
THE UNIVERSITY
OF CALIFORNIA
RIVERSIDE

GIFT OF

A. L. D. Warner


Digitized by the Internet Archive
in 2007 with funding from
Microsoft Corporation

http://www.archive.org/details/revisedrecordofc04newyiala

D 468177

REVISED RECORD

OF THE

CONSTITUTIONAL CONVENTION

OF THE

STATE OF NEW YORK

May 8, 1894, to September 29, 1894

REVISED BY

HON. WILLIAM H. STEELE,

VICE-PRESIDENT OF THE CONSTITUTIONAL CONVENTION OF 1894,

Pursuant to Chap. 21, Laws of 1898.

PUBLISHED UNDER DIRECTION OF

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

SECRETARY OF THE CONSTITUTIONAL CONVENTION OF 1894,

Pursuant to Chap. 419, Laws of 1900.

Vol. IV.

ALBANY:
THE ARGUS COMPANY, PRINTERS.
1900.

JK3425
A16
1894
v.4

REVISED RECORD

OF THE

CONSTITUTIONAL CONVENTION

OF THE

STATE OF NEW YORK.

MAY 8, 1894, TO SEPTEMBER 29, 1894.

Friday Morning, September 7, 1894.

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

President Choate called the Convention to order.

The Rev. C. P. Evans offered prayer.

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

Mr. Deyo asked to be excused from attendance to-morrow. Granted.

Mr. Cochran — I have received a letter this morning which, I think, will compel me to go to the city of New York to-morrow, and, therefore, I ask leave of absence for the day. Granted.

Mr. Kinkel — I ask to be excused to-morrow. Granted.

Mr. McKinstry — I ask leave of absence for next Monday. Granted.

Mr. Deady — I would like to be excused for the afternoon session to-morrow. Granted.

Mr. I. S. Johnson — Mr. President, I would like to inquire what was the meaning of the resolution that was adopted last night, whether these excuses for Monday are in accordance with that?

Mr. McKinstry — Mr. President, I meant to have said, on account of illness.

The President — The condition of Mr. McKinstry's health and of Mr. Deady's renders it necessary for them to be absent. (Laughter.) No more excuses after Saturday will be entertained or put by the Chair, unless on account of illness, and the gentlemen that do not like that will have to depose the Chairman for the time being.

Mr. T. A. Sullivan — Mr. President, I have just received notice of my appointment for some children in a State matter, which requires my presence in Buffalo for Monday. However, if I can be away Saturday afternoon, I will go up to Buffalo and make some arrangements, if possible.

The President — The application is out of order.

Mr. Sullivan — For Saturday afternoon?

The President — No, not for Saturday afternoon.

Mr. Sullivan's request to be excused for Saturday afternoon was granted.

The President — The Chair very much regrets the illness of Mr. Deady and Mr. McKinstry. (Laughter.)

Mr. Deady — I think the Chair is laboring under a misapprehension. I did not ask to be excused for Monday.

The President — That is the only day for which you could ask, under the rule adopted last night.

Mr. Deady — I did not ask for Monday.

The President — For Saturday?

Mr. Deady — For Saturday afternoon. That I do not think came within the resolution. Is my excuse accepted by the President?

Mr. Forbes — Mr. President, I call up the resolution which I offered yesterday (No. 197), in regard to the special committee of five to 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 reason that I offer this resolution at the present time is this. This State is a very large owner of what may be denominated natural property; that is, land under water, water rights, the woods in our forests and other property of this kind. We have considered that it is proper to enter into this subject, because as a Convention we have appointed two committees to consider two local sections of this natural property. The people of this State are entitled to a broader consideration of the subject than can be given to it by two committees appointed for two special purposes, applicable only to little

patches, as it may be said, of this subject. The committee appointed ——

The President — The Chair begs the gentleman to remember that the time he takes comes out of that limited for the consideration of the apportionment article.

Mr. Forbes — Well, sir, I have got but one more word to say. The committee appointed or selected by the President need not be on party lines. It is not a political subject. But they may be appointed for their fitness to consider this question. Therefore, it seems to me, that in view of the fact that we have committed ourselves to the examination of this subject in the past, we should take it up as a whole, and that we should take it up in a non-partisan way by a committee specially appointed to consider the subject.

Mr. Goodelle — I move that the resolution lie upon the table.

The motion to lay on the table the resolution of Mr. Forbes was put by the President, and it was determined in the affirmative.

Mr. Lauterbach — I present from the Committee on Charities a substitute for the amendment now forming the general order which is to be considered, and desire that the same be printed and placed upon the files for consideration.

Mr. I. S. Johnson — I desire to be recorded as dissenting from the report of the Committee on Charities, no matter what the case may be.

The President — Mr. Johnson's objection will be entered by the Clerk.

Mr. Forbes — Now, Mr. President, one more question. There is a committee, or, rather, the Committee on Legislative Powers was at my request directed to consider the question of waters. That is one of these species of natural property. They were to report yesterday. They did not take the trouble to have a meeting until yesterday afternoon at two o'clock, long after the morning session was over. Now, we ask that their time be extended until to-morrow morning. I think that the committee should be permitted to report to-morrow, because it is a large subject and it should not be deferred.

The President — Do you so move?

Mr. Forbes — I do so move.

The President put the question.

Mr. Vedder — Mr. President, I hope that resolution will not carry. I was sorry that Mr. Goodelle, of Onondaga, moved to lay the resolution of Mr. Forbes upon the table. I prefer that the com-

mittee should be appointed as suggested by Mr. Forbes, because the Committee on Legislative Powers regards it as absolutely impossible with any intelligence whatever to report within the time Mr. Forbes desires. Let him have his committee, be chairman of it, and then report it at his own good pleasure whenever he thinks he has sufficient information on which to make a report. The Committee on Legislative Powers confesses its inability to grapple with a subject as mighty as that and dispose of it in twenty-four hours. I hope the motion will be voted down, the other taken from the table and the committee appointed as Mr. Forbes desires.

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

Mr. Forbes — Will the gentleman make his motion to reconsider?

Mr. Vedder — You make it; I will sustain it.

Mr. Forbes — I move, Mr. President, that it be taken from the table.

The President put the motion, and it was determined in the negative.

The Convention then went into Committee of the Whole on the apportionment amendment, only one hour remaining for discussion, and Mr. Durfee took the chair.

Mr. Cookinham — Mr. Chairman, when we adjourned last evening I was presenting some salient points to the committee, which I claimed showed that this apportionment was as fair as it was possible to make it.

I now wish to call the attention of the committee to one more fact. It is this: that if county lines are preserved, it is almost impossible to create outside of the city of New York a single Democratic district by any combination of counties more than is created by the proposed apportionment. I have taken the pains to examine the vote of 1893 in every county in the State that I might ascertain what counties had given Democratic majorities, and I find that there are but two outside of the city of New York and Kings that gave very substantial Democratic majorities except those to which are given a State Senator. Those two counties are Chemung and Schoharie — I mean that have given a substantial Democratic majority. There is no reasonable combination of counties that any gentleman upon the other side can suggest that will make another Democratic senatorial district in the State of New York. I have before me the vote and it shows as follows: That, outside of the city of New York and the counties which are awarded at least one Senator, there was a

Democratic majority in Chemung of 1,291; Greene, 184; Richmond, 879; Rockland, 135; Schenectady, 100; Schoharie, 1,318; Ulster, 47. In the last election Westchester county, ordinarily Democratic, gave a Republican majority of 125. So that — I repeat it — it is almost impossible by any combination of counties to make a single Democratic district other than those that are made by the proposed apportionment.

And now just a word in regard to dividing the State. The gentlemen who are logical upon the other side must concede that it is true that a senatorial district cannot be constituted outside of the cities and those counties which alone are entitled to one Senator. They must concur that the only way a Democratic district could be reasonably made would be to disregard county lines and to divide by town lines or by new artificial boundaries. The last manner is impossible without an enumeration and even a survey of the State. The other is impracticable for two reasons. The first is, it would be extremely difficult to divide a county by town lines, and put part of one county and part of another county into a senatorial district. But there is a further objection, and that is that there would perhaps be no place for the records of election within the district. If, for instance, a portion of one county were taken off and put with a portion of another county that did not possess a county clerk's office, there would be no center where election returns could be put together and a result tabulated, except, perhaps, outside the senatorial district, that is, it might be outside of the senatorial district thus created.

But there is still another and more important reason why this should not be done. It is that there is no gentleman upon the other side, had he the power to divide a county and submit a constitutional provision to the voters of this State, that proposed such a division into senatorial districts, who does not know that it would be buried under hundreds of thousands of votes. He knows perfectly well that the one thing that the people would not tolerate would be to break in upon those lines that, since the State existed, have never been broken for any purpose whatever. So, it seems to me, we must all agree that there is but one way to apportion the State into senatorial districts, and that is to observe county lines. With that proposition, I repeat that no gentleman can put together the counties of this State in any reasonable manner and make one single additional Democratic district.

The proposition made by Mr. Bowers to create new districts violates every principle that should be adopted in making an apportionment. I will simply suggest one and that is the topographical

condition of the counties. He put Herkimer, for instance, with St. Lawrence. Does the gentleman know that the southern part of St. Lawrence and the northern part of Herkimer are covered with a dense forest sixty miles through, and there is no way of passing from southern St. Lawrence to northern Herkimer, without going out of the county in a roundabout way, except to penetrate that forest? Is that a practical way of putting counties together? I mention this as an illustration to show that an important rule that should be followed is violated by the combination of counties proposed by Mr. Bowers. The proper rules are, first, to observe population; second, proximity of the counties to each other; thirdly, the means of communication between them. Taking all those rules into consideration, I pronounce the proposed apportionment just as nearly perfect as it is possible for man to make it, and I challenge the able gentlemen who are to follow me in this debate to show us how the counties may be combined to a better advantage.

One word now as to the proposed senatorial districts, and for the sake of showing the difference between the existing apportionment and the proposed one, I call attention to the position of the very estimable gentleman from Putnam. When he had finished his address I asked him a question which he courteously declined to answer. I proposed to present immediately following his speech this proposition. I knew that he would answer honestly and fairly if he answered at all. I, therefore, asked him what was the disparity, at least the largest disparity between the population in the senatorial districts as proposed. He declined to answer. The fact is that unless you go into a county where a fraction must be represented, the largest difference is in the city of Brooklyn, and it is between the Fourth District and the Sixth District, and the difference is 26,321. And it is well to stop a moment right here and say that the largest district in Kings county is not a Democratic district. But Colonel Morton upon that committee took upon himself, acting for the Republican party, to put into one district a very large Republican majority. So that the largest district in Kings county is a Republican district, and it is, I think, the largest district in population in the entire State of New York. But whether I am correct in that or not, it is safe to say that the greatest disparity between senatorial districts in the same county, except where a fraction must be represented, is in the county of Kings, and it is between a Republican district and the smallest district, which is a Democratic district.

I desire further to call attention to something that the gentleman from New York (Mr. Bowers) said in regard to the apportionment of 1879. I am not here to defend that apportionment. If any gen-

tleman upon the other side will forge a sentence that will condemn it stronger than I can, I will adopt it as my own. But the gentleman criticised it by saying that great Assembly districts were constituted in the county of Kings. He said the Eleventh District of Kings contained a very large population, very far beyond that which ought to have been put in that Assembly district. But does he remember that that was done by a Democratic board of supervisors? The Republican Legislature had nothing to do with that. They accorded to the county of Kings twelve Assemblymen. The Democratic board of supervisors divided it into Assembly districts. They placed all of the Republican vote possible in the Seventh and Eleventh Districts, that they might prevent the election of more than two Republican Assemblymen from Kings county. The Republicans and Democrats of Kings county rose against the outrage perpetrated upon them, and instead of sending two they sent four or six, I have forgotten which, electing some of them in the Democratic districts. The Democratic board of supervisors, intending to bunch the Republican votes in the two districts, made one district that gave something like 3,600 Republican majority. The gentleman from New York criticised the Republican Legislature for those acts, when, in fact, his own party were guilty of the offense.

One or two words more, Mr. Chairman, and I have finished. I want to call attention to the fairness of this report, to the fairness of this apportionment, to the fairness of the acts of your committee in producing and presenting to this body what is known as Document 65. I have listened to all the speeches upon the other side, and I think some of them have been as able a presentation of the case from that side as it is possible to make, and yet I have not heard one single argument, not one single point made against the apportionment that is not found in Document 65. Every single figure which they have used tending to show that the apportionment is unfair was furnished them by the Republican members of this committee, who prepared this tabulated statement. This document shows just how the districts are made up, just where there is a surplus of population, just where there might be a Democratic majority, just where there might be a Republican majority, just where there is a minus district, and just where there is a plus district. The gentlemen on the other side have added not one single word, not one single figure to elucidate the facts as they appear in this Document 65.

What is true in regard to the Senate districts is also true in regard to the Assembly districts. I will not discuss that subject. I will only state the fact that the apportionment of Senate districts and

Assembly districts was so fair that no one upon the other side has been able to point out a single district where there could be a change for the better, not one. The gentleman from New York called my attention to one district in New York which has two Assemblymen, but it is impossible for them to get three. If they should be accorded three, if the city of New York should be accorded thirty-seven instead of thirty-five, then you would impose upon the rural part of the State the burden of making up the minus fraction of every county which has not enough population to give it one Assemblyman.

Mr. Hottenroth — Mr. Chairman, will the gentleman pardon me a question?

Mr. Cookinham — I haven't much time; I have but three or four minutes.

Now, Mr. Chairman and gentlemen, I ask your attention just one moment to one more proposition, and I will have finished. It is this. I say without fear of contradiction, successful contradiction, that the average citizen in the rural district is superior in intelligence, superior in morality, superior in self-government, to the average citizen in the great cities. I say this not in disparagement of the excellent gentlemen who represent the great cities in this body. I know what the culture of the great cities is. But I know, furthermore, that the lower strata of society in the great cities is such that when the balance is struck, and the average citizen is produced, he is not a citizen so well worthy of confidence as the average citizen in the rural districts. The stream will never be purer than the fountain, and government is founded upon the average citizen and not the cultured and wealthy classes.

If, then, the average citizen in the rural districts is a superior citizen to the average citizen of the great cities, your government will be better, your government will be safer in his hands than in the hands of the average citizen of the great cities. I have not forgotten, neither has any gentleman upon this floor, a time when it required in the great city of New York some help from the rural districts. I have not forgotten when the courts of the city of New York became so debauched that you dare not trust them. I have not forgotten when the legislators that came to these halls from the city of New York were so corrupt that you dare not trust them. I have not forgotten when the great financial interests of the city of New York became so corrupt under the domination of one man, and he the head of an organization which you, my Democratic friend, represent, that the honest citizens of the city of New York, Republican and Democratic, cried for help from outside. I have not for-

gotten when the financial part of the government of the city of New York was so corrupt that it called upon my friend who sits in front of me here (Mr. Andrew H. Green) to lift it out of the sloughs of corruption and place it upon the foundation of honesty and purity. I have not forgotten, nor have you, that it was necessary to call from the country judges to try your criminals. That time may come again. I say, may come again, that will come again. The time will come, and you know it better than I — the time will come when there will be in the great city of New York a cry for help. And to whom will you direct your attention? I tell you, gentlemen, you who represent that great city, that when that time comes, when your streets are filled with those who defy the law, when socialists, when those who believe in no government, are parading your streets and destroying your property and killing your citizens, then you will cry for help. And to whom? You will then turn your eyes to the green fields of Oneida and Herkimer and Jefferson and St. Lawrence. You will call to us, who have no Emma Goldburgs and no Herr Mosts, and you will expect us to respond to the call, and we will. For we have as much pride in that great city as you.

And now I appeal to you, not that you confer upon the rural districts a favor, but that you stand by this Committee on Apportionment, and trust that the great rural districts, with all their varied interests, which cannot be represented by members from the city of New York, shall have not more than their share, but that you will give them every Senator and every Assemblyman to which they are entitled. Then we will go before the people with an honest, fair and just apportionment, and in their hands we shall be safe. (Applause.)

Mr. Mantanye — Mr. Chairman, I desire to make a single motion in regard to a matter which was in the committee yesterday and the action which was there taken. In the morning I introduced an amendment to section 2 of this article, that sessions of the Legislature should occur biennially, with power to the Governor to call an extraordinary session whenever it might be deemed actually necessary, specifying the purpose of such session, and that the session be limited to that purpose. I introduced this at the request of many members, also because I believed that it was demanded and desired by the people of the State of New York. The committee that has reported this bill had the matter before it, and by a resolution, which appears as Document No. 22 upon our files, stated that it was their opinion that biennial sessions were proper to be incorporated in the Constitution, but it did not appear in this article, and as I

have stated by request even of some members of the committee it was introduced here. It was supposed by its friends that the matter of this amendment and all others would come to a vote at the close of debate and take the same course as was taken by the educational article when before the Convention and before the committee. It was known yesterday afternoon that there were still several others upon the list to speak upon both sides, and with that idea the friends of this motion happened not to be on the alert. I was myself out of the hall in the corridor necessarily, in the document room. When I came back, after an absence of less than five minutes, I found that this proposition had been voted upon and declared lost. It had not been presented and discussed, was scarcely before the committee, except by a formal offering of the amendment.

I now feel, as do its friends, that this matter should be reinstated to be voted upon at the close of the debate as was supposed proper to be done, and I, therefore, make that motion now; that we reconsider the vote taken yesterday upon the amendment and that it may be reinstated. And, in connection with that, I desire to explain for a moment that this article is, as I believe, desired by the people, that they have a feeling that there is too much legislation, too much expense about it; that of all of the laws that have been passed during the past two years, last year there were 700 that were unnecessary to a large extent; that it keeps alive a lobby that hangs around the Legislature to work through local and special legislation, and that the work of the Legislature to a large extent is devoted to matters which are not purely legislation; and that pure, simple, proper legislation is only secondary.

There are only five States in the Union in which there are annual sessions. With the exception of New York, they are the smaller States of South Carolina, New Jersey, Rhode Island and Massachusetts, and it is unnecessary for me to call attention to the troubles which these States have through too much legislation. This matter has been brought before the Legislature heretofore and efforts have been made to have a constitutional amendment submitted to the people providing for it. Mr. Ainsworth, now Deputy Superintendent of Public Instruction, when in the Assembly two years ago, with many others, tried to bring about that result. But, of course, with the many statesmen in the Legislature there were so many that were so patriotic that they were willing to have greatness thrust upon them oftener than they would with biennial sessions, that the matter fell through, and still the people were desiring it.

The Chairman — Your time has expired.

Mr. Mantanye — It would make much less expense, and I, therefore, move a reconsideration of the matter.

Mr. Bowers — Mr. Chairman, can we hear the amendment read? What is the amendment that the gentleman wants reconsidered?

The Chairman — The Secretary will read the amendment.

The Secretary then read the amendment as follows:

At the end of line 4, section 2, page 1, insert the following: "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 in January, 1896, and biennially thereafter, and at such other times as the Governor, for good cause may call an extraordinary session. The call for such session shall specify the matters to be considered and the business of the session shall be limited to the matter so specified."

The question was put to reconsider and carried.

The Chairman — The motion to reconsider is carried and the vote by which the amendment was lost will be considered. It will be passed upon at the close of the debate.

Mr. Becker — I would like to hear the substitute read, Mr. Chairman, if there is no objection. But, on account of its being a substitute and coming out of the gentleman's time, I will waive it.

Mr. Nicoll — Mr. Chairman, in the very limited time which is left to me to speak upon this matter, I find it impossible to present to the Convention, *in extenso*, the views which I have entertained, and I shall take the liberty, perhaps, on some future occasion, of printing in the record such observations as I have conceived studiously in relation to this matter.

I shall proceed, therefore, now with some general observations upon the whole subject. Of course, I have no expectation of affecting any vote by anything I may say upon other matters. Upon other matters which were under discussion in this Convention, I supposed it was possible by exchange of views or ideas to affect results. But all that is changed now. I am admonished by the resolute, silent and determined attitude of the majority of this Convention, who look upon us of the minority as the cat looks upon the canary ready for the feast, that it is impossible by any argument or entreaty to affect a single vote, to prick a single conscience or to rescue a single motion from the shipwreck of this Convention. When I joined this Convention I entertained the notion that I was taking a vacation from politics. I believed that in the last decade of the nineteenth century Americans were patriotic enough to leave

partisanship out of the Convention. I had no desire to join a political debating club nor to be a member of a Convention dominated by a caucus lashed into line by the party whip and existing mostly for partisan advantage. I do not wish to be understood as ascribing to the majority of this Convention at the outset a desire for partisan advantage alone. I can quite understand the distinguished gentleman from Cattaraugus who, a few days ago upon the floor of this Convention, said that he came here not as a Republican, but as a citizen consecrated to the service of the State alone. I entertain the notion that the majority of this Convention when they first arrived here were animated by that same spirit. But, Mr. Chairman, partisanship is a contagious disease. You cannot live in its atmosphere without absorbing its virus. It subdues and attacks the most rugged constitutions; it overcomes and makes its victims the most patriotic and benevolent of men. I have been curious to study its ravages in this Convention. Brought here by a small and uninfluential minority of the majority, it soon began to spread. First, the weaker vessels fell, and then, finally, the strongest and most vigorous members of the majority became its victims, until now the whole of you are almost eaten up with disease. (Laughter and applause.)

Now, sir, I have made those remarks because I think they are applicable to this whole question of apportionment. The question in this apportionment is this: is it a work of chance or of party action? The question is, is it a matter of sinister design, and if it is a matter of design, what is the design of this apportionment? The inventors of this measure wish us to believe we assembled together for the purpose of working out an apportionment which would recognize the growing population of the State; by one of those flashes of genius which sometimes come to patriotic men who are engaged in a patriotic work they hit by accident upon the fifty to 150 apportionment; that it came to them as a great thought sometimes comes, unheralded and unawares, for they recognize in it a definite inspiration in which they perceive a solution at once of all the problems with which they are confronted. Ah, Mr. Chairman, I wish we of the minority could believe that. We ought to take the gentlemen of the committee at their words, but we find it difficult to do so. You ought to have given us something not so thin, something more substantial if you wished to win our approval. No, Mr. Chairman, there is no accident nor chance except, perhaps, the main chance in this apportionment. It is a work of design. It is stamped from one end to another with the evidence and the elements of design, and what are those elements? They are, first, the

unnecessary change from thirty-two and 128 to fifty and 150 for the purpose of making certain populations in the State believe that they are in fact increasing their representation, whereas a greater preponderance against them is maintained. Then, the next element of design is the postponement of the census in order that the results of this apportionment may be retained for the period of the next ten years. The next evidence of design is the number of plus ratios in Democratic districts and the number of minus ratios in Republican districts. The next is the discrimination between cities and the country as to additional senatorial representation. The next is the ingenious classification and division of counties for the purpose of maintaining the prestige of the agricultural districts and subordinating the population to territorial representation. And the last is the barefaced carving out of Republican districts in the hearts of Democratic cities, in New York and in Brooklyn and in Buffalo; and then there is the deliberate ignoring of the law of population in this State and the tendencies at this time and the whole progress of current events. I say, sir, that this apportionment is stamped with the evidence of some design. What was the design? Now, who does not know it, who cannot understand it, who on oath would deny it? What was the design? The design was to secure to the Republican party the control of the legislative branch of government for half a generation at least. It says to the people of this State, "You may elect your Governor and State officers, you may elect your judges, but we will make your laws and elect your United States Senators until the twentieth century is well under way." For this you postpone the census, for this you make the new apportionment, for this you divided counties by a new classification, for this and for this alone you sacrificed cities and aggrandized agricultural interests, for this you defied the law of population and the whole order of current events, for this, sir, in defiance of experience, in contempt of history, in disregard of any just law of apportionment, you have been willing to violate the law of population, to subordinate population to territorial representation. And now you propose to soil the white pages of the Constitution of this State with the mire of partisanship itself. That is the design of this apportionment.

And what defenses are made to it? I have no time to discuss them numerically. The labored defense in which the gentleman undertook to justify the increased number by a comparison with the United States census in other States; the Root defense, where he actually had the audacity to attempt to persuade this Convention that it was the Democratic apportionment and not the Republican

apportionment at all. I like better the Gilbert defense. That is the safest one. He says this is a fair apportionment. Why? Because it favors the Republican party, and the Republican party can never do anything unfair. That is the proper answer to the situation. The Republican party can never do anything unfair. Angels and ministers of grace defend us! Skeletons of the Louisiana returning board rattle in their box! The Republican party cannot do anything unfair if it tries. It is like the hero of that Gilbert and Sullivan opera:

"His taste exact
For faultless fact,
Amounts to a disease;
He always tries
To utter lies,
But never quite succeeds."

That is the first defense. But there is another defense. There is one correct defense of this apportionment never yet urged by any gentleman upon the floor of this Convention, and that is this. The Republican party, some of its defenders say, is the party of equal rights, liberty and fair government. It is, therefore, to the interest of the people of this State that the Republican party should always control. This apportionment secures a permanent control to the Republican party. That is an honest defense. Is there no one here who dares to state it? Is there no one amid this great body of intelligent men, this triumphant and reckless majority, who dares to stand upon the floor of this Convention and assert the only true defense to this apportionment, when every man knows it? Will no champion of truth come forth and enter the lists in this debate?

"Oh, for a man — for a man with heart, head and hand
Like one of the simple great ones gone
Forever and forever by;
A still, strong man in this blatant land,
Whatever you call him what care I —
One that can rule and dare not lie."

Now, gentlemen, the whole proposition here is that suggested by the distinguished gentleman from Chautauqua; that is, can you succeed? I know what the proposition is. You have said to one another, "Lo, brethren, this is a tidal-wave year, this is the year of political reaction; in this year the people of this State will not be industrious to observe our shortcomings. We will charge up the hard times to the Democratic party, although we have bankrupted

the national treasury and exhausted the surplus. We will win in a canter and carry the constitutional apportionment at Albany."

Well, it is a good scheme; it is worthy of the audacious inventor of this apportionment scheme. Will it succeed? The verdict of the popular jury, like the verdict of the petit jury, is always uncertain. It may succeed, and if it does succeed, I ask but one thing of this majority. We of the minority will have little interest in the governing of the State thereafter; our occupation will be gone. Those of us who do not like it, can leave it. But I ask but one thing: never forget him of Jefferson, or him of Erie, or him of Cattaraugus; keep them green in your memories; write their names upon your hearts; make them household words, and condemn them to be permanent representatives from their respective districts in this Capitol. Make them breathe the summer air of Albany and drink its summer water unmixed with that which cheers for the balance of their lives. Give them census tables and State and national statistics and put them to the business of showing how they can whistle up Republican districts and whistle down Democratic districts for the balance of their lives until the next Constitutional Assembly assembles. That, at least, will be some consolation for us.

But, gentlemen, do not be deceived. No such scheme as this ever did or ever can succeed. Do not encourage yourselves by thinking of the apportionment of 1846. That found a place in the Constitution of this State only because the people were then determined to wrestle the control of this State from the domination of the Albany regents. There is no parallel here. This is a proposition to take the control of the State from the people and put it in the hands of one political party. I say it never can succeed; it is sure to meet the fate which overtook the apportionment of 1867. It never can succeed, gentlemen of the majority. We of the minority whose rights have been assassinated will kindle again our camp-fires; we will appeal to the people of this State; we will expose in all the blackness of its darkness this nefarious scheme of apportionment. Jealous of the invasion of their liberties, affronted at the proposal to stifle for half a century the expression of their popular will, the people of this State will rebuke a party which attempts so atrocious a crime against public morals. They will nip in the bud your blooming hopes and overcome with disaster your nicely-calculated schemes of permanent aggrandizement and control. (Applause.)

Mr. E. R. Brown — Mr. Chairman ——

Mr. Gilbert — Mr. Chairman, may I make one correction?

The Chairman — Will Mr. Brown give way?

Mr. Brown — I give way.

Mr. Gilbert — Mr. Chairman, I merely rise to correct the last speaker. The argument I made here was simply based upon the argument of Mr. Peck, of Rensselaer. I was merely reiterating the argument which he made.

Mr. Brown — Mr. Chairman, after listening to the address of my brilliant friend, Mr. Nicoll, I hardly feel like attempting to reply to it, but I will say that I think the gentleman has entirely misconceived the attitude of the majority upon this floor. It is the first time that I ever heard the minority, composed as it is very largely of Tammany delegates, likened to a canary. It may be a bird, Mr. Chairman, but not a canary; more likely the four-legged animal which we have often seen in the illustrated papers.

Why, Mr. Chairman, the gentleman reminds us that the apportionment of 1846 was adopted by the people of this State to be rid of the Albany regency. Does he think that it is impossible that the people of this State may make a like effort to rid themselves of the Tammany regency and the apportionment which it gave to the people of this State in 1892? Is there no virtue, no desire for independence left in 1894 after that effort of 1846?

Mr. Chairman, we are closing this debate and now we have to look back over the field and weigh the criticisms that have been made upon this bill. We preceive that they are not general, but are devoted to minor details. It has been the preference of the minority upon this floor to divide and to sub-divide the measure until it had reduced it to such small fractions that the orator for the time being could toss one of them as a certain animal would hay on its horns.

Mr. Chairman, when the measure is looked at broadly, viewed from top to bottom, and it is discovered that its average is nearer to the standard than any average of apportionment that has ever been made in this State, then the gentlemen confine their attention to the highest and the lowest figures and omit to discuss the general fairness of the measure. When the Assembly is considered, gentlemen forget that it gives a greater degree of equality than has ever before been given. They prefer to spend their time discussing a single inequality in a single corner of a single county that has thirty-five Members of Assembly. It is no satisfaction to them that there will be a general representation of the people of the State more nearly correct, more nearly just, than in any other apportionment that has ever been given to the State. No, they prefer a single line, and if that single line is too hard for them to handle, they prefer a single

word in that line that they may have the appearance of having some strength in this argument.

Why, Mr. Chairman, this minority, this outraged minority, sits here as the unwilling trustee of stolen goods, goods which they would never themselves have stolen, but which have been given into their care by the party that elected them, and, Mr Chairman, in discussing that trusteeship it becomes a matter of extreme delicacy for them to determine how far they shall withstand the power of the people of this State, how far in defense of their party it will be proper for them to cling to what their predecessors in the Legislature, men of lower honor than they, have given their party at the expense of the State. Mr. Chairman, no man respects the members of this minority more than I, no man thinks higher of their honor or of the honor of any man than I do of theirs. But, sir, where does personal ambition begin, and where does private honor leave off? I admire their ability, I respect their honor, I pity their position as the trustees of stolen goods. When the proposition is made in this Convention that they restore these goods, what is the answer? Is it answered, "We will restore to the people of this State the representation of which they have been deprived?" No, but the gentleman from New York (Mr. Bowers) says, "We will divide the representation of the State, not among the counties of the State, but among the parties of the State." Here, then, is the stand of those who have become the willing trustees of stolen goods. "We will divide the representation of this State with you; we will not restore to the people of the State the representation that has been taken from them; we will divide between the parties of the State, the Republican party and the Democratic party, the stolen goods in our possession." They say, "You are the officers of the law, you have overtaken us, the Democratic party, in the possession of these stolen goods, but we will not restore them to the people of the State, we will divide them with you, the officers of the law — part shall be yours and part ours."

Mr. Chairman, I have heard upon this floor from my friend, Mr. Bowers, and my friend, Mr. Nicoll, that as against this apportionment they will stand up in defense of their firesides and of their homes, they will kindle the camp-fires of liberty again. In defense of what? In defense of the Bush gerrymander of 1892, to hold on to what the people of this State have said by a majority of 100,000 they shall not retain, but shall surrender? Why, these are words that belong to the heroes of Switzerland and of Scotland, to the firesides and the homes of the men on every field from Concord to Charleston; but it is the first time that they have ever been

dragged in in defense and in support of an apportionment confessed upon this floor by its author to be a wrong in excess of any wrong of its class ever done to the people of this State.

Mr. Chairman, these gentlemen had a predecessor. There was a Lorenzo de Medici in Florence who when he came to his death sent for Savanarola, and Savanarola said, "Confess your sins." He said, "I do confess." My friends confessed their sin of 1892 upon this floor, and confession is good for the soul even of the party of the minority. Savanarola said, "Restore, or bid your sons restore to those whom you have robbed that which you have taken from them." Lorenzo bowed his head in acquiescence. Then the priest said, "Restore her liberties to Florence," but the old man, prizing above all else his theft of his people's rights, turned his face to the wall and died. And rather than surrender the unjust advantage you as partisans have stolen from the great State of New York by your apportionment you are willing to turn your faces to the wall and die. (Laughter and applause.)

Mr. Mulqueen — Mr. Chairman, it is with feelings of extreme diffidence that I rise to debate the measure which has been under discussion for the past three days. But, sir, I cannot, nay, I will not, remain silent when the people residing in our great cities are not only to be robbed of their rightful representation in the Senate and Assembly by the proposed amendment, but who have also been maligned and insulted by the last speaker.

It is a source of deep regret to me, Mr. Chairman, that Republicans in this body seem to believe it necessary in order to secure the passage of any measure affecting our great cities, that they must cast slurs on the government of those cities and vilify and insult the people who reside therein. That style of argument is unworthy of a Constitutional Convention, because it seeks to arouse the prejudices of members representing rural constituencies against the great cities, and worst of all no facts have been or can be produced either against the government of those cities or of their people to justify these false accusations.

The last speaker, Mr. Cookinham, has charged that the people residing in great cities are not capable of self-government, and that if they were capable that it would be unsafe to trust them with representation based on their population. Moreover, he has declared that the average of honesty, of intelligence and of patriotism is greater in the rural districts than in the cities. Again, he says that it is good for these cities that they should not have that representation in the Legislature to which they are justly entitled

by their population, because we in the cities need the fostering care in the Legislature of the rural members.

Why, sir, this is the argument of the brigand who demands your property and tells you he will take better care of it than yourself. By virtue of the Constitution and the laws, our cities are entitled to a certain number of representatives in the Legislature, and the Republicans of this Convention say to the people of the State, we have robbed the cities of their past representation, but we have done it for their good. If this be a justifiable excuse for taking other people's property, our prison doors should be opened and all the felons therein contained should be given their freedom.

But, sir, he must be unfamiliar with the history of legislation in this State for the past twenty years or he would have known that the greatest enemy of good local self-government has been the Legislature at Albany. Every would-be reformer who has cried out for the reformation of alleged abuses in cities has declared that there can be no reform in city government until you take all power from the Legislature and give it to the cities on local matters. So we find among our propositions one from the so-called good government clubs of New York city, an organization of disinterested patriots, nearly every one of whom thinks himself just the man for every vacancy in the city government, and even their reformers have petitioned, addressed and lectured this Convention through its committees that you should give relief to the cities and prevent the raids on them by their so-called honest, intelligent and patriotic rural representatives in the Senate and Assembly.

I deny absolutely that the average of honesty, intelligence and patriotism is higher in the rural counties than among the working people of our cities. In the great city of New York there dwells a cosmopolitan population of nearly one and a half millions of people. A better, purer, honester, more patriotic, more generous or more noble people never lived. Lovers of law and order, devoted heads of families giving their children a fair education, standing by the authorities for everything that makes for the advancement of the city, supporting our great and munificent charities, helping to build our churches, in a word in everything that goes to make a true, loyal, devoted, honest and sincere citizen the workingmen of the cities of our State have no equals in any part of the Union.

Away with your flimsy excuses! If you must rob the people of the cities of their just representation in the Senate and Assembly for the benefit of the Republican party, at least be men enough to say so, but don't rob us, and while you are doing it, dare tell us it is for our benefit, when you know in your hearts that the statement

is untrue. Last night, the gentleman from New York told us he was ashamed of having reported this measure to the Convention. At once I found myself hoping that his better nature had been stirred, and that his conscience had told him that it was wrong to thus rob the great cities of their just representation. But, to my great surprise, his sorrow was occasioned not by the injustice this bill would do cities, but that it did not take more representatives from the cities and give them to the rural districts.

Sir, he ought to be ashamed of his work. How can he go back to the city, wherever he has lived thirty years, and tell his part in this great conspiracy to rob New York of her just power. Let us for a moment consider what it is proposed to do by this bill. First, it proclaims that whenever it can be safely done the citizen population shall not be the basis of representation in the Legislature, but it shall be based on the number of acres of land in the State; that 8,000 men in the country shall have the same numerical strength as 34,000 in the city; that New York city, no matter how she shall grow either in territory or in population, shall never have more than one-third of the representation in the Legislature of New York, and Brooklyn never more than one-half. So that, although New York and Brooklyn should pay seventy-five per cent of the State taxes and have eighty per cent of the population, they must always be ruled by a Legislature made up of members living without both cities.

Remembering the proudest boast of every true American citizen that ours is a government representing the free will of the majority of our people, and that under that benign principle our people have prospered and our State grown great, should you wonder, gentlemen of the Convention, that some of your Republicans should feel ashamed of their work? Will some gentleman of the majority tell me why they disfranchised 150,000 citizens residing in the counties of New York, Kings, Albany and Rensselaer? What crime, political or otherwise, have those people committed which calls for this heavy punishment of disfranchisement? The gentlemen on the other side smile at the question, and I can interpret that smile only as meaning that those 150,000 citizens are disfranchised, first, because they live in cities, and next, because they are Democrats.

But the Republicans of this Convention, in their mad haste to grab the Legislature for their party for the next twenty years, do not even stop at hampering the cities of to-day, but they also desire to retard their future influence because of their growth, both in territory and in population. So they declare that hereafter New York or Kings shall not have another representative in the Senate

unless each has an increase of 115,000 in population, while the rural counties may have an additional Senator on an increase of 57,500 in population.

Let me illustrate this unique scheme for depriving large cities of fair representation. New York city increases 114,000 in population and yet will not be entitled to another Senator. Brooklyn also increases 114,000 and yet will not be entitled to another Senator. But four rural counties, each increase 57,500 in population, or 230,000 in all, and under this bill will be entitled to four Senators. Gentlemen of the Republican party, just think of the fraud on the cities you are asked to commit — 230,000 inhabitants residing in the rural districts will have four more Senators, but New York and Kings may increase 228,000 in population and have no additional Senators. And this is what you have called justice to cities. May I not exclaim: Oh! Justice, what crimes are committed in thy name? Will you do it, gentlemen of the majority? Will you, at the behest of party caucus, forget that you are members of a constitutional and not a political convention? Will you vote to disfranchise over 300,000 of your fellow-citizens? Well, you have the power to do it in this Convention, but pray remember that you must one day render an account of your stewardship to the people of the State. You may not believe it, but I tell you that no party will ever be strong enough in our State to disfranchise nearly one-half million of our people and succeed at the polls.

The gentleman from Wyoming has alluded to the spread of socialism and anarchy in the large cities, and the dangers attending the same. With a grace that was both childlike and bland, he told us that if those forces ever sought to overturn by force and disorder the government of that city, we would have to appeal for aid to the people of the rural districts. Let me allay the gentleman's fears with the assurance that New York city will, is and always has been able to take care of herself. But, sir, your proposition, if it should be ratified by the people, will give a greater impetus of the growth of socialism in large cities than anything that has happened within the last quarter of a century. To-day the working people of the State are satisfied with existing laws because those laws have been enacted by the representatives of a majority of the people. Moreover, under our existing apportionment, they know that if they can convince the majority of the people of the justice of their demands they can obtain relief.

How different will it be under your apportionment. The workingmen and women of the State reside principally in the cities and you are arranging the Senate and Assembly districts so that the

country will control the cities and so that a minority of the people will enact laws for the government of the majority. The result will be, I greatly fear, that the workingmen, finding that they cannot obtain relief, although they have convinced the majority of our people of the justice of their cause, will listen to the pleas of anarchistic, socialistic leaders and join those movements, which they never would have done were they fairly represented in the Senate and Assembly and given an equal opportunity with others to secure the enactment of just and equitable laws.

Of course, the Republican party, as represented in this Convention, has no sympathy with the working people of our cities. Their great crime in your eyes is that they are poor. But I tell you they will remember the party that has treated their proposed amendments to the Constitution with scorn and contempt. You may refuse to listen to their petitions, you may ridicule the efforts of their representatives in this body, but you must yet appear before them to answer your charge that the working people of the State do not know what they want and that their propositions if adopted would injure themselves. You can't shirk your responsibility by insulting the intelligence of organized labor. You tell them they must go to the Legislature for relief, and by your present measure you pack the Legislature against them by giving its control to the rural members, who have no sympathy with the workingmen residing in the cities, and to men also who know not and care not for the wants of our working people. The only consolation to me is that you must some day appear before the bar of public opinion and answer for your injustice to the working people of the State.

Let me call your attention to another little trick of this patriotic majority of this Convention. The present Constitution provides for a census to be taken in 1895; but knowing that the cities have grown so much in population since 1892, that even according to their own figures the cities would be entitled at least to two more Senators and five Assemblymen, the enumeration of 1892 is adopted and thus one further step in the conspiracy is accomplished. Moreover, you have refused home rule to the cities of the State. You have proclaimed that citizens of cities cannot be trusted to govern themselves, and that they must obtain relief from the Legislature. Go to the Legislature forsooth! What influence will cities have in the Legislature? The gentleman from New York stated last night that thirty men coming from the city of New York would possess more influence in a legislative body than forty men coming from any other part of the State. What hypocrisy! Does he think that the people can be fooled by such an argument? Do they not know, as

we know, that just as soon as members come to this chamber, whether it be from St. Lawrence county or New York county, the first thing they do is to have a caucus and decide what to do; and when the gentleman tells us that thirty men from the city in a legislative body will count as many as forty from the country, I tell him that that statement is an insult to the intelligence of the people of the State as well as to the members of this Convention. Sir, there should be and there is no antipathy between the city and the rural districts. Why should there be? We ought to go hand in hand together in the upward career of our great State. New York county pays forty-four per cent of the State tax, and New York city and Brooklyn pay two-thirds of the State tax. Why then should there be any antipathy between the country and city? We of the cities have none toward our rural friends, and all we ask from you is justice. We say that you are proceeding on a wrong principle. The basis of representation should be population and not land. And we do not hesitate to say that you are not doing justice to the cities when you practically disfranchise 300,000 of our people.

Sir, I have the honor to offer a substitute for the whole of the pending bill. It provides for thirty-two Senators and 128 Assemblymen. It also provides that an enumeration of the inhabitants of the State shall be taken next year under the direction of the Secretary of State, and the next Legislature shall apportion the Members of the Senate and Assembly according to population and based on said enumeration.

I sincerely hope my substitute will be adopted. Sir, this is not the year to increase the burdens of the people by increasing the number of Senators and Assemblymen at an annual cost of $100,000. The majority of the Convention have already imposed an additional burden on the people of nearly $300,000 by increasing the number of judges. If ever there was a time when a body such as ours should reduce the expenses of the government that time is the present. There has been no demand by the people for an increase in the number of Senators and Assemblymen. I cannot conclude, Mr. Chairman, without once again warning the Republicans of this Convention who are charged with its work, to hesitate before adopting this bill, which should be called a bill to disfranchise the poor in favor of the rich. Pause before it is too late. Will you, in the face of the prosperity which our State under our present system has attained, change our representative form of government? Will you insult the intelligence of the people of New York city by carving out a senatorial district in which will dwell only the

rich and made up only of brown-stone houses? Will you continue to say that it is necessary for Republican success that you must array the rich against the poor? Do not forget that one of the proudest boasts of our civilization is that the greatest leveler of social conditions is American citizenship, and that at the ballot-box all men are equal. If you, by reason of the decree of your caucus, persist in adopting this measure, then, sir, I believe that the people of the State, irrespective of party, will rise in their might and defeat the un-American work of this Convention.

In my judgment, the work of this Convention is doomed to defeat. One more glorious opportunity has been lost by the Republicans of this Convention, namely, to fairly reapportion the Senate and Assembly districts of the State. In my opinion, this Convention will be remembered as a thing of shame and disgrace. Never, never, will the conservative people of our State surrender our present glorious Constitution, under which the people have lived for more than fifty years, and under whose benign influence our people have prospered, and our State grown great, for a Constitution adopted by the Republican majority of this Convention, and wherein they have incorporated provisions which would array the poor against the rich, religion against religion, the workingmen against the farmer, rob the cities of home rule and of just representation in the Legislature, and disfranchise nearly one-half a million of our people. (Applause.) Mr. Chairman, I offer a substitute to the whole bill.

Mr. Jenks — Mr. Chairman, I had not intended to take part in this debate until Mr. Lincoln, the Lion of Little Valley, rode down into the lists, hung high his shield, and dared any member of the minority to touch it. It was a taunt and a challenge, and it seems the privilege of an humble squire, so long as he be a Democrat, to accept the challenge and to take up the gage. On my return to this Convention, after a brief absence, this apportionment scheme was well under way. The walls of the Convention were hung with maps. In my innocence, I supposed that perhaps they were plans of the Chinese invasion of Corea, contributed by the Beer Club; but when I saw that this was a scheme of friendly partition suit of the Republican party, I was astonished and amazed. Yet, when I thought a second time, I forgave the designing man, who could not even spell the counties straight, but printed Cattaraugus with a "K," because he spared from the apportionment Lake Erie and Long Island sound. I have listened to the defenses of this measure in this debate with great interest. They are divided into three or four classes. The first defense is that it is unfair to the Republican party; that is, that this committee "did good by stealth and blushed

to find it fame." Why, these dyed-in-the-wool Republicans remind me of the man who found regeneration and was baptized in the river. When he was taken out a little boy from the bank said: "He's bad enough to leave him soak all night." (Laughter.) These men are like Clive, who, when he saw the whole of India before him, said he was amazed at his own moderation. Then, the second class who have defended this measure are those who say that it is as fair as it should be, and they scream and shake their little fists and cry, "Mylod" and "Maynard," or they say: "Partisan apportionment is bad — the Democrats are guilty of that;" therefore, we will do worse things; or they tell of some little local trouble about ward divisions, as if "the rustic murmur of their bourg for the great wave that echoes round the world;" or there are others who say, like my friend from Jefferson (Mr. Brown), that it is entirely fair, that it is "faultily faultless." but chance gives the advantage to the Republicans. Oh, can you believe that the member from Jefferson has the deep heart of a Machiavelli, when he has the chubby face of Raphael's cherubs, which beams beatitudes? (Laughter.) Or, there are others, such as Mr. Lincoln, "as mild-mannered a man as ever scuttled a ship or cut a throat" (renewed laughter), who say that this is as fair as it could be under the limitations?

Now, gentlemen, in the time afforded to me, I necessarily have but a very few words to say. I want to discuss the two defenses which have been made to this measure that are worth consideration. The first is that this is an entirely fair apportionment, in which chance has given everything to the Republicans. What nonsense. I want to recall to your minds the time when the chairman of the Committee on the Judiciary suffered from insomnia until two o'clock in the morning and leaned upon the shaft of the broken Reed. I want to recall to you that the minority never saw this report until it was flung and cast upon the table; here I want to remind you that it has been said on this floor that it takes 100,000 Republicans to return a Senator and 123,000 Democrats; that it takes 33,000 Republicans to return an Assemblyman, and 40,000 Democrats; that 115,000 voters in New York city can get a Senator, but no less; that 89,000 in Brooklyn can get a Senator, but no less; but outside in the State that 58,000 can get a Senator; and if there be 75,000 Democratic majority in the State, yet the Legislature remains in the hands of the Republican party. Why, this is a minority representation which will please the halcyon Holls himself. (Laughter.) Is this a coincidence, or is it a conspiracy? Does this point toward the accident of fate, or is it the deliberation of the Machiavellian mind of the member from Jefferson? Oh, my friends, who are so innocent,

"All nature is but art unknown to thee,
All chance, direction which thou canst not see."

This is an organized hypocrisy; it is a sham; it is a by-word and a hissing; and it will be rebuked when the people come to pass upon it.

The second argument is that of my friend, Mr. Lincoln, of Little Valley, who goes a great length into the matter that the county must be preserved, and that representation should be based in this State upon these territorial divisions. The Court of Appeals, writing unanimously, has used these words, and I will not lose your attention by any long quotation: "That policy of representation by towns has never been adopted or practiced in this State. From the earliest period of our State history, the leading idea has been that the Legislature was to directly represent the people, not the towns or other *quasi*-political corporations contained within the State itself." * * * "Here we have always had, as a State, the principle of direct representation of the citizen" (applause) "and not the representation of him through a corporate body, of which, by his residence, he might happen to be a member." * * * "It was not the county, however, which was thus represented." * * * "It is impossible to give even a cursory reading to the Constitution of 1846 upon the subject of representation, without seeing that representation of the people, as nearly as might be, in an equal manner, was contemplated and provided for." (Applause.) That is the decision of the Court of Appeals in the People on the relation of Baird, reported last year. But, then, we are to have this new plan of territorial representation, and a political engine, "as it snorts its way across the acres, shall mark upon the blasted heavens the measure of the land." Mr. Root said last night that we were complaining of the political effect. Nay, nay, we are complaining that he has taken his county lines and not even left them intact, but he has added territory to make his districts. We complain of this — that he seeks to bring back into the policy of this State representation by the rotten borough system, that system against which the people of this State once arose in their might. We ask simply that every man in the State have equal representation. That is our policy here. If it be the plan of the gentleman to have this territorial representation, this rotten borough system, to have these counties organized so that they, as such, may send representatives, then I ask them why, in the very measure which they have laid upon the table in this House, they provide that after the next enumeration each district shall contain, as nearly as may be, an equal number of inhabitants, excluding aliens? Are we to have

an apportionment put in the Constitution which shall be territorial, and yet is that Constitution to be so worded that hereafter there shall be an equal number in population in each district? Why this change? Why, under the pressure of this Republican majority, are we to inaugurate only for the present a new system in the Constitution, and yet, in the very terms of that Constitution, have a provision for the future that shall keep the population of each district equal? I am opposed to this whole measure. I am opposed to it because it creates new offices without necessity; I am opposed to it because these new Senators and Assemblymen are created, not because the people desire a greater number of representatives, but because the number thirty-two or the number forty will not give to the Republican majority that kind of representation which they seek. I am opposed to it because it perpetuates the Republican party in power when it does not represent a majority of the people, and need not represent a majority of the people. I am opposed to it because it violates the fundamental principle of equal rights. Every man in the State that has less representation, or right of representation, than any other, is deprived of his inherent right. It is a wrong to the man, it is a wrong to every man, it is a stab in the back of the very State herself. I expected partisanship in this Convention. I believe in partisanship in this Convention. I believe that where Democratic principles and Republican principles clash or run amuck there may partisanship abide. But the time comes when all partisanship should be laid aside, and that time is when the essential and inalienable rights of men, equality before the law, and the supreme law preserving that equality are invaded. Then is the time when the Republican majority should cease to invade these great principles for which Americans have fought, before the member from Jefferson county was born. Gentlemen, the wisest writer of all has said that "they who can give up essential liberty to obtain a little temporary safety deserve neither liberty nor safety." I hoped for better things; and in seasons of despair and grief, when my mind labors in the toils and struggles of this time, I turn, as the Moslem turns to his Khoran, to the utterances of that great man who presides over this Convention. (Laughter.) On the first day when he took the gavel he said these words, which should be inscribed in letters of living light: "There is the great and important question of a reapportionment of the districts of the State. I am innocent enough to believe that even upon that question, which might naturally agitate and arouse a party feeling, this Convention will be virtuous and courageous enough to unite upon an apportionment which shall be at once honest, fair and just to all the

districts and to all the people of this State." (Applause.) Of this gentleman it may be said that "he so loved the truth that he would as soon pick a pocket as dissemble." Oh, can we say it of his fellows? No. "Man seems the only growth that dwindles here." Now, if chance gives this advantage to the Republican party, I say let us recast this measure. Let us take forty, or thirty-two Senators. If, as my friend (Mr. Lincoln) says, such an apportionment as this is the only true and honest apportionment, within present limits of law, then let us cast aside the limits. My proposition is, if you do not believe in the last enumeration, let it be wiped out. I do not speak for the minority. I speak for myself only. Let us have an enumeration next year under the Secretary of State. Let us keep the Senate at thirty-two; let us keep the Assembly at one hundred and twenty-eight; then let us cast the duty upon the Legislature of dividing the State into thirty-two senatorial districts and one hundred and twenty-eight Assembly districts of compact and contiguous territory, and of equal populations. That is a plan which is honest, fair, non-partisan, and which preserves beyond the mere party turbulence and struggles of the hour, the great principle of equality in representation. Sir, this is not apportionment, this is assassination. The Convention of the Constitution has become the conventicle of the caucus. You have taken the Magna Charta and written across it in lurid lines a letter of marque. I hoped when I came here, as Mr. Nicoll hoped, that statesmen would meet, who, "knew the seasons when to take occasion by the hand and make the bounds of freedom wider yet." I hoped that this matter would not be thrown in here as the football of party discussion and party politics, but if you lug this matter as a party question into the organic law of the State, then I will appeal to your own Seward, who said: "Sir, there is a higher law than the Constitution." This is not fair; it is not right; it is not just. Put a fair and honest measure into the Constitution. Put it in for justice's sake. Do not put it in for my party's sake, because I would rather have this blazing iniquity there for the sake of my party, for it is the handwriting on the wall which reads your doom. Do not put it in there for the State's sake, because a great Democracy, like the palm tree of the orient, grows best when a weight is imposed upon it; but put a measure, fair and just, into the Constitution for your own sakes, for "the path of the just is as a shining light that shineth more and more unto the perfect day," and put it into the Constitution for your children's sake, for "only the actions of the just smell sweet and blossom in the dust." (Applause.)

Mr. Choate — Mr. Chairman, I have purposely taken my seat on this side of the chamber at this time in order that in the closing moments of this great debate I might absorb something from my surroundings of that lofty spirit of patriotism and that absolute devotion to country, of that freedom from all partisanship, which has marked the course of the minority from beginning to end, not only of this debate, but of all the proceedings of this Convention. (Laughter and applause.) My friend, Mr. Platzek, from New York, and again the gentleman to-day, with greater emphasis, reading it so that I never appreciated before how impressive and eloquent it was, have quoted from that instrument which my Democratic brethren seem to have committed to heart, the few words that I said in the most inadequate address that I delivered on taking the chair on the first day of the Convention, about this great subject of reapportionment. Mr. Chairman, I am still in that same state of virgin innocence that I was when I took the chair. The serpent of partisanship, which seems to have operated so widely hereabout and left his slimy trail hither and thither, has tendered as yet no apple to my lips. I did believe that it would be possible to devise a scheme of reapportionment, which would be so fair, so honest, so just to all the people of this State and to all the parts of this State, that it would deserve and would command, even if it did not receive, the unanimous approval of this Convention and of the people of the State; and I believe that the scheme of apportionment that has been tendered is of exactly that character. (Applause.) It depends altogether, Mr. Chairman, as to what is the standard by which a scheme of reapportionment should be made, or by which it should be tested. If, as is claimed on this side of the chamber, the whole object of a Constitutional Convention, in reapportioning the Assembly and Senate districts of this State, is to divide the districts fairly between the two parties that happen to-day to divide the people of the State almost equally, why, then it is not fair, it is not honest, and it is not just, and ought not to command the approval of the people; but, as I understand it, that is not the true rule and standard for making or testing an apportionment. It is, whether fair, reasonable, just equality and equity have been done to all parts of the State. Judged by that standard, I uphold and will uphold to the end the justice and the fairness of this amendment for reapportionment which is now about to be voted upon. Of course, Mr. Chairman, the result of the test that is applied is manifest in the manner in which it is debated by the minority here. Believing that that was the real object that was to be sought, what have we had in debate upon this side? Well, we have had, in the first place, a careful

study and analysis of every corner of the State, of every Assembly district, of Senate district, to see exactly how many Republicans, exactly how many Democrats there were and ordinarily would be in each. Those endless strings of figures that my friend, Mr. Bowers, read in that direction, how inspiring, yet how ineffective they were. I remember, Mr. Chairman, we had a great mathematical genius as professor at Harvard when I was there, who undertook to help us in the unsolvable problems of mathematics, and he would begin at one end of the blackboard that extended across the wall, and continue his hieroglyphics until he reached the right-hand end, and then, only being half through, he would take a sponge and wipe out all he had done, and begin again at the left end as before, and so on, the result of which was that the whole thing was as inexplicable and unintelligible to us when he got through as to know how the constellations at the beginning rose out of chaos; and so it was with all Mr. Bowers's figures. (Laughter.) And then, too, I was sorry that this spirit, this small political party view of looking at the measure, had led to so much of invective, so much of adjective, so much of abuse on this side of the chamber. He, the loveliest of men, with the sweetest of tempers — except Mr. Nicoll (laughter) — actually said of men whom he has learned in these four months to honor, to respect and to love, that they had been actuated by fraudulent motives, wilfully fraudulent motives, were engaged in robbery, which Mr. Jenks magnifies into assassination. (Laughter.) And then, too, he became personal, even to the unapproachable presiding officer of this body. He said, if I remember rightly, referring to me, that I was the usual and favorite spokesman of what has been marked out by him as the great Republican Senate district of the heart of the city of New York, and he said it in connection with the assertion on his own part of standing in the same relation to that hall whose name recalls a lost tribe of Democratic savages. (Laughter and applause.) All right, if he likes that, if he is content to crow on his own dunghill, I do hope he will let me alone on mine. (Renewed laughter.) And then Mr. Bush came in with his complaints, the gentleman from Ulster, the last man in the world to complain that he had not had time to consider this since the ninth day of August, when it was in substance presented. He, whose fame culminated — he can never rise above that peak — on the 25th day of April, 1892, when he made, created, was the beginning and end, the alpha and omega, the be-all and end-all, of the apportionment, if you please call it the census, if you please to call it, of 1892. (Applause.) He thought they ought to have had a little more time than since the ninth of August. He only

gave the people of this State — my friend who preceded me said twenty-four hours. Why, if you leave out the adjournment, he only gave them four hours to consider and debate upon that wonderful scheme. Now, gentlemen, when you try, as you now are trying, to stand by that instrument of 1892, you are fighting behind rotten ramparts and armed with wooden guns; they cannot take any effect. (Applause.) And then my friend, the gentleman from Putnam, gave us a genuine oasis in this weary desert of party discussion. He stood for actual popular enumeration down to a man, so that the vote of every man for Senator and Assemblyman on every election should be exactly equal throughout the whole State. Unfortunately the gentleman from Putnam was handicapped by the fact that he is the most flagrant instance of popular misrepresentation that has found a place within the list of this Convention. Sitting on his piazza, as you climb the heights of that beautiful mountain opposite West Point, he can look down upon his constituents, proud, proud of him, proud of themselves, proud of the fact that they, being only 13,000, weigh half as much in the Assembly as his neighbors, upon whom also he can look, of Westchester, with ten times the population; and he says that our scheme of apportionment is not fair because it does not deal exact equality between all the districts and parts of the State. Mr. Chairman, he then made a kind of an apology for being here and making that argument, in that he said, that the county of Putnam was ordinarily all Republican. I think it is now, and I think they knew their man when they selected him to represent them in this body; and if he will only promise to stay there long enough, if he will promise not to go out of that little county, if he will not outgrow it, as I am very much afraid he will, if he continues to exhibit the patriotism and the powers that he has shown here; if he will continue to be a Democrat, which I do not believe he will (laughter); his conduct, his character, his intelligence, yes, even his address, on whom my friends so much rely, bely that character altogether; but, allowing these two great ifs, if he will stay there and continue a Democrat, I promise him that it won't be long before he will have it as a pocket borough in his own permanent and perpetual possession, and he can wear the little county of Putnam as a diamond upon his shirt front, the favorite badge of the regular Democratic politician. (Laughter and applause.)

But Mr. Becker, the chairman of the committee, is frowning upon me. He expected that I would make a serious argument here. What one can do in fifteen minutes, after brooding over the subject

for four months, it is difficult to tell. I will tell you, however, in a few words, what I believe in respect to this scheme of apportionment, and that is the test of whether it is partisan or whether it is fair, honest and just, worthy of the support of all good citizens. Mr. Chairman, the way to make an apportionment is to leave out politics, and to leave out parties, and that is the way to test it. And I venture the assertion that if the people of this State were all Republicans, as they are in some States, or if they were all Democrats, as they are in other States, this apportionment would be accepted as just, fair and honest by every man in the State, with some misgivings lest too great indulgence had been given to the two great cities at the southern end of the State. (Applause.) Mr. Chairman, it is not true that direct population, popular count, man for man, has ever been in this State the basis of representation in the Legislature. We are not a pure democracy; we are not an impure republic. We are a representative government, so far as its legislative body and the dealing out of legislative powers are concerned. For the great offices of State, the Governor and other great officers, we vote man by man, and the majority rules. In the highest judicial court of the State we vote in the same way, popular sovereignty, popular majority, or, at any rate, popular plurality. It never has been so, it never will be so, it never can be so, in respect to the Senate and Assembly. We must be represented by districts; we must be represented by counties; we must be represented by some form of territorial division. When my friends on this side of the chamber concede, as they must concede, and as they have conceded, that, they give away the whole of the argument which Mr. Osborn presented, based upon equal popular representation. Why, there is the little county of Putnam of his, with 13,000 people, and the adjoining county of Westchester, with 127,000, that, according to his theory, ought to have ten times as much. Nobody has ever dreamed, under this or any other apportionment, of giving it more than three times as much. What do the people of this State come to the Legislature for? To make laws for the whole State; to represent the whole State, and each part of the State is interested in the whole. My friend down here upon this side talked as if all the wealth accumulated in the city of New York ought to lie at the basis and foundation of apportionment. Who owns the magnificent harbor, which is the foundation of all her prosperity, and those great rivers that meet to kiss each other at her door? Why, the little county of Niagara might just as well claim to own for itself the cataract of Niagara, that other wonder of the world at the other end of the State. No,

sir, they come here representing these divisions, and the first rule always has been, and always will be, I believe, that each one of these divisions, these counties which have been formed as political divisions for the very purpose of being the centers of home rule, if you please, of local government; every one of them has the right, and the equal right; and if there were but sixty counties, if there were but sixty representatives, they must be distributed among these sixty counties, upon every doctrine that has ever prevailed in this State; and the little county of Putnam in that case would be entitled to the same number in the Assembly as the great county of New York.

Mr. Chairman, I know I have already used up my time. Let me say a single word more on this matter of the division of counties. It was found necessary, for one thing, to enlarge the number of the members of the Assembly, so as to mitigate somewhat this extremely disproportionate power of the smallest counties, so that they might have only one one hundred and fiftieth power, each of them, instead of one one hundred and twenty-eighth. But then that left another series of middle-class counties, which ought not and could not on a just principle be kept down to a single member, and so that second class was introduced and devised, counties having a population somewhere from sixty to one hundred thousand, that they should not be kept down with Putnam and Schuyler, with their 13,000 and 16,000, to one representative, but should have two; and then that the other ten counties of the State should divide the rest between them equally.

Mr. Chairman, if you want to go, for example, to good Democratic authority, I want to give you some on this doctrine in support of this proposition that is represented in this scheme; that is to say, that the greater the territorial extent of a little and poor county, the greater shall be its grade of representation in the popular branch of the Legislature. Florida — is not that a good Democratic State? Did anybody ever hear of a Republican venturing within its borders except for the purpose of summer recreation, or for the investigation of fraud? Florida says: "The representation in the House of Representatives shall be apportioned among the several counties as nearly as possible according to population; provided, each county shall have one representative at large in the House of Representatives; and no county shall have more than three representatives." Think of that.

Georgia — is not that a good Democratic State? Here are States that are all of one way of thinking. Georgia apportions her one hundred and seventy-five representatives among the several coun-

ties thus: "To the six counties having the largest population, three each; to the twenty-six counties having the next largest population, two each; to the remaining 105 counties, one each. After each United States census the general Assembly may change the above apportionment so as to give to the six largest counties, three each; to the twenty-six next largest, two each; but in no event shall the aggregate number of representatives be increased." Is that good Democratic doctrine?

Kentucky, where the people are always one way — see what she does. "If in districting the State inequality of population should be unavoidable, any advantage resulting therefrom shall be given to districts having the largest territory."

Maine — all one way — the other way. Maine, with 151 representatives, divides them thus: each town having 1,500 inhabitants shall have one; each town having 3,750 inhabitants shall have two; each town having 6,750 inhabitants shall have three; each town having 10,500 inhabitants shall have four; when, according to the doctrine of the gentleman from Ulster she ought to have five or six. Each town having 15,000 shall have five representatives, when, according to his doctrine she ought to have ten. Each town having 20,250 shall have six. Each town having 26,250 shall have seven. But no town shall ever be entitled to more than seven.

Maryland, all one way again, reverting to Democracy. Baltimore has 433,000 people. Now, she divides her ten Senators thus: "Senators — each county in the State shall have one, and each of the three legislative districts of Baltimore, one," far below what she ought to have on any theory on this side. "Representatives — each county having eighteen thousand, shall have two; each county having eighteen thousand and less than twenty-eight thousand, three; each county having over twenty-eight thousand and less than forty thousand, four; each county having over forty thousand and less than fifty-five thousand, five; over fifty-five thousand, six and no more." (Applause.) "And each of the three legislative districts of Baltimore shall have as much as the largest county."

Missouri — is that a good Democratic authority? Missouri divides the whole number of her inhabitants by two hundred. Each county having one ratio or less, one; each county having two and a half ratios, two; each county having four ratios, three; each county having six ratios, four, "and one more for each two and a half additional ratios. Until such apportionment shall be made, St. Louis (450,000 inhabitants) shall have seventeen," and she is limited to that, far less than her numerical share.

Now, Mr. Chairman, those are the doctrines which have been accepted and acted upon by States that have studied this subject under circumstances that by no possibility could have been actuated by politics. It is the developed science of apportionment, on just and fair and honest grounds; and adjudged by any such standard, ours is far within the mark to which the majority of this body might well have carried. (Applause.)

The Chairman — The hour has arrived at which this debate was to be closed.

Mr. Becker — Mr. Chairman, under the arrangement made between the leaders on the other side, and myself, I was to close the debate. I don't know of any way in which I could close it with greater satisfaction to the members of the Convention on both sides of the House to use that expression, than by stating that it was the purpose and intent of this committee to effect equal representation, not only in the cities but in the rural districts.

The Chairman — The gentleman can only proceed by unanimous consent.

Mr. Becker — I am going to offer an amendment. And after hearing this debate, and looking over this question thoroughly on both sides, appreciating fully that there should be some allowance for an increase in the cities, but that at the same time if that increase results in representation at the expense of the country districts, it ought to be limited, we have unanimously decided to offer to our proposition the following amendment, which constitutes the only speech I shall make. I say we have unanimously agreed to offer the following amendment, so far as the majority of the committee are concerned, which we think meets this question.

Mr. Veeder — Mr. Chairman, I object to the gentleman's proceeding for the reason that I asked that we might have further time, and the gentleman refused. Now, I object to his taking further time.

The Chairman — The Chair rules that the objection is not well taken, inasmuch as the action proposed by the gentleman from Buffalo relates simply to the offering of an amendment.

Mr. Veeder — I rise to a point of order, Mr. Chairman, that the time for this committee to dissolve has expired, and it is no longer in existence. The time to take a vote has arrived.

The Chairman — The point of order is not well taken. The time for the closing of the debate has arrived, but that does not carry with it the closing of the time for the offering of amendments.

Mr. Mulqueen — Do I understand the Chairman to say that the time for the offering of amendments has not expired?

The Chairman — The time for the offering of amendments is not necessarily concluded by the closing of the time for debate.

Mr. Veeder — The time for debate only is closed?

The Chairman — The time for debate has closed.

Mr. Lincoln — Mr. Chairman, to fit the term of the State Senators, in the scheme of the apportionment article, I offer an amendment for the purpose of moving the election of the Senators after next year into the even years. It is a substitute for section 2.

Mr. Barhite — I desire to offer an amendment with reference to the county of Monroe. I understand this is satisfactory to the Committee on Apportionment.

Mr. Bowers — Mr. Chairman, I make the point of order that under 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. In plain language, it forbids the offering of further amendments, and it was properly so written because it was manifestly wrong that after a three days' debate, amendments changing the entire substance of the article should be thrown upon the Convention and voted upon without any argument; and we understand the rulings have been in that way in the past. It was the intent of the rule that nothing of this sort should take place. By your own ruling, if you follow the rule, the unfortunate position of being compelled to act upon most material amendments with no opportunity to discuss them, will be done away with, and I, therefore, insist that the rule should be, that no amendments can now be received.

The Chairman — The Chair does not understand that the rule excludes the offering of amendments, but it does provide that when the time for debate is closed, the vote shall be taken upon amendments previously offered. That course will now be pursued, and the question arises first upon the amendment offered by Mr. Mereness, which the Secretary will please read.

Mr. Mulqueen — Mr. Chairman, may I not ask whether the resolution did not say that we should vote at twelve o'clock, not receive amendments; and if the Chair be right, may we not offer amendments from now until six o'clock?

The Chairman — The Chair understands that the resolution was that the debate should be closed at twelve o'clock.

Mr. Mulqueen — I ask for the reading of the resolution.

Mr. Bush — It seems to me, Mr. Chairman, that the procedure in this matter is entirely wrong, and the Convention will be all tangled up if you follow out that course. The proper procedure is to read the bill through, section by section, and offer amendments to the sections as they are read.

Mr. Dickey — I make a point of order that the gentleman has no right to speak against the ruling of the Chair unless he appeals from it.

The Chairman — The point of order is not well taken, inasmuch as he does not understand that the gentleman from Ulster is speaking in opposition to the ruling of the Chair.

Mr. Bush — I am discussing the method of procedure that should be adopted; that is, that the measure should be read section by section, and these amendments proposed to the various sections. That is the rule of procedure, and it seems to me that the measure, never having been read through heretofore, should be read through now. That not having been done, it seems to me that the offering of amendments now, without permitting any discussion of them, changes the whole subject which has heretofore been before the Convention.

The Chairman — The Chair is of the opinion that the method of procedure, as stated by the gentleman from Ulster, is correct, but by common consent the debate has proceeded upon the reading of the first section only. It would be manifestly unjust that all amendments to subsequent sections should be precluded in consequence of that course of procedure.

Mr. Bush — Precisely; but, Mr. Chairman, the effect of this whole matter then is, that while we have been debating one proposition, we are voting upon another, which is entirely wrong. Amendments have been offered indiscriminately during the pendency of the debate, and we are offered one during that time, supposing that no amendments would be offered after the close of the debate, and that a vote would be taken at twelve o'clock. Now, you are changing the whole situation and a vote will not be taken on any proposition which has been debated in the House.

Mr. Roche — Mr. Chairman, I desire to call your attention to the report of the Committee on Rules on this subject. It is found at pages 616 and 617. It was to the effect that on general order No. 74, or 77, whichever it is, a vote should be taken at three o'clock P. M., on Thursday next, unless sooner disposed of. I made a motion that the vote be taken instead at twelve on Friday, which amendment was adopted; and I now raise the point of order that

according to the rule which was adopted by this Convention, that vote must now be taken.

The Chairman — The Chair has already ruled that the question before the House is the proposition for amending section 2, I think, offered by Mr. Mereness. The Secretary will read that. The amendment of Mr. Mereness, as the Chair understands, was to Mr. Becker's amendment, and, therefore, the vote comes first upon the amendment of Mr. Mereness, amending Mr. Becker's amendment to the first section.

Mr. Cochran — Mr. Chairman, I recollect the fact that on the reading of the first section, the gentleman from Erie (Mr. Becker), moved to strike out the word "two" and insert in lieu thereof the word "one." What has become of that amendment?

The Chairman — Mr. Mereness subsequently offered an amendment to Mr. Becker's proposition.

Mr. Cochran — How can he amend section 2 when there is an amendment pending to section 1? We must dispose of one section at a time.

The Chairman — It relates to section 1.

Mr. Cochran — I understood the Chairman to say section 2.

The Chairman — My recollection is that it is numbered section 2 in the bill.

Mr. Cochran — It refers to section 2 then; that is it.

Mr. Francis — I desire, Mr. Chairman, to occupy the attention of the committee but for a moment, and to speak upon the question of biennial sessions of the Legislature ——

The Chairman — The gentleman can only be heard by unanimous consent, the business before the House being the vote upon the proposition offered by Mr. Mereness.

Several members objected.

Mr. Blake — Mr. Chairman, I would call for a reading of the resolution fixing the time of limitation of debate on this matter.

The Chairman — The resolution has been read within a very short time by the gentleman from Rensselaer (Mr. Roche), and the resolution can be found upon reference to the Journal.

Mr. J. Johnson — I ask unanimous consent that Mr. Francis may be allowed to print what he desires to say.

Objection was offered by several members.

The Chairman — The Secretary will please read the proposition of Mr. Mereness.

The Secretary read:

Amendment offered by Mr. Mereness — in section 2, page 1, strike out all of line 2, after the word "years," and lines 3 and 4, making it read:

"Section 2. The Senate shall consist of fifty members, and the Senators shall be chosen for two years."

Mr. Cochran — I understand that was an amendment to Mr. Becker's amendment. Now, if it is, then that should be, "shall be chosen for one year."

The Chairman — This was an amendment to the amendment proposed by Mr. Becker. The question is upon the adoption of the amendment offered by Mr. Mereness.

Mr. Bush — I rise to a point of order. The amendment is not germane to Mr. Becker's amendment.

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

The Chairman again put the question on agreeing to the amendment offered by Mr. Mereness, and it was determined in the negative.

Mr. Moore — Mr. Chairman, I rise to a point of order, and that is that I do not believe that the Convention understands this amendment. The amendment as I understand it ——

The Chairman — If the gentleman desires to raise to a point of order, he will please state it.

Mr. Moore — Well, I raise that point of order.

The Chairman — The point of order is not well taken. The question is on the amendment offered by Mr. Becker.

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

Substitute, in line 4 of section 2, "one year" for "two years," making the term of Assemblyman one year instead of two.

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

The Chairman — The question now arises upon the amendment offered by Mr. Mantanye, which the Secretary will now read.

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

At the end of line 4, section 2, 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."

Mr. Osborn — Mr. Chairman, I rise to a point of order, that a vote upon that motion is out of order for the reason that we have already fixed the term at one year, and this prescribes a two-year term.

The Chairman — The Chair decides that the point of order is not well taken. This is relating to the sessions, as the Chair understands.

Mr. Root — Mr. Chairman, we do not understand either the amendment or the observations of the Chair.

The Chairman — If the gentlemen do not understand the amendment it will be again read by the Secretary.

The Secretary again read the amendment offered by Mr. Mantanye.

The Chairman put the question on agreeing to the amendment as read, and it was determined in the negative.

Mr. Bowers — I offer an amendment.

The Chairman — The question now comes on the amendment offered by Mr. Bowers. The Secretary will read it.

Mr. Bush — Mr. Chairman, are we not to have this bill read by sections?

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

Amend section 2, by changing "one hundred and fifty" to "one hundred and twenty-eight."

The Chairman put the question on agreeing to the amendment proposed by Mr. Bowers, and it was determined in the negative.

Mr. Blake — Mr. Chairman, I offer an amendment.

Mr. Bowers — We call for a count on the other amendment.

The Chairman — It is too late for a count on the amendment of Mr. Bowers.

Mr. Roche — Are we going to have a rising vote on the other question. There was a call for it.

The Secretary read the amendment offered by Mr. Blake, as follows:

"Amend by striking out section 2."

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

The Chairman — The gentleman will state his point of order.

Mr. Veeder — The Chair, being occupied, did not hear the count demanded on the last proposition. I now renew the application for a count.

The Chairman — The Chair decides that the application comes too late.

Mr. Veeder — I demand a count on this when it comes to a vote.

The Secretary again read the amendment offered by Mr. Blake to strike out the whole of section 2.

The Chairman — The question is upon the adoption of the amendment of Mr. Blake.

Mr. Bowers — On that we demand a count.

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

The Chairman — The gentleman will state his point of order.

Mr. Acker — There can be only one amendment pending to a proposition at a time. There are already three amendments on the table. They must be voted on separately before any other amendment can be received. If such a procedure was allowed and all these amendments allowed to go on, they would continue until the end of time. One thing at a time is the parliamentary rule, and those amendments that were here first should be voted upon, and then if gentlemen have any amendments to propose they can send them up.

The Chairman — The Chair will state that the difficulty appears to have arisen from the fact that amendments so far as within the knowledge of the Chair, to the bill generally, have not been to specific sections. The amendment offered by Mr. Blake relates to a specific section which, in the opinion of the Chair, gives precedence over amendments generally.

Mr. Acker — Well, Mr. Chairman, if such is the rule it must come in order.

Mr. Bowers — Mr. Chairman, I raise the point of order that Mr. Acker has no right to address the Chair. If he wishes to correct his ruling he must appeal.

The Chairman — The Chair holds that the question is upon the amendment offered by Mr. Blake to strike out section 2.

The Chairman then put the question on agreeing to the amendment offered by Mr. Blake, and it was determined in the negative.

Mr. Maybee — A rising vote was demanded on that long before the amendment was read.

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

Mr. Dickey — I make the point of order that Mr. Veeder voted on both sides. (Laughter.)

The Chairman — The question now is upon the substitute offered by Mr. Lincoln.

Mr. Veeder — Will the Chair allow me one moment?

The Chairman — Further amendments are out of order until those now before the House are disposed of. The question now is on the amendment offered by Mr. Lincoln.

Mr. Bowers — I rise to a point of order.

The Chairman — The gentleman will please state his point of order.

Mr. Bowers — May I state the point of order, or Mr. Veeder?

Mr. Veeder — The Chair was misled, and misunderstood our demand. We asked for tellers. If twenty-four members will rise for that we are entitled to it.

The Chairman — There was no demand for tellers until after the vote.

Mr. Veeder — The demand for a count includes tellers.

The Chairman — Not in the judgment of the Chair, unless specially demanded.

Mr. Veeder — It was so held the other day.

Mr. Bush — Mr. Chairman, I rise to a point of order, and that is, that the bill must be read section by section, and amendments proposed in accordance with the rules of order. This offering amendments now indiscriminately to all sections simply creates confusion, as you very readily see. That comes from the wrong ruling of the Chair in the first place, that amendments might be permitted changing the whole scope of the bill after the debate was closed. You see what a folly that is and what a ridiculous position it puts the whole House in. Now, if you will come back to regular parliamentary usage, you will prevent this trouble. You could not pass this bill in a month, under this method of procedure.

The Chairman — All amendments heretofore passed upon have been to section 2, which has been read.

Mr. Cochran — I have an amendment to section 2, which I desire to offer, a very important amendment, too.

Mr. Acker — Mr. Chairman, I rise to a point of order. The Chair has already stated that the question before the committee is the proposition introduced by Mr. Lincoln, and that is now pending.

Mr. Cochran — That is a substitute for the entire amendment.

Mr. Acker — No, it is not. I beg your pardon. It is not a substitute. It has already been stated, and no other amendments can be received until that is voted upon.

The Chairman — The Secretary will read the substitute offered by Mr. Lincoln. The Chair has no knowledge as to what it relates.

Mr. Bowers — Mr. Chairman, a substitute cannot be voted upon until all amendments are disposed of. We are trying to offer amendments in accordance with the ruling of the Chair.

The Chairman — The Secretary will read the substitute offered by Mr. Lincoln.

Mr. Bowers — Will the Chairman please decide my point of order.

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

The Secretary read the amendment offered by Mr. Lincoln.

Substitute the following in place of section 2: "The Senate shall consist of fifty members. The Senators elected in the year 1895, shall hold their offices for three years, and their successors shall be chosen for two years. The Assembly shall consist of one hundred and fifty members, who shall be chosen for one year."

Mr. Chairman, I submit that that is a substitute for the entire amendment, and that my amendment is in order, and must be ——

Mr. Veeder — I demand tellers.

The Chairman — The question is upon the amendment of Mr. Lincoln.

Mr. Cochran — Do I understand the Chair to rule that a substitute to section two shall be put before my amendment? Mine is an amendment to the section. A substitute is not in order until the entire section has been amended. The Chair can rule it out if he wishes to, but I stand upon my rights that my amendment shall be put to a vote. I ask the Chair for a ruling upon my point of order, as to whether my amendment is in order or not before the substitute is put. Before the substitute is put, I insist upon a ruling.

The Chairman — The Chair rules that the point of order is not well taken.

Mr. Cochran — I insist, then, that that ruling be put on the

Journal, in accordance with the rules, that the ruling of this Chair may appear before the people.

The call for tellers was sustained, and the Chair appointed as such Messrs. Gilleran and O'Brien.

The Chairman put the question on the proposition offered by Mr. Lincoln.

Mr. Meyenborg — Mr. Chairman, there was so little order in the committee that I could not hear the amendment read by the Secretary. I ask to have the amendment read.

The Chairman again put the question on Mr. Lincoln's amendment.

Mr. Mulqueen — Do I understand the Chair to hold that a gentleman cannot have a substitute read that gives Senators a three-year term; that he cannot even have it read?

The Chairman — The substitute has been read.

Mr. Mulqueen — No, sir. The gentleman has asked for information.

A rising vote was then taken on agreeing to the amendment of Mr. Lincoln, and it was determined in the affirmative, 84 to 51.

Mr. Cochran — Mr. Chairman, is my amendment now in order.

The Chairman — The Chair rules that a motion to strike out section 2 having been passed upon, after all the amendments to that section had been offered, that no further amendments to the section are in order.

Mr. Cochran — I rise to a question of privilege, to state to the Chair and to this House, the fact that I offered an amendment ——

Mr. Root — Mr. Chairman, I rise to a question of order. It is not competent for the gentleman to discuss the ruling. His only recourse is an appeal.

The Chairman — The gentleman rises to a question of privilege.

Mr. Cochran — The privilege is, sir, that I desire to offer an amendment to the Constitution, putting it back where it is to-day with thirty-two Senators. I made it when no substitute was pending here, the substitute was put before my amendment, and now to rule my amendment out because the substitute was carried, I submit, sir, it is not fair.

Mr. Root — Mr. Chairman, I ask for a ruling upon my point of order, that the gentleman is not stating a question of privilige.

The Chairman — The point of order is well taken. The Secretary will now read section 3.

Mr. Bowers — Mr. Chairman, I rise to a point of order. Your decision upon this matter may adjust present differences. We have a number of amendments that we desire to have passed upon to this section. Some of them have already been presented, others have not. We understood the Chair to rule that amendments could be offered after the time limit had been fixed. If the ruling is to be changed and that fact is plainly announced, we shall submit, I suppose, to the ruling of the Chair, but we cannot pass it over unless it is so plainly announced that that is the ruling. I therefore, ask leave to offer an amendment.

The Chairman — The Chair holds that, after amendments have been offered and passed upon, and a motion to strike out the section has also been passed upon, no further amendments to that section are in order.

Mr. Cochran — I offer a substitute for section 2.

Mr. Bowers — A point of order, Mr. Chairman. The amendment of the gentleman from Kings was in the hands of the Chair, or the Secretary, before the substitute was passed upon, and we urged that proposition at the time, and the Chair ordered the substitute to be read; and I am sure there must be some error in the Chairman's present ruling.

The Chairman — The amendment was not in the hands of the Secretary until the motion to strike out had been acted upon, which, as the Chair understands, precludes the amendment.

Mr. Cochran — I offer a substitute to section 2: "Strike out all of the present section and insert in lieu thereof the following:"

The Chairman — The Chair has directed the Secretary to read the section.

Mr. Cochran — Not until I had offered my substitute. Am I not to be allowed to get my amendment in here, to reduce the number of Senators and to reduce the expenses which will be created by this amendment now proposed to be put in here? I submit I have a right to offer my substitute.

Mr. Vedder — Mr. Chairman, I understand that section 2 is passed. That is the end of it, then. No amendment can be made if you have passed it in the reading of the bill.

Mr. Cochran — I offer a substitute.

Mr. Vedder — Well, a substitute. You can't offer it. It has been passed and that is the end of it. I make this point of order, Mr. Chairman, that we are reading this bill by sections. When a section is passed it is passed for good, until amendments generally

are in order; and when it comes to that time, then the gentleman may offer his as a substitute or an amendment, as he pleases. Till then he must remain silent upon that substitute.

The Chairman — The Chair so holds, and was about so to announce.

Mr. Cochran — I have an amendment to offer to section 3.

The Secretary proceeded to read section 3.

Mr. Barhite — I raise the point of order that there are already two amendments to section 3 on the Clerk's desk that have been received.

The Chairman — The question is on the adoption of the amendment.

Mr. Bowers — Mr. Chairman, I rise to a point of order. We are entitled to have the section read. You only read the first paragraph.

The Secretary then concluded the reading of section 3 in the language following:

Sec. 3. The State shall be divided into fifty districts, to be called Senate districts, each of which shall choose one Senator. The districts shall be numbered from one to fifty, inclusive.

District number one (1) shall consist of the counties of Suffolk and Richmond.

District number two (2) shall consist of the county of Queens.

District number three (3) shall consist of that part of the county of Kings comprising the first (1), second (2), third (3), fourth (4), fifth (5) and sixth (6) wards of the city of Brooklyn.

District number four (4) shall consist of that part of the county of Kings comprising the seventh (7), thirteenth (13), nineteenth (19) and twenty-first (21) wards of the city of Brooklyn.

District number five (5) shall consist of that part of the county of Kings comprising the eighth (8), tenth (10), twelfth (12), thirtieth (30) and thirty-first (31) wards of the city of Brooklyn, including the former town of Gravesend.

District number six (6) shall consist of that part of the county of Kings comprising the ninth (9), eleventh (11), twentieth (20) and twenty-second (22) wards of the city of Brooklyn.

District number seven (7) shall consist of that part of the county of Kings comprising the fourteenth (14), fifteenth (15), sixteenth (16) and seventeenth (17) wards of the city of Brooklyn.

District number eight (8) shall consist of that part of the county of Kings comprising the twenty-third (23), twenty-fourth (24),

twenty-fifth (25) and twenty-ninth (29) wards of the city of Brooklyn, and the town of Flatbush.

District number nine (9) shall consist of that part of the county of Kings comprising the eighteenth (18), twenty-sixth (26), twenty-seventh (27) and twenty-eighth (28) wards of the city of Brooklyn.

District number ten (10) shall consist of that part of the county of New York which was included within the First Assembly District, the Second Assembly District and the Fourth Assembly District, and the fourth, fifth, nineteenth and twentieth election districts of the Fifth Assembly District, and all that part of the twenty-first election district lying south of Spring street, as the said Assembly and election districts existed on the first day of January, 1892; being all that portion of the city within and bounded by a line commencing at Canal street and the Hudson river, and running thence along Canal street, Hudson street, Broome street, Sullivan street, Spring street, Broadway, Canal street, the Bowery, Division street, Grand street and Jackson street, to the East river, and thence around the southern end of Manhattan Island to the place of beginning, and also Governor's Island.

District number eleven (11) shall consist of that part of the county of New York, which was included in the Eighth Assembly District, the Tenth Assembly District, and the election districts numbered from one to sixteen inclusive, of the Third Assembly District, as the said Assembly and election districts existed upon the first day of January, 1892; being all that portion of the city lying to the north of district number ten, and bounded by a line commencing at the junction of Broadway and Canal streets, and running thence along Broadway, Fourth street, Third avenue, St. Mark's Place, Avenue A, Seventh street, Avenue B, Stanton street, Rivington street, Norfolk street, Division street, the Bowery and Canal street, to the place of beginning.

District number twelve (12) shall consist of that part of the county of New York which was included in the Sixth Assembly District, the Twelfth Assembly District and the Fourteenth Assembly District, as the said Assembly districts existed on the first day of January, 1892; being all that portion of the city lying to the north of districts numbers ten and eleven, and bounded by a line commencing at Jackson street and the East river, and running thence through Jackson street, Grand street, Division street, Norfolk street, Rivington, street, Stanton street, Avenue B, Seventh street, Avenue A, St. Mark's Place, Third avenue, East Fourteenth street and the East river, to the place of beginning.

District number thirteen (13) shall consist of that part of the county of New York which was included within election districts seventeen to nineteen inclusive of the Third Assembly District, and election districts from one to twenty-two, inclusive, of the Seventh Assembly District and the Ninth Assembly District, and all of the Fifth Assembly District, except election districts numbers four, five, nineteen and twenty, and the south half of the Twenty-first District, and election districts numbers one to eleven, inclusive, of the Thirteenth Assembly District, as the said Assembly and election districts existed on the first day of January, 1892; being all that portion of the city lying to the north of district number ten, within and bounded by a line beginning at the junction of Canal and West streets, and running thence along Canal street, Hudson street, Broome street, Sullivan street, Spring street, Broadway, Fourth street, the Bowery, St. Mark's Place, Third avenue, West Fourteenth street, Seventh avenue, West Eighteenth street, Eighth avenue, West Twentieth street, and the Hudson river, to the place of beginning.

District number fourteen (14) shall consist of that part of the county of New York which was included in the Sixteenth Assembly District, Eighteenth Assembly District, and election districts numbered one to four, inclusive, and nineteen to thirty-five, inclusive, of the Twentieth Assembly District, and the easternmost blocks of election districts numbers twenty and twenty-one of the Third Assembly District, as the said election and Assembly districts existed on the first day of January, 1892; being all that portion of the city lying north of district number twelve, and lying within and bounded by a line commencing at East Fourteenth street and the East river, and running thence along East Fourteenth street, Irving Place, East Nineteenth street, Third avenue, East Twenty-third street, Lexington avenue, East Fifty-third street, Third avenue, East Fifty-second street, and the East river, to the place of beginning.

District number fifteen (15) shall consist of that part of the county of New York which was included within the election districts numbered twenty to twenty-three, inclusive, of the Third Assembly District, and election districts numbered twenty-three to twenty-eight, inclusive, of the Seventh Assembly District, the Twenty-second Election District of the Thirteenth Assembly District, the Eleventh Assembly District, the Twenty-first Assembly District, and election districts numbered forty-seven to fifty-two, inclusive, of the Seventeenth Assembly District, and election districts one and two of the Nineteenth Assembly District, and election districts nine, eleven, twelve and ten, except the easternmost block thereof; and thir-

teenth, except the easternmost block thereof, of the Twenty-second Assembly District; and election district number one of the Twenty-third Assembly District; as the said election and Assembly districts existed on the first day of January, 1892; being all that portion of the city lying north of district number thirteen, and within and bounded by a line beginning at the junction of West Fourteenth street and Seventh avenue, and running thence along Seventh avenue, West Fortieth street, Eighth avenue and the Transverse road across Central Park at Ninety-seventh street, Fifth avenue, East Ninety-sixth street, Lexington avenue, East Twenty-third street, Third avenue, East Nineteenth street, Irving Place and West Fourteenth street, to the place of beginning.

District number sixteen (16) shall consist of that part of the county of New York which was included within election districts numbers twelve to twenty-one, inclusive, and twenty-three to thirty-five, inclusive, of the Thirteenth Assembly District; the Fifteenth Assembly District, election districts numbered from one to six, inclusive, and thirty-two to thirty-seven, inclusive, of the Seventeenth Assembly District; as the said election and Assembly districts existed on the first day of January, 1892; being all that portion of the city lying north of district thirteen, and within and bounded by a line commencing at Seventh avenue, and West Eighteenth street, and running thence along West Eighteenth street, Eighth avenue, West Twentieth street, the Hudson river, West Forty-sixth street; Tenth avenue, West Forty-third street, Eight avenue, West Fortieth street and Seventh avenue, to the place of beginning.

District number seventeen (17) shall consist of that part of the county of New York which was included within election districts numbered seven to thirty-one, inclusive, thirty-eighth to forty-sixth, inclusive, of the Seventeenth Assembly District; and election districts numbered three to thirty-seven, inclusive, of the Nineteenth Assembly District, as the said election and Assembly districts existed on the first day of January, 1892; being all that portion of the city lying to the north of district number sixteen, within and bounded by a line commencing at the junction of Eighth avenue and West Forty-third street, and running thence along West Forty-third street, Tenth avenue, West Forty-sixth street, the Hudson river, West Eighty-ninth street, Tenth avenue, West Eighty-sixth street, Ninth avenue, West Eighty-first street and Eighth avenue, to the place of beginning.

District number eighteen (18) shall consist of that part of the county of New York which was included in the election districts numbered five to eighteen, inclusive, of the Twentieth Assembly

District, and election districts numbered one to seven, inclusive, and thirty-one to seventy-four, inclusive, of the Twenty-second Assembly District, as the said election and Assembly districts existed on the first day of January, 1892; being all that portion of the city lying to the north of district number fourteen, within and bounded by a line beginning at the junction of East Fifty-second street and East river, and running thence along East Fifty-second street, Third avenue, East Fifty-third street, Lexington avenue, East Eighty-fourth street, Second avenue, East Eighty-third street, and the East river, to the place of beginning, and also Blackwell's Island.

District number nineteen (19) shall consist of that part of the county of New York which was included within election districts numbered thirty-eight to seventy-six, inclusive, of the Nineteenth Assembly District, and election districts numbered twenty-nine, thirty-seven, thirty-nine, fifty-four to fifty-nine, inclusive; seventy-four to seventy-eight, inclusive, and eighty of the Twenty-third Assembly District; and all that part of the thirtieth election district of the Twenty-third Assembly District lying west of Fourth avenue, and that part of the thirty-first election district of the Twenty-third Assembly District lying west of Fifth avenue; as the said election and Assembly districts existed on the first day of January, 1892; and being all that portion of the city lying north of district number seventeen, and within and bounded by a line commencing at Eighty-ninth street and the Hudson river, and running thence along the Hudson river and Spuyten Duyvil creek around the northern end of Manhattan Island; thence southerly along the Harlem river to the north end of Fifth avenue; thence along Fifth avenue, East One Hundred and Twenty-ninth street, Fourth avenue, East One Hundred and Tenth street, Fifth avenue, the Transverse road across Central Park at Ninety-seventh street, Eighth avenue, West Eighty-first street, Ninth avenue, West Eighty-sixth street, Tenth avenue, West Eighty-ninth street, to the place of beginning.

District number twenty (20) shall consist of that part of the county of New York which was included in election districts numbered eight and fourteen to thirty, inclusive, of the Twenty-second Assembly District, and the easternmost block of the tenth election district and the easternmost block of the thirteenth election district of the Twenty-second Assembly District; and election districts numbered from two to twenty-eight, inclusive; thirty-one to thirty-six, inclusive; thirty-eight and forty to fifty, inclusive, of the Twenty-third Assembly District; and that part of the fifty-second election district of the Twenty-third Assembly District which lies south of One Hundred and Nineteenth street; as the said election and

Assembly districts existed on the first day of January, 1892; and being all that portion of the said city lying north of district numbered eighteen, and within and bounded by a line commencing at East Eighty-third street and East river, running thence through East Eighty-third street, Lexington avenue, East Ninety-sixth street, Fifth avenue, East One Hundred and Tenth street, Fourth avenue, East One Hundred and Nineteenth street and the Harlem river, to the place of beginning; and also Randall's Island and Ward's Island.

District number twenty-one (21) shall consist of that part of the county of New York which was included in all the election districts not hereinbefore enumerated of the Twenty-third Assembly District and the Twenty-fourth Assembly District, as the said election and Assembly districts existed on the first day of January, 1892; and being all that portion of the city lying north of district numbered twenty, being that part of Manhattan Island, within and bounded by a line commencing at East One Hundred and Nineteenth street and Harlem river, and running thence along East One Hundred and Nineteenth street, Fourth avenue, One Hundred and Twenty-ninth street, Fifth avenue and the Harlem river, to the place of beginning; and all that part of the city of New York lying north and east of Harlem river.

District number twenty-two (22) shall consist of the county of Westchester.

District number twenty-three (23) shall consist of the counties of Orange and Rockland.

District number twenty-four (24) shall consist of the counties of Dutchess, Columbia and Putnam.

District number twenty-five (25) shall consist of the counties of Ulster and Greene.

District number twenty-six (26) shall consist of the counties of Delaware, Chenango and Sullivan.

District number twenty-seven (27) shall consist of the counties of Montgomery, Fulton, Hamilton and Schoharie.

District number twenty-eight (28) shall consist of the counties of Saratoga, Schenectady and Washington.

District number twenty-nine (29) shall consist of the county of Albany.

District number thirty (30) shall consist of the county of Rensselaer.

District number thirty-one (31) shall consist of the counties of Clinton, Essex and Warren.

District number thirty-two (32) shall consist of the counties of St. Lawrence and Franklin.

District number thirty-three (33) shall consist of the counties of Otsego and Herkimer.

District number thirty-four (34) shall consist of the county of Oneida.

District number thirty-five (35) shall consist of the counties of Jefferson and Lewis.

District number thirty-six (36) shall consist of the county of Onondaga.

District number thirty-seven (37) shall consist of the counties of Oswego and Madison.

District number thirty-eight (38) shall consist of the counties of Broome, Cortland and Tioga.

District number thirty-nine (39) shall consist of the counties of Cayuga and Seneca.

District number forty (40) shall consist of the counties of Chemung, Tompkins and Schuyler.

District number forty-one (41) shall consist of the counties of Steuben and Yates.

District number forty-two (42) shall consist of the counties of Ontario and Wayne.

District number forty-three (43) shall consist of all that part of the county of Monroe situate, lying and being on the east side of the Genesee river.

District number forty-four (44) shall consist of all that part of the county of Monroe situate, lying and being on the west side of the Genesee river.

District number forty-five (45) shall consist of the counties of Niagara, Genesee and Orleans.

District number forty-six (46) shall consist of the counties of Allegany, Livingston and Wyoming.

District number forty-seven (47) shall consist of that part of the county of Erie comprising the first (1), third (3), sixth (6), fifteenth (15), sixteenth (16), nineteenth (19), twentieth (20), twenty-first (21), twenty-second (22), twenty-third (23), and twenty-fourth (24) wards of the city of Buffalo.

District number forty-eight (48) shall consist of that part of the county of Erie comprising the second (2), fourth (4), fifth (5), seventh (7), eighth (8), ninth (9), tenth (10), eleventh (11), twelfth (12), thirteenth (13), and fourteenth (14) wards of the city of Buffalo.

District number forty-nine (49) shall consist of that part of the county of Erie comprising the seventeenth (17), eighteenth (18) and

twenty-fifth (25) wards of the city of Buffalo; and all the remainder of the said county of Erie.

District number fifty (50) shall consist of the counties of Chautauqua and Cattaraugus.

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

Amend by striking out in section 3, page 12, all of lines 7, 8 and 9, and insert as follows: " District number forty-three shall consist of that part of the county of Monroe comprising the towns of Brighton, Henrietta, Irondequoit, Mendon, Penfield, Perinton, Pittsford, Rush and Webster, and the fourth, sixth, seventh, eighth, twelfth, thirteenth, fourteenth, sixteenth, seventeenth and eighteenth wards of the city of Rochester as at present constituted;" and also strike out, same page and section, lines 10, 11 and 12, and insert the following: " District number forty-four shall consist of that part of the county of Monroe comprising the towns of Chili, Clarkson, Gates, Greece, Hamlin, Ogden, Parma, Riga, Sweden and Wheatland, and the first, second, third, fifth, ninth, tenth, eleventh, fifteenth, nineteenth and twentieth wards of the city of Rochester as at present constituted."

The Chairman put the question on agreeing to the amendment offered by Mr. Barhite.

Mr. Osborn — Mr. Chairman, I desire to ask the population of those two districts.

A vote was then had on agreeing to the amendment of Mr. Barhite, and it was determined in the affirmative.

The Chairman — The Secretary will read the further amendments in relation to this section.

Mr. Cochran — I have an amendment to section 3. I offer the following amendment to section 3.

Mr. Blake — Mr. Chairman, do I understand that section 3 has been passed upon?

The Chairman — Section 3 has been read. It is before the House.

Mr. Blake — I desire to offer an amendment to section 3.

Mr. Cochran — I also desire to offer one after Mr. Blake is through. I desire to give notice now.

The Secretary read the amendment offered by Mr. Blake, in the language following: Amend section 3 by inserting at the commencement of the section:

"Sec. 3. The State shall be divided into thirty-two districts, to be called Senate districts, each of which shall choose one Senator. The districts shall be numbered from one to thirty-two, inclusive, and each of such districts shall have the same territorial boundaries as are now fixed by law."

The Chairman put the question on agreeing to the amendment offered by Mr. Blake, as read, and it was determined in the negative.

Mr. Cochran — Mr. Chairman, I am pleased at last that I will have an opportunity to put in what I consider to be one of the very most important amendments yet considered to this article. I will give it to the Secretary in writing immediately. The amendment is, sir:

"Strike out in line 5, page 1, the word, "fifty," and insert in lieu thereof the word "thirty-two," and strike out in section 3 all the remaining part of the section after line 6, and insert in line 5 the words 'by the Legislature,' after the word, 'divided.'"

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

The Secretary read section 4, in the language following:

"Sec. 4. An enumeration of the inhabitants of the State shall be taken under the direction of the Secretary of State, during the months of May and June, in the year one thousand nine hundred and five, and in the same months every tenth year thereafter; and the said districts shall be so altered by the Legislature at the first regular session after the return of every enumeration, that each Senate district shall contain as nearly as may be an equal number of inhabitants, excluding aliens, in as compact form as practicable, and shall remain unaltered until the return of another enumeration, and shall at all times consist of contiguous territory, and no county shall be divided in the formation of a Senate district, except to make two or more Senate districts wholly in such county. No town, nor any block in a city, inclosed by streets or public ways, shall be divided in the formation of Senate districts. Nor shall any district contain a greater excess in population over an adjoining district in the same county, than the population of a town or block therein, adjoining such district. Counties, towns or blocks, which, from their location, may be included in either of two districts, shall be so placed as to make said districts most nearly equal. An additional Senator shall not be apportioned to any county on less than one-half the ratio, 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."

Mr. Roche — Mr. Chairman, I offer an amendment.

The Secretary read the amendment heretofore offered by Mr. Becker to section 4, in the language following:

Amend section 4, page 13, line 26: Strike out all after the word, " equal," to and including the word, " ratio," on page 14, line 5, and insert the following: " Every county having four or more Senators shall have a full ratio for each Senator, and no city or county shall have more than one-third of all the Senators, unless the counties of New York and Kings, or the cities of New York and Brooklyn, are consolidated, in which case the city or county so formed shall not have more than one-half of all the Senators. The ratio for apportioning Senators shall always be obtained by dividing the population, excluding aliens, by fifty, and the Senate shall always be composed of fifty members, except that if any county having three or more Senators at the time of any apportionment, shall be entitled on such ratio to an additional Senator or Senators, such additional Senator or Senators shall be given to such county, and the whole number of such Senators shall be increased to that extent."

Mr. Bush — Mr. Chairman, I desire to debate that amendment. It hasn't been before the committee.

The Chairman — The question is upon the adoption of the amendment.

Mr. Bush — I rise to a question of privilege, which takes precedence of every other matter.

The Chairman — The gentleman will state his question of privilege.

Mr. Bush — My question of privilege is, that I desire to debate this proposed amendment, which, under the rules, I have a right to do. It is a question of the highest privilege. It is an amendment not heretofore before the committee for consideration.

The Chairman — The Chair decides that the gentleman's point is not a question of privilege.

Mr. McIntyre — Mr. Chairman, I ask the Chair to require gentlemen to take their seats and, if necessary, have the sergeant-at-arms seat them.

Mr. Bush — Unfortunately, the sergeant-at-arms cannot seat any man in this House who desires to rise to a question of privilege or to a motion.

The Chairman — The question is upon the adoption of the amendment.

Mr. Bush — Without one word of debate?

The Chairman proceeded to state the question.

Mr. Cochran — A count is called for.

Mr. Veeder — And tellers demanded.

The call for tellers was sustained.

Mr. Jenks — I rise to a point of order.

The Chairman — The gentleman will state his point of order.

Mr. Jenks — I find in the rules of the Convention Journal that there was a report that the time for debate upon the proposed amendment as to apportionment be fixed at five days. I find, then, that Mr. Roche moved to amend the report of the Committee on Rules by striking out " three P. M., Thursday," and inserting in lieu thereof, " Friday at twelve o'clock." I find that that was adopted. I shall make the point of order that the time has now arrived to take a vote, and if the Chair adheres to its previous ruling, I propose to appeal, with all due respect, from the decision of the Chair, in order that we may come to a dignified vote upon this measure. (Applause on the Democratic side.) I now ask for a ruling of the Chair upon my point of order.

The Chairman — The Chair decides the point of order not well taken.

Mr. Jenks — I appeal from the decision of the Chair.

Mr. Acker — I move to lay the appeal upon the table.

Mr. Veeder — On that I demand tellers.

Mr. McIntyre — Mr. Chairman, a point of order. I demand that all gentlemen be required to take their seats.

The Chairman — The Chair desires to state the point upon which his ruling is based. It happened that there was no opportunity for the few moments preceding twelve o'clock, the time at which the debate was to be closed, for the offering of an amendment, inasmuch as the floor was then occupied by a gentleman who was addressing the committee, and to have insisted upon a vote upon the main proposition being immediately taken, would have cut off all amendments. The Chair, therefore, held that a reasonable opportunity should be presented for amendments to be offered after the debate was closed. If the committee desires to reverse the ruling of the Chair, the Chair will be abundantly content.

Mr. Veeder — I rise to a point of order. The time for recess has arrived.

The Chairman — The question before the committee is, shall the decision of the Chair stand as the decision of the House?

Mr. Acker — I move that lie upon the table.

Mr. Veeder — And on that I demand tellers.

The Chairman put the question on sustaining the decision of the Chair, and it was determined in the affirmative, by a *viva voce* vote.

Mr. Bowers — We demand tellers.

Mr. Jenks — A count, Mr. Chairman.

The hour of one o'clock having arrived, President Choate resumed the chair, and declared the Convention in recess until 3 P. M.

AFTERNOON SESSION.

Friday Afternoon, September 7, 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., September 7, 1894, at three o'clock P. M.

President Choate in the Chair.

Mr. Vedder — Mr. President, just before the Committee of the Whole rose at the hour of one o'clock to-day an important amendment was offered to the proposition under consideration by the gentleman from Erie, Mr. Becker. Those who have been opposing many features of the proposition desire, as I understand it, to debate that amendment, but, under the previous order of the Convention, they had no opportunity to do so. I now move you, Mr. President, that this be the order of the Committee of the Whole; that that amendment which is pending shall be taken up immediately, and that those who desire to debate it, or to oppose it — I will put it on that ground — that those who desire to oppose it, may have an hour in which to do so, and that we shall have an hour for the debate, and that the vote shall be taken, at least, at four o'clock. That will give them a full hour to debate the proposition.

Mr. Veeder — Does the gentleman mean to go back to the Committee of the Whole?

Mr. Vedder — Yes, sir; and that at four o'clock.

Mr. Root — Say quarter past four.

Mr. Vedder — That at fifteen minutes after four o'clock the vote

shall be taken on that amendment, and then on the main proposition.

Mr. McClure — Mr. President, I rise for a question of information. What is to be the order of procedure with reference to other important amendments to this apportionment bill than that offered by Mr. Becker?

Mr. Vedder — In regard to that, sir, they will all proceed, I suppose, in order, as if this motion had not been made.

Mr. McClure — Why so?

The President — That is the rule established by this Convention.

Mr. McClure — Then I move, sir, that any amendment offered by any member of this Convention shall be debated and fully considered before a vote shall be had upon it, just the same as the amendment offered by Mr. Becker.

The President — The question is on Mr. Vedder's motion.

Mr. McClure — Mr. President, I move this as an amendment to Mr. Vedder's motion. I cannot understand why an amendment proposed by one member of this Convention shall have the distinction of being considered and explained, while other important amendments, offered by other members of this body, are not permitted to have a like explanation and discussion accorded to them. I think there ought to be fairness about this thing. I have not been able to follow the discussions throughout upon this question, but, sir, it seems to be an extraordinary innovation upon the rights of at least some of the members of this Convention that only one amendment, and that the one proposed by the chairman of the committee and a member of the majority, should be singled out for discussion, while the others are not permitted to be discussed.

The President — Will Mr. McClure please restate his amendment?

Mr. McClure — I move that all amendments shall be accorded a full and sufficient and liberal discussion before any vote shall be taken.

Mr. Vedder — Mr. President, this motion of mine was made, not because under the rules they had a right to ask to debate this proposition ——

Mr. McClure — Who are "they?"

Mr. Vedder — Those who oppose it, or who have been opposing the main proposition; but it is asked for them *ex gratia*. It is out of grace to them only, and in order to grant them the fair thing that I have made this motion.

Mr. McClure — Why, sir, we want nothing of grace on this subject. This is a subject of great importance, one which has occupied the attention of this House for many days, and I, for one of the minority, reject the proposition of the gentleman to accept upon this grave and important subject, held until the last minute of this Convention, the right to discuss it as an act of grace and not as a matter of right. We do not want to discuss Mr. Becker's proposition purely and solely because it is Mr. Becker's or any other man's but we want to have the privilege to discuss any new proposition that is put in here by way of amendment, no matter from what source it proceeds. You cannot give us grace on this, gentlemen, and live; and I say to the mover of this amendment, that after he shall have passed this apportionment matter by "grace," as he says — using his own words — they will only have the corpse of this Constitution to carry out after the people shall have acted upon it.

Mr. Osborn —Mr. President, I was informed at the desk just now that two amendments had been prepared by Mr. Becker — one relating to the Assembly and one to the Senate — I should be pleased to be informed which amendment Mr. Vedder's resolution refers to.

Mr. Vedder — It is only one.

Mr. Osborn — Which one does it refer to?

Mr. Vedder — It refers only to one; to the Senate, chiefly.

The President — There is only one at the desk.

Mr. Vedder — Can it be read?

The President — Yes, it can be read, and it shall be read. The Secretary will please read it.

The Secretary read the proposed amendment, as follows:

"Every county having four or more Senators shall have a full ratio for each Senator, and no city or county shall have more than one-third of all the Senators, unless the counties of New York and Kings, or the cities of New York and Brooklyn, are consolidated, in which case the city or county so formed shall have no more than one-half of all the Senators. The ratio for apportioning Senators shall always be obtained by dividing the population, excluding aliens, by fifty; and the Senate shall always be composed of fifty members, except that if any county having three or more Senators at the time of any apportionment, shall be entitled on such ratio to an additional Senator or Senators, such additional Senator or Senators shall be given to such county, and the whole number of Senators shall be increased to that extent."

The President — The question is on Mr. McClure's amendment to Mr. Vedder's motion, Mr. Vedder's motion being that in the Committee of the Whole there be an allowance of time until a quarter past four o'clock to debate Mr. Becker's amendment which has just been read. Mr. McClure's amendment to that motion is, that unlimited time shall be allowed for the discussion of all the amendments. Those in favor of Mr. McClure's amendment will please say aye, those opposed, no. Lost.

The President — It appears to be lost.

Mr. Veeder — Mr. President, I call for a rising vote.

The President — Those in favor of Mr. McClure's amendment will rise and stand until they are counted. Those opposed will now rise. The amendment is lost — ayes, 45; noes, 77. The question is now on Mr. Vedder's motion. Gentlemen will understand it. It is, to allow until a quarter past four o'clock in Committee of the Whole for debate upon Mr. Becker's amendment only, and at that hour the vote shall be taken upon that and all other amendments. Those in favor of that motion will say aye; those opposed, no. Carried.

The motion is carried.

Mr. Francis — Mr. President, we have here to-day a distinguished citizen of Georgia, General Alexander Lawton, late United States Minister to Austria-Hungary. I move you, sir, that the privilege of the floor be accorded to him.

The President — Gentlemen, you have heard the motion to accord the privilege of the floor to General Lawton. Those in favor of extending the privilege of the floor to General Lawton will please say aye. Carried.

The President — Mr. Durfee will please resume the chair.

Mr. Durfee took the chair, and the Convention resolved itself into Committee of the Whole and resumed the consideration of general order No. 74.

The Chairman — The House is now in Committee of the Whole for the consideration of the amendment offered by Mr. Becker, which was pending at the time of the taking of the recess. Are you ready for the question?

Calls were made for the question.

Mr. Roche — What is the question, Mr. Chairman?

The Chairman — The question is on the adoption of the amendment offered by Mr. Becker, which was pending at the close of the morning session. Are you ready for the question? All those in

favor of the amendment proposed by Mr. Becker will signify it by saying aye, and those opposed, no. Carried.

Mr. Root — Now the main proposition.

Mr. Vedder — I call for the main proposition.

Mr. Root — Put the question on the main proposition, Mr. Chairman.

The Chairman — The question is now ——

Mr. Roche — Mr. Chairman, I have an amendment to offer to section 4.

The Chairman — The Chair holds that no further amendments can be offered, under the rule adopted by the Convention.

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

Mr. Roche — Mr. Chairman, I was recognized by the Chair before adjournment, and I insist upon my amendment being put to the committee.

The Chairman — The question is on the main proposition. No further amendments can be entertained. All those in favor of the main question being now put will say aye, and those opposed, no. Carried.

The motion is carried.

Mr. Bowers — Mr. Chairman, I rise to a point of order, and it is addressed to the proper management of this debate.

The Chairman — The gentleman from New York, Mr. Bowers, will please take his seat.

Mr. Bowers — I rise to a point of order, sir.

The Chairman — The Chair declines to recognize the gentleman unless he speaks from his own seat in the committee.

Mr. Bowers — I have been seated, sir, and I rise from the chair which I have been occupying.

The Chairman — The Chair understands that the rule of the Convention requires that a member, who rises and makes a proposition before the Convention, shall be heard only from the seat to which he was assigned.

Mr. Bush — There is no such rule.

The Chairman — The Chair understands that to be the rule.

Mr. Bush — Mr. Chairman, was the gentleman from Cattaraugus in his own proper seat in this committee when he rose to make the motion which you have entertained?

Mr. Bowers — Was he in his seat when he called for the question? That is my point of order.

Mr. Roche — May I inquire, Mr. Chairman, what section is now under consideration?

The Chairman — The question has been taken upon the entire proposition.

Mr. Roche — Is section 4 under consideration?

The Chairman — The Secretary will inform the gentleman.

Mr. Vedder — Mr. Chairman ——

Mr. Roche — May I be informed what section is now under consideration?

The Chairman — The Chair was inquiring of the Secretary.

Mr. Bowers — Mr. Chairman, from my own seat, I now rise to a point of order.

The Chairman — The gentleman will state his point of order.

Mr. Bowers — My point of order is, that the gentleman from Cattaraugus and a large number of other members of the majority side of this Convention are not now and have not been occupying their seats, and I desire the Chair to enforce the rule, and especially forbid them to gather, as they did this morning, behind the chair of the Chairman.

The Chairman — The Chair will state that it is now apparent that it is not necessary for the Chair to enforce the rule.

Mr. Vedder — Mr. Chairman, I move that the Committee of the Whole do now rise and report progress, and ask leave of the Convention to sit again.

Mr. Bowers — Mr. Chairman ——

Mr. Bush — A point of order, Mr. Chairman. The bill has not been read through, nor the substitute voted on, and, therefore, the motion is out of order.

The Chairman — The question is on the motion of Mr. Vedder ——

Mr. Roche — Mr. Chairman, there is an amendment pending.

The Chairman — No, sir; there is no amendment pending. The motion of the gentleman from Cattaraugus is a privileged motion, and as such it is always in order. All in favor of the motion ——

Mr. Bowers — I call for a count, Mr. Chairman.

Mr. Choate — Yes, and give them tellers, too.

The Chairman — Tellers are called for. All in favor of tellers

will please rise to the number of twenty-four. Evidently the call is sustained. The Chair will appoint as tellers the gentlemen who officiated this morning, Mr. O'Brien and Mr. Gilleran.

Mr. Blake — Mr. Chairman, upon this vote I call for the ayes and noes.

The Chairman — The motion is that of the gentleman from Cattaraugus. All in favor of the motion of the gentleman from Cattaraugus, that the committee do now rise and report progress, and ask leave to sit again, will please rise and remain standing until they are counted. The gentlemen will be seated. All opposed will now rise and remain standing until they are counted. The motion is carried — ayes, 72; noes, 49.

The President resumes the chair.

Mr. Durfee — Mr. President, the Committee of the Whole have had under consideration the proposed constitutional amendment (printed No. 454), entitled, to amend article 3, relative to the apportionment of Senate and Assembly districts, 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 — Gentlemen, you hear the report of the Committee of the Whole, asking leave to sit again upon this amendment.

Mr. Durfee — I move that the report of the committee be disagreed to, and that this proposed amendment be ordered to a third reading, and upon that I move the previous question.

Mr. Bowers — Mr. President, a point of order.

Mr. Cochran — I rise to a point of order.

Mr. Bush — I rise to a point of order.

Mr. Roche — Mr. President ——

The President — The gentlemen will please be seated.

Mr. Roche — Mr. President, I desire to move an amendment to section 4.

The President — That is not now in order.

Mr. Bowers — I rise to a point of order.

The President — The gentleman will state his point of order.

Mr. Bowers — Rule 34 provides that "No proposed constitutional amendment shall be ordered to a third reading until it shall have been considered in Committee of the Whole." This bill has not been considered in Committee of the Whole, because there is a

substitute and some amendments pending in that committee which have not been acted upon, and the word " considered " can only be treated as meaning plainly and fully considered, and under that rule leave to sit again must be granted, and we must go back into Committee of the Whole to dispose of the amendment and substitute which have not been acted upon; beside, sir, section 5 was never read and the bill has never been read through in Committee of the Whole. Rule 34 is our protection in this regard.

The President — The point of order is not well taken. Nothing can compel the Convention to go into Committee of the Whole unless it is so disposed.

Mr. Mulqueen — Mr. President, I rise to a question of privilege.

The President — The question is on Mr. Vedder's motion and the previous question.

Mr. Mulqueen — I rise to a question of privilege.

The President — I beg your pardon. Mr. Mulqueen has the floor.

Mr. Mulqueen — Mr. President, my privilege as a member of this Convention is being violated, inasmuch as I have proposed a substitute here which was regularly received, and I am entitled to have the vote of this House taken upon that substitute.

The President — Now, when Mr. Mulqueen has completed his remarks, the Chair will put the question.

Mr. Mulqueen — I have completed what I wish to say.

The President — The question is on Mr. Veeder's motion.

Mr. Mulqueen — I fail to hear the Chair's remark, in reply to my statement.

The President — Your statement does not call for any reply.

Mr. Mulqueen — How about my privilege? I demand that my substitute be voted on, and I make that point of order.

The President — As a point of order, it is not well taken.

Mr. Mulqueen — Then as a question of privilege, sir.

The President — As a question of privilege, in a remark of that sort, the Chair has no power to grant it.

Mr. Cochran — I make a point of order here, sir.

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

Mr. Cochran — My point of order is that we have rules which govern the procedure and the passage of proposed amendments to the Constitution, and, in view of the great importance which every

amendment is supposed to have, we should follow those rules strictly. There can be no question as to the meaning of the rule which provides that no proposed constitutional amendment shall be ordered to a third reading until it shall have been considered in Committee of the Whole, and there can be no misinterpretation.

" Proposed constitutional amendments and other matters shall be considered in Committee of the Whole in the following manner, viz.: They shall first be read through, if the committee so direct; otherwise they shall be read and considered by sections; 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."

Under that the Convention may see fit to direct, but in " the following manner," which is there stated. Now, I submit that the motion to order this amendment to a third reading is not in order, for the reason that we had not proceeded further than the fourth section.

The President — The point of order of the gentleman is not well taken.

Mr. Cochran — I thank the Chair; I expected it.

Mr. Maybee — Mr. President, the ayes and noes are demanded on the previous question.

Mr. Cochran — I rise to another point of order, Mr. President; that you cannot order an amendment to a third reading until it has been reported back to the Committee on Revision and Engrossment.

The President — The point of order is not well taken. Those sustaining Mr. Maybee's call for the ayes and noes will rise. The call is sustained. The Secretary will call the roll. Gentlemen in favor of having the main question now put on Mr. Vedder's motion will say aye, and those opposed, no.

The Secretary proceeded to call the roll.

Mr. Bowers — Mr. President, rule 27 provides that " When the limit of time has expired "——

The President — Does Mr. Bowers wish to explain his vote?

Mr. Bowers — That is what I am trying to do, sir, in this somewhat disturbed assemblage.

The President — You have a right either to explain your vote or

to ask to be excused from voting, and if you do so, the assemblage will not disturb you while I am in the chair.

Mr. Bowers — I assumed that I was proceeding in order.

The President — You did not rise and ask to explain your vote or asked to be excused.

Mr. Bowers — Oh, I beg your pardon. Then, sir, I will ask leave to explain my vote.

The President — You have that right.

Mr. Bowers — Rule 27 provides that "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 was taken."

That rule has been distinctly, openly and purposely violated this day. This Convention stopped passing upon all amendments which we required to be passed upon, ordered us to rise and report progress and ask leave to sit again, and now propose to dispose of the proposed constitutional amendment without an opportunity to completely discuss all the proposed amendments and substitutes in accordance with this rule. What was worse, sir, in Committtee of the Whole the chairman proceeded to prevent amendments being offered by deliberately jumping from one section to the other, when a dozen men stood on the floor with amendments, and which position he had announced shortly before was the rule to govern debate in this body. Therefore, in every aspect of the case, during the past two or three hours, at least since we finished the debate at twelve o'clock to-day, the majority of this Convention have been simply engaged in the progressing of this proposed constitutional amendment; but not alone this, but parliamentary rules have been violated, and not only that but there has been a direct violation of the ordinary rules of procedure which their own presiding officer announced were in existence. Under these circumstances we ought to go back to the Committee of the Whole. For these reasons I vote no.

Mr. Bush — Mr. President, I ask leave to explain my vote. The procedure which this Convention is about to take is one taken with the deliberate intent and purpose of preventing any amendment being considered to this proposed amendment. It was stated by the chairman of the Committee on Legislative Organization this morning that no amendments were to be proposed; that the only subject

which would be considered was the one introduced by Mr. Mantanye, with reference to biennial sessions. We had no knowledge of any amendment. We had an amendment introduced by Mr. Mulqueen as a substitute for the whole measure, which this Convention has a right to vote upon. Under the procedure now determined upon not only that substitute, but no amendment, can be considered or voted upon. If there ever was a gag law applied in violation of rules in any legislative body or Convention, I should say that the procedure this morning was of that character. For that reason I vote no.

Mr. Cochran — Mr. President, I desire to explain my vote. I believe that the manner in which this body has acted to-day is such a beautiful example of gag law and such utter disregard of the rights of the minority in this Convention, that I desire the people of this State may fully know what the rulings have been from the chair, and for that reason I will insist that to-morrow's Journal shall contain all that is required by rule 14, and that is this: "All questions of order, as they shall occur, with the decisions thereon, shall be entered in the Journal, and at the close of the day's session a statement of all such questions and decisions shall be printed at the close of and as an appendix to the Journal." We want nothing more to hand to the people this fall than the decisions that have been made on the points of order and on the motions of the minority. I vote no.

Mr. Dickey — Mr. President, I desire to explain my vote. I fear there is nothing that we can do in this matter that will please our Democratic friends, and I think the vote ought to be taken now. We have spent four days of debate upon this proposition, and they have not offered an amendment of any account to be voted on here; and when now we offer to extend the time an hour to enable them to debate that proposition further, when they were complaining that they had no time and that the gag rule was being applied to them, they refused to accept it, and the time for a vote is now. I vote aye.

Mr. Goeller — Mr. President, I desire to explain my vote. I believe this is an extremely and bitterly Republican measure, and I think some delay should have been extended and indulgence granted to the Democrats for the purpose of allowing further consideration. I vote no.

Mr. Hottenroth — I desire to explain my vote, and I would not have taken the trouble to do it had not the Dickey bird spoken. A moment ago, sir, you decided to give the majority an hour's additional time to discuss an amendment proposed by the chairman of

the committee. Then we had a statement from the other side of the Convention that four days had been taken up in discussing this proposition. Of those four days, each side divided equally the time. You have expressed a desire to extend the time of the majority in order to discuss an amendment to this proposition submitted by that portion of this body. I submit that it is a great injustice to the minority not to give it one moment of time to discuss an amendment which it proposes. I, therefore, vote no.

Mr. Maybee—I desire to explain my vote, Mr. President. It is not true that the Democrats have offered no amendments to this measure. They have offered amendments and substitutes, but the Chair has refused to allow a vote to be taken upon any of the amendments or substitutes offered by them. It would seem, with the last Republican candidate for Governor, ex-Senator Fassett, and many other leading Republicans, saying that if this proposed amendment to this apportionment is submitted to the people this fall, it will defeat the Republican State ticket at the polls, that the Republicans ought to be careful if they pass it to pass it by the ordinary forms of procedure. But, sir, they are not content with that; they are not content with passing that iniquitous and unpopular measure by the ordinary forms of parliamentary procedure, but they are willing to apply gag rule, in defiance of all forms of parliamentary practice, and thus perpetrate an outrage upon all methods of fairness, in order to put this proposed amendment through, under whip and spur, and submit it to the people. I vote no.

Mr. Mereness — Mr. President, I desire to explain my vote, but before doing so I would like to inquire whether it will be in order, if the previous question is ordered, to propose an amendment to the bill?

The President — It will not.

Mr. Mereness — Inasmuch as I gave notice that I had an amendment that I desired to offer in Committee of the Whole, and no opportunity was given in this Convention to vote upon that question, I will vote no.

Mr. Meyenborg — I desire to explain my vote. I believe that this amendment will meet its deserved fate if it is adopted. I consider the whole proceedings of the majority in this Convention revolutionary, and, wishing to disclaim being a revolutionist, I vote no.

Mr. Mulqueen — Mr. President, bidding defiance to the conspiracy which exists here and to the applying of gag law for the purpose of preventing us from even voting upon a substitute, the

only thing necessary to make this day's session complete is that when we reach the end of the roll-call to have the usual sermon preached to us upon the dangers of delay, and this Convention admonished that it must do some work. If you will deprive us of the constitutional and absolute right of having a vote upon a measure after the same has been fully presented, do it by your power; go before the people and receive the punishment you deserve. I vote no.

Mr. O'Brien — Mr. President, I am paired upon the main question with my friend, Mr. C. S. Truax, and, as I suppose he would desire to be kept straight upon the record, I wish to be excused from voting on this proposition.

Mr. Osborn — I desire to explain my vote, Mr. President. While I am opposed, as I have already stated, to the main features of the amendment which has been discussed in Committee of the Whole, and upon this floor, I incline to think as well that I am opposed to the features of the amendment presented by Mr. Becker. My only object in speaking now is to state the fact upon the floor of this Convention in such a form that it shall go upon the record that a member of this Convention, who has sat here and faithfully listened to the debates and attended to the proceedings of this morning, who has made no dilatory motions nor filibustered in any way, but who has centered all his activities upon the endeavor to find out what is going on, is unable at this moment to state what is the nature and effect of the amendment introduced by Mr. Becker. I understand that it has some effect upon the representation from the city to be known as the greater New York, but what that effect is I am unable to determine; and, if there is one member in my position, I believe there are from fifty to seventy-five upon this floor. This is more than unconstitutional; it is undignified in this body to take a vote upon a subject of such importance without having it explained by the gentleman who presents it. For these reasons I vote no.

Mr. Peck — Mr. President, I desire to explain my vote by saying that while I am ready to vote on every proposition which has been considered in this Convention, and as to which it is possible for the gentlemen of the minority to be intelligently informed, I do not understand the effect of the amendment which has been incorporated within a few minutes in this measure which I understand affects all the cities of this State smaller than Buffalo, where Mr. Becker resides. For that reason I am unable to vote in any

other way than no, especially when an opportunity for debate was afforded him, he declined to explain his measure.

Mr. Platzek — Mr. President, I desire to explain my vote. I am opposed to the motion for the reason that there are certain amendments still to be considered; and, besides, Mr. Mulqueen has a substitute which I have not yet heard read, though it was received and it became the property of the Committee of the Whole, and, therefore, of this Convention. How it is parliamentary to smother a substitute deliberately in this way is to me inconceivable. The distinguished gentleman from Cattaraugus, with his legislative knowledge and parliamentary experience, may have the facility and may succeed in the effort of crushing out a suggestion which he does not wish to hear. He may know what Mr. Mulqueen's amendment or substitute is. There are those within the hearing of my voice who do not know it, and Mr. Mulqueen has as much right to have his amendment read from the Secretary's desk as any man within this body. He is here. He is here an accredited delegate the same as I am, and there should be the same right accorded to the feeble minority as there is to the colossal majority. Now, I am not going to quarrel any more. I have ceased to fight. I find the time has come when we really ought to crave the privilege of being allowed even to speak. I say it is only fair and right, however, that we should go back into Committee of the Whole. You may limit the discussion as much as you please, make it one minute, or two minutes, or three minutes; but do not cut out and smother amendments conscientiously proposed and intelligently prepared, without giving the people of this State the right to have it read from the desk, because in Convention assembled we are the people, and as their representatives, you have no right to shut off our voice. Mr. President, I vote no.

Mr. Roche — Mr. President, I desire to explain my vote. Contrary to the letter and spirit of the rules of this Convention this proposition is about to be put through, without sections 5, 5a and 5b having been read at all or considered in Committee of the Whole. It seems to me that is very unfair and very undignified. It seems to me that when the leaders of the majority in this Convention get into a snarl and desire to put something through in a rapid-transit and despotic fashion, and not knowing how to do it, they call to their assistance the genius, the resources and the experience of the tactitian, politician and parliamentarian from Cattaraugus. It is not dealing fairly with the minority. I had intended, when section 4 was under consideration, to offer an amendment providing for an

enumeration in 1895 instead of 1905, as proposed by this measure, but under the extraordinary rulings of the Chair, and under the summary motions made by the gentleman from Cattaraugus these and all other amendments were ruled out, and you are now proceeding to vote upon something that has not been considered in Committee of the Whole. Gentlemen, if you think this is conducive to getting this thing adopted by the people this fall, well and good; but I believe and I hope that the effect of it will be to unite the Democracy of this State, both Clevelandites and Hillites, in opposition to this Constitution. I vote no.

Mr. Root — Mr. President, I wish to explain my vote. The time for the consideration of this apportionment article was set down in accordance with an agreement to which the members of the minority were willing parties, and the day for commencing the discussion was fixed to suit them. The time which the discussion should occupy was fixed upon the motion of the gentleman from Rensselaer (Mr. Roche). The Convention overruled a report of the Committee on Rules which I presented, and upon the motion of Mr. Roche, gave one full day more of time for the discussion of this measure than I had recommended from the Committee on Rules. Now, sir, that full time, which was all the gentlemen asked and for which every member of the minority voted, has been taken. During all Tuesday and Wednesday and Thursday, and now the greater part of Friday, the measure has been discussed. Almost a score of members of the minority have been on their feet discussing it, with full opportunity to offer amendments and substitutes. The time so fixed by common agreement for discussion has expired. And the time for a vote has been reached. Those gentlemen remained in their seats and stood upon their feet and spoke, but offered no amendments. When an amendment was introduced by the chairman of the committee, which they said they wished to debate, the Convention extended the time for the purpose of enabling them to debate it. They remained silent and refused to debate it. Now, sir, all this time having been occupied, all the time they asked for the presentation of amendments, and the discussion of the measure having been occupied, the Convention proceeds, as is its right and its duty to do, to pass upon the measure. If that be gag law, then it is time that in the interest of public business and of the people of this State these gentlemen should be gagged. I vote aye.

Mr. Schumaker — Mr. President, in this matter on the main question, and on the amendments to it, I am paired with Mr. Porter,

of Erie. He would vote aye, if he were here, and I would vote, I suppose, no.

Mr. Smith — Mr. President, I desire to explain my vote. I have been looking over the Penal Code. I find that it makes it a felony for any person or persons to disfranchise a voter, to prohibit any voter from exercising his right as such at the polls. Now, I have read over this scheme of apportionment and made a careful analysis of it, and I find as a matter of fact that it would disfranchise more than 150,000 voters in this State. I cannot remain silent and permit such a crime to be perpetrated, therefore, I protest against it, and vote no.

Mr. Tekulsky — Mr. President, I desire to explain my vote. I have been sitting here among the Republicans trying to keep them in line and see that they did not do anything which would derogate from good common sense, and especially that they would not make any misstatements. I would not get up now to explain my vote only that my distinguished friend over here got up and excused himself from voting and made a statement that the Democrats offered no amendment. I wish to let him understand that I have been watching him, and he has made a misstatement. That is my friend from Orange. The Democrats have offered an amendment. They have offered a substitute. I am also surprised that my friend, Mr. Vedder, should attempt to rush this matter through without reading the bill when he has himself offered an amendment that the Legislature shall not pass any bills within three days before adjournment, so that every person who is a member of the Legislature, and the people themselves in the different localities of the State, should understand the different measures before they become laws. Yet he comes in here and moves the previous question on an article before it has been read through. I vote no.

Mr. Titus — Mr. President, I ask permission to explain my vote. The procedure adopted by the majority in this Convention to-day in Committee of the Whole, and also their action when they returned in the Convention, will prove a veritable boomerang to them. They may think that they have Morton and his barrel with them this fall, but when this case is presented to the people, Morton and his barrel will avail them nothing. I vote no.

Mr. Vedder — Mr. President, I desire to be excused from voting and will briefly state my reasons ——

Mr. Veeder — Mr. President, I make the point of order that the gentleman is not in his seat.

The President — The point of order is well taken, and Mr. Vedder will oblige the Chair by taking his seat.

Mr. Vedder — Mr. Roche is not in his seat, Mr. President, and he and I have paired on seats. One would judge, from what our friends on this side are saying, that this was a political measure. It is nothing of the kind. As citizens of the great State of New York we have debated this non-partisan proposition for four days, and there has not been an amendment which they might not have suggested during those four days, if they had so desired. At the last moment, when the rules of this Convention were being obeyed, and the clock told the hour when the vote should be had, they suddenly clamored for more time, some of them, and I made the motion that they should have one hour more given to them. Then, when that time was given them in Committee of the Whole, they were silent, and did not propose to discuss it. They want to talk when it is not in order for them to talk, and they will not talk when they have a chance to talk. The great lights of Democracy, however, have not complained. Here is their leader, Mr. Bowers, and here is Mr. Jenks, and Mr. Mulqueen, and others, who have not complained a word. The shallows murmur, but the deeps are dumb. Mr. President, there never was a measure, in my opinion, which by any possibility could have been tortured into a political measure that has been framed by men who thought so little of partisanship, and absolutely forgot that they were anything but citizens of the State of New York. The great heights of statesmanship have been climbed almost to their summits by the Committee on Organization, and this measure has been fashioned in that pure and exalted air of statesmanship.

The President — Mr. Vedder has exhausted his time.

Mr. Vedder — I vote aye, then.

Mr. Veeder — Mr. President, I desire to explain my vote. In the first place, I want to disavow the idea that my namesake evidently considers that we regard this as a Republican measure. The Democrats, as I understand it, regard it as a suicidal measure. The gentleman talks about the deeps being silent. I was in hopes that my friend was quite deep and learned; but, upon his own definition of their character, I must believe that he is in the same class with those that only murmur but those that roar. Now, sir, the general proposition on the bill has been debated quite sufficiently, I submit, and Mr. Becker presents a proposition that entirely changes the scheme and enlarges it. The scheme now is, under this idea that you can elect almost anybody and carry almost any measure, to make the

term of your Senators three years, so that you may carry them over into the election of a United States Senator, in order that you may know next fall or whenever you elect your Senators who are your Senators during the pendency of the election of the next United States Senator, and you now begin your fine work. I vote no.

The President — I desire to explain my vote, and, in doing so, to take issue with some statements that have been made here by gentlemen in explaining their votes There was a time fixed for the consideration of this matter in Committee of the Whole, and it was substantially fixed by the minority. They had it all to themselves. They had every opportunity to debate and to offer amendments. An amendment was offered shortly before the recess, by Mr. Becker, and complaint was made that on account of the time fixed for debate there was no opportunity to discuss it. An opportunity for full and complete discussion was offered by vote of the whole Convention, and not only did the minority decline and refuse to debate it, but runners went about among them, crying loud enough to be heard by the public, "Not a word, not a word." Then in Committee of the Whole it was moved to rise and report progress and ask leave to sit again. They concurred in support of that motion. When the report was made and open for consideration, it was entirely in the power of the Convention to refuse leave to sit again, and that was done, and the motion was made to put the amendment upon the order of third reading. It is not true that the rights of the minority have been disregarded or threatened. I vote aye.

Mr. Hotchkiss — Mr. President, I desire to explain my vote. Although I was not here yesterday so as to have the pleasure of listening to his remarks, I understand that the gentleman from New York (Mr. Root), in the course of his remarks upon this measure, likened what he saw before him to a scene in a play. What I have seen here to-day, Mr. President, reminds me also of a scene in a play. It reminds me of that play within a play of A Midsummer Night's Dream, where, if you will remember, Snug and Quince and Bottom and the others, the simple rustics of the place, gathered together for the purpose of taking part in that immortal play of Pyramis and Thisbe. Snug — and we might have likened him to the gentleman from New York — says: "Have you the Lion's part written? Pray you, if it be, give it to me, for I am slow of study," and Quince, who, if the Chair will allow me the privilege of drawing the comparison, says: "You may do it extempore, for it is nothing but roaring;" and then Bottom appears and says — and Bottom may well be likened to the gentleman from Catta-

raugus —" Pray, let me play the Lion's part, too, for I will roar that it will do any man's heart good to hear me, I will roar that the duke will say, let him roar again, let him roar again." And having applied to the Duke for permission to explain his vote, the gentleman from Cattaraugus has roared again upon this measure. The gentleman from New York is entirely mistaken in respect to his recital of the facts connected with this debate. The minority found themselves in no trouble; it was the majority who found that difficulties hampered them. The rule under which this debate began, prescribed that the vote should be taken at twelve o'clock to-day — mark you, the vote. There were notoriously in the hands of the leaders of the majority, upon this measure, three amendments which it was absolutely necessary for the majority, in pursuance of their plans, to have brought before the Convention, and the extension of time after twelve o'clock was made by the majority in order that they themselves might have an opportunity to present these amendments. With these few historical corrections, Mr. President, I wish to be recorded in the negative.

Mr. McClure — Mr. President, I ask to explain my vote. I think, sir, that any one who reads the report of the proceedings here to-day will dispute the position taken by one of the leaders of the majority, Mr. Root, and if I may be allowed to say so, the position taken by the President of this Convention, as to the condition of affairs when the gentleman from Cattaraugus applied the gag rule as he so well knew how to apply it. As has been stated by Mr. Hotchkiss, when the time fixed to vote arrived, no amendments had been offered except one or two by the minority, but Mr. Becker did offer at least one substitute. Now, it was proposed that the minority should have the great favor of debating that particular proposition of Mr. Becker, but should not have the right to submit any amendment or substitute of its own. We properly and in a dignified way said we would not accept the favor of discussing Mr. Becker's amendment, with no right to propose one of our own, and we refused to discuss it, to act upon it, and thereupon the gag was applied, and without some of this provision even having been read, we are in the position of voting upon it. Mr. President, was it necessary, after the months spent by the committee upon this work, and by the Convention upon it in discussion, was it necessary for an hour or two leeway that such action should be had? I think not. I think it will condemn itself; that the work, that needed or seemed to need at the hands of its creators such action, will be damned by the people at the polls. I desire to be recorded as voting in the negative upon this question.

Mr. Pratt — Mr. President, I ask to be excused from voting for the reason that I am paired with my friend from Kings (Mr. Jenks), who is obliged to be absent.

The previous question was ordered by the following vote:

Ayes — Messrs. Acker, Ackerly, Allaben, Arnold, Baker, Barhite, Barnum, Barrow, Becker, Brown, E. A., Brown, E. R., Cady, Carter, Church, Clark, G. W., Coleman, Cookinham, Cornwell, Crosby, Davies, Davis, Deterling, Dickey, Doty, Faber, Floyd, Foote, Francis, Frank, Andrew, Frank, Augustus, Fraser, Fuller, C. A., Fuller, O. A., Galinger, Gilbert, Goodelle, Hamlin, Hawley, Hecker, Hedges, Hill, Holls, Jacobs, Johnson, I. Sam, Johnson J., Johnston, Kinkel, Kurth, Lauterbach, Lewis, C. H., Lincoln, Lyon, Manley, Mantanye, Marshall, McDonough, McIntyre, McKinstry, McLaughlin, C. B., McMillan, Moore, Morton, Nichols, Nostrand, Parker, Parkhurst, Pashley, Phipps, Pool, Putnam, Redman, Root, Spencer, Springweiler, Steele, A. B., Steele, W. H., Storm, Sullivan, T. A., Turner, Vedder, Vogt, Wellington, Whitmyer, Wiggins, Woodward, President — 86.

Noes — Messrs. Banks, Bigelow, Blake, Bowers, Burr, Bush, Campbell, Chipp, Jr., Cochran, Danforth, Davenport, Deady, Dean, Deyo, Durnin, Emmet, Farrell, Forbes, Gibney, Giegerich, Gilleran, Goeller, Green, A. H., Green, J. I., Griswold, Holcomb, Hotchkiss, Hottenroth, Kerwin, Marks, Maybee, McClure, McCurdy, McLaughlin, J. W., Mereness, Meyenborg, Mulqueen, Nicoll, Ohmeis, Osborn, Parmenter, Peck, Platzek, Roche, Rogers, Rowley, Sandford, Smith, Speer, Sullivan, W., Tekulsky, Titus, Towns, Truax, C. H., Tucker, Veeder, Williams — 58.

Mr. Bowers — Mr. President, may we have the bill read before the vote is taken?

The President — The question is simply on agreeing to the report of the Committee of the Whole, and putting it upon the order of third reading. Does the gentleman seriously desire to have it all read?

Mr. Bowers — I desired to have Mr. Becker's amendment read, more particularly; not the whole bill.

The President — The Secretary will read the amendment of Mr. Becker.

The Secretary read Mr. Becker's amendment.

The President — Does any gentleman desire to have any other part of this bill read before the vote is taken?

Mr. Roche — Mr. President, on the question of ordering this matter to a third reading I call for the ayes and noes.

The call was supported.

The President — The gentlemen who are in favor of having the bill put upon the order of third reading, as their names are called, will say aye, and those opposed will say no; and gentlemen will understand that under this motion, if carried, it goes to the Committee on Revision, to be printed and reported by them before actually ordered to a third reading.

The Secretary proceeded to call the roll.

Mr. Bowers — Mr. President, I desire to explain my vote. It is now apparent from the reading of the amendment of Mr. Becker, from the change proposed therein, that it has been in the minds of the speakers on behalf of the majority this morning, owing to its close association with the extracts from Constitutions of other States. As, therefore, it is perfectly plain that the proposed change in the measure was in the minds of the committee long in advance of the time when it was offered, we can only assume that it was purposely kept back. The hour of debate was utterly of no use, because where so material a change is made, we should at least have been given over night in which to consider the proposition. It was not offered until after the hour when the vote should have been taken, at best, and as to this talk of grace, it was simply a means of escape from the most awkward predicament a parliamentary body ever found itself in. But now, as to the merits of the bill; Albany has 156,748 people, and gets one Senator. Three times 156,748 is 470,244; Buffalo, with a population of 304,713, is given three Senators, a surplus representation of 165,000, being 50,000 beyond the ratio established by the committee; twice Albany's population is 313,496. Monroe, with 131,000, is given two Senators, showing a surplus population of 132,000 in favor of that county as against Albany; Cayuga and Seneca are given but one Senator, with 86,000, a difference of 70,000 in their favor on the same representation as Albany county. These statements by themselves, wholly independent of the rest of the proposed amendment, show that upon its face, entirely aside from the question of the political aspect of these counties, that there has been no just attempt to make a division according to the population; and I vote no.

Mr. Burr — Mr. President, I ask leave to explain my vote. "Sink or swim, survive or perish," said Mr. Marks on a memorable occasion, "I am opposed to the taking away of property without

the consent of the owner," and quoting from the same authority, I say I have but one lamp by which my feet are guided, and that is the lamp of experience. And if experience has taught me anything, it is that the gentlemen who are the majority in this Convention are making a mistake which they will take some twenty years to correct. I say that you have an opportunity to make a Convention here which would be actually constitutional, which might be the ideal Constitutional Convention, and you have avoided the opportunity. You have swept it out of your sight. Since I have come here I have seen nothing but hatred and bigotry fermented, and rules broken. I say to you, Mr. President, that I thank God we have a Constitutional Convention to-day, and I say that not from the height of statesmanship, but from a partisan standpoint, because without this Convention I do not know but what the wave that threatened to overwhelm the Democratic party would have accomplished that result; but, like the noble ship that is threatened with a water-spout, the good captain fires the cannon and the water-spout is gone. So, this Constitutional Convention pricked the water-spout; it has knocked out the wave that threatened to overwhelm Democracy. Without the Constitutional Convention you might have gone on and availed yourselves of the popularity which was about to be yours. I believe with Mr. Tyndall, that there is a wave of sound. I believe in the symmetry of political ups and downs, which are also waves of popular change of sentiment. You were on the crest of the wave; this Constitutional Convention has ruined the crest, and it is broken. I renew the assurance of my most distinguished consideration to the members of the majority, and I say we shall meet at Phillippi. I vote no.

Mr. Cassidy — Mr. President, I desire to explain my vote. If I were a Democrat upon the floor of this Convention I should not be moved by any party considerations to vote against this apportionment, if I believed it to be right, and I think some of them do believe it to be right. But, Mr. President, I believe that partisanship never should enter into constitution-building. (Applause.) Partisanship is transitory and ephemeral, but principles are stable and eternal, and a Constitution should contain only principles. If there are any of my Republican friends who differ from me in casting their vote, I honor them for it. I honor them because they have the courage to stand here and vote for what they believe to be right, and I ask at their hands the same consideration. If I were removed from partisan consideration I should vote against this apportionment, because it makes my district hopelessly Democratic. I could get along with that all right if it was not Mugwump Democrats that I

should be obliged to associate with. If we only had Democrats of the type of Senator David B. Hill, I could complacently submit to having my district made Democratic; but when I think that my path shall be among the dandelion Democrats in the future, it deters me in voting upon this question. I am sure that I could turn the tables upon my friend, Mr. Speer, and guarantee to him that if he would take the Democrats in my district to New York city, that city in five years would roll up an overwhelming Republican majority. However, I am not moved by party considerations. It is a matter of principle with me. I do not believe in this plan of apportionment, and I must vote no.

Mr. Cochran — Mr. President, I desire very briefly to explain my vote. I believe that this article is wrong in its inception, wrong in its every principle, and wrong in the spirit which actuated its rapid advancement through this body. It is now a matter of history to all who have interested themselves in the work of this Convention, as to the source from which this reapportionment of the State has come. It has not come from any deliberate body, but from sources that we know are purely partisan. It is wrong in principle, sir, because it intrudes upon legislative work. We embody into our Constitution legislative matters. The duty of this Convention was to put into the Constitution a mandate for the reapportionment of the State, and then to prescribe the rules for the Legislature under which that apportionment should be made. It is wrong in principle, also, because it recognizes area and not the population of the various districts; it recognizes extent of territory, instead of the individual. It is wrong in spirit, because it is partisan in every line. We do not have to read between the lines, but we may read the words which are printed here, and they breathe forth nothing but partisanship from the first word, which is section 2, until the last period at the end of the last page. I do not say this idly. It is clear to any one who will look at it. This apportionment shows plus districts and minus districts. It shows districts with fifty, sixty, all kinds of numbers of thousands of inhabitants unrepresented in the next legislative body that will meet in this hall. And who are those that are unrepresented? Take the votes of the counties where these unrepresented people live, and you find that they are Democrats; but take those that are over-represented, and with but one exception, they are Republican districts. Is it necessary for me to say more to show the partisanship of this measure? And then my friend from Cattaraugus breathes forth the eloquent plea for us all to vote for it, because it is such a non-partisan measure! I think it is not

necessary to say more. I believe the course of the minority will be commended by the people. We have not stood up here as obstructionists to any amendment that has been introduced in this body to-day, but we have stood here because unless we stood up and fought as we did to-day, we would have gone down silent into history, and the truth of this matter would never have been known. I vote no.

Mr. Cornwell — Mr. President, I desire to explain my vote. I believe, sir, the apportionment proposed, when the best interests of the State in all its various degrees are considered, to be as fair as possible to be made. Indeed, I cannot understand by any arrangement of figures, taken with all its surroundings, how it could be improved. The majority of this Convention cannot afford, neither will it follow the example of the Democratic party in the apportionment of 1892, which has been acknowledged upon this floor to have been unfair and unjust. The proposed apportionment has not been successfully attacked, the minority having dealt only in glittering generalities, without any serious proposition for material change. Mr. President, filibuster is not argument, neither is dishonest pretension. The majority of this Convention, representing the patriotism, the general welfare and the intelligence of the State, is more than willing to go before the people upon its record as regards this apportionment. I venture to say that if it accomplishes nothing more than the adoption of this measure, its creation will have resulted in a great boon and blessing to the people. Mr. President, the Twenty-sixth Senate District, which I have the honor in part to represent in this Convention, one of the largest, if not the greatest, not only in territory but also in population, of any in the State, and which exhibits in itself a specimen of the dishonest gerrymandering practices of the Democratic party in the apportionment of 1892, I sincerely believe will speak by its votes in tones not to be misunderstood, in giving an overwhelming majority in favor, not only of this apportionment, but also in favor of the entire work of this Convention. Mr. President, I am more than willing to stand in favor of this bill upon its merits, and vote aye.

Mr. Davenport — Mr. President, at the request of Mr. Johnston, who is called away, and who if present would have voted aye, I, who would vote no, am paired with him.

Mr. A. H. Green — Mr. President, I desire to say a word in explanation of my vote. It is well known that this fall a vote is to be taken as to the consolidation of various areas around the port

of New York, including the city of New York, the city of Brooklyn, and part of Westchester county, all of Richmond county, and a part of Queens. If I understand the amendment proposed by Mr. Becker, if that consolidation takes place, the same number of people that now occupy these various areas would be lessened something like one-sixth in their representation in the Senate. I do not see the propriety, if that consolidation should be voted by the people, in their having a less representation than they have if they remain separate. I suppose this was unintentional, and if so, I should be very glad to see some amendment made to it. That would be the most serious blow to the effecting of the consolidation that I have yet heard of. I vote no.

Mr. J. I. Green — Mr. President, I believe that this proposed apportionment is the greatest effort in the history of the Republican party to perpetuate its existence at the expense of the majority of the people of this State. I call on the people of the State to bear in mind the actions of this Convention, and to say whether closing the debate upon this important question is in comport with fairness, with honesty or with justice. I say, sir, that there is something beyond this Convention, it is in the public conscience, and the majority of this Convention in the Republican party will find on the evening of election day that that conscience will have been aroused, and the work of these many weeks and months will amount to naught, simply on account of this great dastardly act of the majority of this Convention. I vote no.

Mr. Hawley — Mr. President, I very early resolved that all the contribution which I should make to this discussion would be upon this roll-call. I have never been content with the measure which is now before us, and I have always so stated to the gentlemen who have had it in charge. I have not been content because I take issue with my friend from Kings, Mr. Cochran, and take the ground that territory should have a wider influence in any apportionment than it has been given in this one; that that principle underlies the very foundation of our government and is absolutely necessary to the preservation of the State. But, Mr. President, this measure does contain the germs of that principle. I complain of it because the principle is not applied in all its length and breath, and because its operation is postponed to some future apportionment. I have listened to these debates, and I have heard no successful attack upon this measure. We heard that there was to be a war upon it, but the war has not come up to the sounding phrase of the manifesto. Indeed, this debate on the part of the minority reminds me of a

woodland road, which Longfellow somewhere describes, that opened broad and spacious, under wide arching trees; gradually diminished in width, and dwindled at last in a squirrel-track, and ran up a tree. I vote aye.

Mr. Holcomb — Mr. President, I ask to be excused from voting and will say a few words. I consider this proposed apportionment of the people of the State for the purpose of representation to be very unjust indeed, to the people whom it proposes to serve. I am not one of those who fear in the slightest carrying the principle of the suffrage to its utmost limits; leaving the representation to rest entirely upon the individual citizen, upon whom, in the last regard, I believe the whole safety of a republic rests, and without whom the republic would be entirely impossible. As concerns the suggested fairness, of which we have heard so much from the lips of the Republicans upon this proposition before the Convention, I have failed anywhere to hear them call attention to the condition of the St. Lawrence or the Franklin senatorial district for the better part of twenty years, or to the Assembly districts of St. Lawrence county for the better part of thirty years, a whole generation of men. Where St. Lawrence had only about 80,000 population, there were three representatives in the Assembly, while at the same time the citizens of New York are compelled to be represented upon this basis of representation, by one Member of Assembly for the better part of 50,000 souls. In Jefferson county, with 60,000 in 1865, they gave her two Members of Assembly, and to Jefferson and Lewis, when they had together only 98,000 population, they gave them a Senator, while they were compelling us in the lower part of the State to add thousands of souls for our basis of representation. That was the fairness of the Republican majority when they had the power during 1866, and during 1879. When the Democracy came to change the apportionment in 1892 they were confronted by such outrages as those carried on for a whole generation of years; and if the representation in the Assembly was cut down by the apportionment act of 1892, it was simply stating to the people of those localities, to the Republican majority who now foist upon the people of this State this most unjust apportionment, which expresses the Republican distrust of the average citizen of the republic, it was simply saying to them, it is the whirly-gig of time that works its own revenges. Mr. President, I desire to be recorded first, last, and all the time, absolutely and without qualification, as against this proposed amendment, in its inception, in the idea that controls it, and in the result which it proposes to produce in this State. I vote no.

Mr. Hottenroth — Mr. President, at this time I would not be carrying out the trust reposed in me did I not call attention to the great injustice that would result from this measure, if passed, to the Twenty-first Senatorial District. In the first place, as a central district, it has a population of 116,000, and there are at least half a dozen districts in other portions of the State, including Erie, in which less than 100,000 will be represented, if this measure should happen, unfortunately, to become a law, by a Senator. But that is not the greatest evil. The gentleman from Oneida, in the debate, complained to us that the greatest iniquity in the present apportionment was the comparison between Albany and Monroe, and he showed there that while Albany, under the present system, had four Assemblymen and Monroe but three, with a population varying but slightly in this district that you propose. In the Twenty-first Senatorial District, we have a population of 116,000, and have but two Assemblymen; whereas, the county of Erie, with a population of 100,000, has three to two districts; but you base this upon the theory of locality representation. Now, if there is a locality that requires representation in the Legislature more than this district, I fail to find it in the State of New York. Again, you say you wish to preserve county lines. You have failed to preserve them. Again, you make a territorial distinction. You say that the vast acreage ought to be represented in a greater degree. In that district we have within about 1,000,000 acres a territorial area as large as the entire city of New York, and yet we have one representative in the Senate and two in the Assembly; and this is the theory upon which you apply the basis of this iniquitous measure. Again, you do not propose to divide city blocks. If it should come to that in some future apportionment — I do not suppose you expect ever to have one — if it should come to that under this measure, I challenge you to divide that section of the city and to maintain the lines without dividing the city blocks. I, therefore, vote no.

Mr. J. Johnson — Mr. President, I vote aye. I desire to explain my vote. I hate a gerrymander. I live in a community whose citizens have been robbed of their rights as American citizens by it. I hate it; I loathe it. It is un-American, unworthy of American politics unworthy of American citizenship. If I could find or see it in this measure, I would vote against it. I have given no word of counsel, if counsel I may be said to have given, to anybody, that framed this measure, save to say that I wanted an honest and a fair apportionment of the people of this State, and I believe, sir, that we have it. I have talked

with the gentlemen across the table. I have listened in this Convention, and I have failed to find any one thing that shows this is not fair in principle and accurate and proper in its execution. It has been said to-day that Abraham Lincoln was right in saying: "You may fool all the people some of the time, and some of the people all the time, but you cannot fool all of the people all of the time;" and when this battery of sound, that wearies the air with asseveration of fraud, without pointing out anything, this obvious attempt to make an issue on confusion of figures, shall have cleared away, the verdict of the people will do away with the most infamous wrong that was ever perpetrated on a free people, the gerrymander of 1892, and put in its place an honest, fair, statesmanlike proposition of representation.

Mr. Lauterbach — Mr. President, if I may be allowed a few moments, I would like to explain my vote. Mr. Elbridge T. Gerry has proven to me beyond any question, that the slur which is cast upon his ancestors by calling the system that has prevailed during the last two years in this State, of parceling out the voting right, gerrymandering, is absolutely unfair and unfounded. As the author of the last instance of that sort of thing is rather proud of the accomplishment of his feat, I do not know any reason why the term Hilly-mander should not prevail since the accomplishment of the performance of 1892. Now, that performance we were called upon to do away with and destroy. That was one of our functions, as the President of the Convention, at the opening of the Convention, so justly said. I have been very much amused at the assumption of nonpartisanship all around this circle. It was all the more amusing, because I remember that, while the statute of 1893 contemplated that the big-bugs of the Convention, the various delegates-at-large, should consist of an equal number of Democrats and Republicans so as to insure some degree of nonpartisanship, under the leadership of the gentleman who had initiated Hilly-mander that law was so altered that all the delegates-at-large should be of one political complexion, and that complexion was supposed to be sure and safe for Democracy; they reckoned without their host, and when they eliminated nonpartisanship from the Convention so far as the delegates-at-large were concerned, happily the people, shocked at Clevelandism, turned the tide which had set toward Democracy, and the State became Republican, and we were elected here to represent a fairly partisan Republican sentiment. (Applause.) And when the matter has come down to this moment, it is right that the iniquities of Democracy, perpetrated in 1892, should be removed, and that a

fair apportionment, which should represent not only the man-made town but the God-made country, should be made; that not only the population composed of many who were unfitted for citizenship but territory upon which live thousands of men not as great in number, but of greater force and power, and greater intellect, should also be represented; and that is the scheme of this apportionment, and it is a wise scheme and one that we ought to support. If I had my way, this scheme of depending upon a padded population census would never have prevailed, and this apportionment would have been based upon the actual vote cast in every district of the State, which would have shown beyond peradventure what was the true representation of every district. But, in obedience to the dictates of Democracy, a different rule has prevailed. I vote aye.

Mr. Maybee — Mr. President, I desire to explain my vote. At least twenty Republican delegates in this Convention are opposed to an increase of the numerical strength of the Legislature. They regard it as unwise and uncalled for, and they believe that there is no reason for it, and that it is only under caucus dictation that they are called upon to vote for this measure. You increase the number of the Legislature by forty members; you go to the people with that large increase, and can give no reason for it. No reason has been alleged upon this floor for the increase of the Republican Legislature that rises to the dignity of being worthy of serious consideration. You go to the people of the State and you tell them you have added this expense, with no reason for it whatever except reason that exists because of political advantage to the Republican party. I vote no.

Mr. McDonough — Mr. President, I would vote aye, were I not paired with Mr. Rowley, who would vote no, if present.

Mr. McIntyre — Mr. President, I think that some of the members who are on the tail end of this Convention must take the opportunity of explaining our votes or die, after so much eloquence and so long a time as we have had to listen to it; hence I hope you will pardon my explaining mine. I am not exactly pleased with this measure, but my objections are not along the lines of those of the minority. If I had my say, I do not think they would have as many liberties as they have now. I would have had each senatorial district in the city of New York stand exactly on the same footing as those of the country, and no better. I would criticise it upon that line. I think it is a just and fair apportionment and that great pains has been taken with it. What makes me more satisfied with it than anything else, is because

the Democratic party say that we are going to ruin and perdition if we pass it. That makes me believe it is a good thing. (Laughter.) Because, if they believed that, they would stand shoulder to shoulder with us and hustle over to us as soon as possible and as smilingly as possible. They have no love for the Republicans, and when they say they are nonpartisan, they do not know the meaning of the word. The pap that raised them does not create any such sentiment in them. Nonpartisan is no word to use there. We know they are partisans from beginning to end, and we know, too, that this is a good measure and they do not want us to pass it, and that is the reason there has been so much furore over it. Gentlemen of the minority, why don't you propose something here? One gentleman says he would put St. Lawrence with Herkimer. A nice combination that would be, with a wilderness of thirty or forty miles separating the settled part of the territory. They are very ignorant about St. Lawrence, too; they criticise St. Lawrence, but old St. Lawrence speaks for herself, and always has and always will. She has sent as many noble men to honorable positions as any other part of the State. She is able to take care of herself. Gentlemen, I think it is time that the country was heard from as well as the city. I vote aye.

Mr. Meyenborg — Mr. President, I had intended to explain my vote, but as it is already five o'clock, I will not do it. I vote no.

Mr. Moore — Mr. President, I desire to explain my vote. As some of you know, I did not look with extreme favor upon all the features of this measure, but after hearing all the debate, and especially the speech of Mr. Speer on the other side, I have come to the conclusion that it is the very best proposition that could possibly be adopted. And, now, Mr. President, as by our clock here time has ended and eternity begun since we gave the minority a chance to discuss this question, I vote aye.

Mr. O'Brien — Mr. President, I am paired with Mr. C. S. Truax. If he were here he would vote no, and I would vote aye.

Mr. Roche — Mr. President, I desire to explain my vote. It is not correct, as stated by the gentleman from New York (Mr. Root), that this provision follows constitutional precedents. The Convention of 1777 provided for an enumeration at the end of seven years; the Convention of 1821, at the end of four years; the Convention of 1846 followed the enumeration of the previous year, and provided for another in nine years. The Convention of 1867-8 followed the enumeration of 1865, and provided for an enumeration in 1875. In this case, however, you depart from all precedents,

making an apportionment now, prohibiting another enumeration for eleven years, and another apportionment for twelve years. You may call this fair and honest, but I believe it will be baptized by the name iniquity. At the risk of repetition, I recall an historical incident. When Warren Hastings listened to Burke's terrible denunciation of the manner in which he had plundered and robbed India, his description of the wealth of that empire, and the opportunities afforded to the English viceroy for acquiring vast power and riches, he is said to have exclaimed: "My God, I am astonished at my own moderation." Last evening I listened to the labored attempt of the distinguished gentleman from New York (Mr. Root), to show that this apportionment was a fair and honest one, and that instead of doing injustice to the cities, an injustice was perpetrated against the rural districts, and that the committee might properly have given much larger representation to the Republican districts, and in an earnest manner and with solemn tones he exclaimed: "I am astonished at the moderation of the Committee on Apportionment." Gentlemen, I felt at that moment that perhaps we Democrats ought to be thankful that our political friends will be allowed to go to the next Legislature in any considerable numbers whatever and for many years to be spoken of in that body as the minority. This scheme should be entitled "An act to prevent the possibility of the re-election of the present Democratic Senators from the State of New York in the United States Senate, or the election of any other Democrat to that office for the next fifteen years." I vote no.

Mr. Schumaker — Mr. President, I am paired with Mr. Porter, of Erie. He would vote aye, and I would vote no.

Mr. Tekulsky — I desire to explain my vote, and I am not going to agree with my Democratic friends, either. My reasons for voting against this measure are, that proper consideration of the substitute was not given in Committee of the Whole, and also that in looking over the map as prepared by the State engineer, I find that we have in the city and county of New York nothing but zig-zag lines, and it would take the people of the city of New York five years to find out what senatorial district they lived in; because they have not gone by straight lines, nor street lines. They have cut in and cut out. My own senatorial district, for instance, which you have laid out, is supposed to include the Spring street market. For some purpose, I don't know what, you have cut it out of my district. You have also cut out Sullivan street and Thompson street, one block from each, for what purpose? No other purpose at all because there are a good many colored people

living in that district, and you desire to get them and add them to the district above. You have cut off nine election districts from the straight line, and it would be very hard for those people who are really living in the district to understand where the senatorial line comes. And, as I say, you have not given the substitute any consideration at all. I, therefore, vote no.

Mr. Vedder — Mr. President, I ask to be excused from voting and will state my reasons. I am astonished, Mr. President, that gentlemen upon this floor, gentlemen of high intellectual attainments, great in their several walks of life, great in everything except their politics, which is certainly unique, should not in this presence and at this hour, have divorced themselves for a moment from the maddening crowd of clamorous and unreasoning politicians in that great city by the sea, and have had one elevating, soul-absorbing, transporting thought for the good and the glory of the State of New York, and have voted with us upon this proposition. But I turn from that picture to this: I want to call the attention of the Convention to that triumvirate of genius, Lauterbach, Root and Choate, who were brave enough, grand enough, honest enough, and far-seeing enough to be above the effeminacy, and the emasculating influence of a great city's provincialism; to have seen the necessities of the whole State, and have dared to speak and vote for the State upon this proposition. It is an act, Mr. President, which the people in the country, the people in the State, the people in all its cities, will appreciate and do appreciate, and will remember with gratitude, and those yet to be will hold these three great names in eternal honor. This is not a political measure; but, if, as some of the gentlemen say, it will unite the Hill and Cleveland Democracy against us, and against all these propositions, then I say let them unite. We invite you to battle, and we will welcome united Democracy with bloodless hands to hospitable graves. If you fall as you surely will, "with charity for all," we will bury you all. I withdraw my request to be excused from voting, and vote aye. (Applause.)

Mr. Veeder — Mr. President, because of the well-known hospitality of my friend who has just spoken, I desire to explain my vote; and as it is what we are to expect always when we accept his hospitality, I vote no.

Mr. Woodward — Mr. President, I wish to explain my vote. Notwithstanding the fact that I made a speech yesterday, I was perhaps misunderstood. The Argus advertised me as being opposed to this apportionment. I am not opposed to it. I am

in favor of it. (Applause.) I think it is the best apportionment that could be made. It is true I do not look at it as some of my friends on the Democratic side do. I recollect coming across somewhere, this expression: "The philosophy we adopt depends upon the men we are." I am not that sort of a man that adopts the philosophy that a fair apportionment like this is to be voted down. I made a mistake in my figures yesterday in reference to the number of acres in the city of New York. It should have been thirty thousand, I think, instead of three thousand. (Laughter.) I took the figures from an able Democrat who gave them to me, but since that some other Democrat has corrected me. Now, this looks to me like a very fair apportionment. There is one thing I have noticed about the minority; they keep saying, "If you pass this bill we will vote it down at the polls." There has not been a measure proposed here but that those in opposition to it have threatened to knock it down at the polls. It reminds me of the story of the little boy. He told the big boy, says he, "If I can't whip you, I can make faces at your sister, and I will do it." (Laughter.) I vote aye, and I want everybody to take notice of it.

Mr. Becker — Mr. President, it will not do for the pot to call the kettle black. The apportionment of 1892 was reported to the Assembly at eleven o'clock P. M., April twenty-fifth. A recess was taken from hour to hour, and nothing was done until six o'clock in the evening of Tuesday, when the first consideration of the bill was had, the recesses being taken on motion of the majority, at that time led by my friend who is the leader of the minority here. A few unimportant amendments were offered some time during that night, the record does not show which; Mr. Bush moved the previous question, and under the operation of that previous question, the bill was passed. In the Senate the Republican Senators protested against the legal authority to hold an extraordinary session, and were compelled under the ruling of the speaker, who counted a quorum, to sit quietly in their places, without even offering an amendment, until the measure was pushed through. Now, we believe that that action, which was final, from which there was no appeal to the people, after two years consideration of it, required redress at our hands. We have endeavored to give that redress in this bill, a redress to the Republicans of this State and a fair apportionment to both Republicans and Democrats in the future. I will add but one word in explaining my vote, Mr. President, and that is, that we believe that when this measure comes before the people, to which there is an appeal in this case, all these minor discussions about privilege and about voting in view of the fact that

there was nearly four days' debate allowed here, when there was only four hours allowed on the other bill, will convince the people, who look at great things and not at little things, that every opportunity was afforded for discussion and consideration that courtesy and the law allowed. I believe that when they examine this bill they will decide that it is just what it purports to be on its face, a nonpartisan Republican apportionment. I vote aye.

Mr. Bush — Mr. President, I ask leave to explain my vote. This is the first opportunity I have had to hear the gentlemen discuss the method of passing the bill of 1892, and I will take three minutes' times allowed to explain and to contradict many of the assertions that have been made in this House. The bill of 1892 was introduced in the Senate and in the Assembly on the same day and at the same hour. They were considered in the House from the time they were introduced until one o'clock on Tuesday night. There was no other business that intervened in any way, shape or manner. There were about forty-two separate and distinct amendments offered to that bill in those houses, and each and every one of those amendments was adopted before the previous question was ever moved. Now, Mr. President, it is a well-known fact that in an Assembly or Legislature, very extended debate is never had on any proposition, as is necessary and proper in a Constitutional Convention; for, if errors are made, it is possible sometimes to correct them there; but here, when it is embodied in the Constitution, it is in the fundamental law, and there is no way to correct it except by another Constitutional Convention. What have you done, on the contrary, in this Convention? Have you voted on one amendment offered by a Democrat? There was just one amendment offered to substitute for this whole measure. Did you take a vote on it? Have you done it yet? I was the leader of the Democrats on the floor of the Assembly in 1892, and we permitted debate on forty-two separate and distinct amendments. How does that compare with your action here? We had a majority of only two members, with the Republicans in the smoking-room trying to bribe Democratic members to vote against the bill, and absolute speed was necessary if we ever were to pass it at all; whereas here you have fifty members at your back and can do as you please. I am glad and proud of the opportunity to compare the Assembly of 1892 with this Constitutional Convention upon this question. Mr. President, I vote no.

Mr. Dean — Mr. President, we are making history. For the first time in the history of the State it is proposed, at the dictation of a Republican caucus, to induct into the fundamental law a matter of

mere political expediency. A Constitution should be a declaration of those great principles on which honest men may substantially agree; not on those questions on which parties may fairly divide. For those gentlemen who believe in this measure I have the most profound respect; but for those cuckoos, who mildly murmur when the Mugwumps speak, who blindly follow where folly leads, I have only that pity which must find its consummation in contempt. In the language of Shakespeare, Mr. President,

> "To thine own self be true,
> And it must follow, as the night the dawn,
> Thou canst not then be false to any man."

Therefore, at the risk of being read out of the party by the organized verbosity from Newburgh (Mr. Dickey), I vote no.

Mr. Gilbert — Mr. President, the air is so dark here with adverbs and adjectives that it seems almost impossible for the voice of calm reason to be heard; and yet I shall venture in the two minutes that I have to say a word in that direction. I believe, as I said on Wednesday, that the cities of the State have an undue amount of representation in the Legislature. The reasons for it were most admirably and forcibly stated by Mr. Root, of New York, and I commend that speech to the faithful attention of the delegates in this Convention and the people. Now, I wish merely to add this, and it is an addition. This is not a new proposition. The State of Rhode Island, in its Constitution, has made the provision that no city shall have more than a sixth of the representation in the House of Representatives, and yet the city of Providence has more than one-third of the population of the State. The gentlemen here would howl about that, as if it were a wrong and an infamy and everything of the sort. But will anybody soberly say that the city of Providence, within a small area, with immense opportunities for aggregating its forces and bringing them to bear at a given point, ought to have one-half or one-third of the representation? Pennsylvania has provided that no city or county shall have more than one-sixth representation in the Senate, and yet the city of Philadelphia has more than one-fifth of the population of the State. I want to say right here, in all soberness, that we have got some time or other to revise the theory on which apportionments are made. I hope the day will never come, I think it would be a sad day for the city of New York when it should come, when that city and the city of Brooklyn, if they should be united, should have one-half of the representation in the Legislature of the State. I want to say with profound earnestness and with all the

emphasis that I can give to it, that the coming of that day, if it should ever come, would be to the disadvantage of the best interests of the State of New York. And it is not too soon that the warning voice is raised. It is not too soon that the new principle of representation is about to be incorporated in the organic law of the State. Mr. President, I vote aye.

Mr. Goeller — Mr. President, I desire to explain my vote. I am a plain, quiet, unpretending man, and not actuated by a sentiment of ostentation, nor wish to fill the record with my words. But I am pained, standing here, to hear the note of contempt implied by some Republicans, when they express themselves in opposition to the Democratic party. Now, if I say as a Democrat that I am proud of my party, some of the Republicans will laugh. But, Mr. President, the Democratic party as it is represented here, we standing here as the representatives of the Democratic party, will manfully and fervently enter a protest against the Democratic party being compelled by the Republican party to take a step backward. If this apportionment goes through, we feel that the Democratic party, for the next twenty years, has hopelessly to battle with a majority in the Legislature of this great State of New York. We are not pleading for a handful of men, nor for a handful of citizens. It is the Democratic party, that has the chief executive of the nation, and not alone has had the Governor of the State for many years, but the Governor of many a State in the Union, no doubt, and probably a majority of the States of the Union. Hence, I say, and the only reason why I make this address is, that we are viewed with disfavor by the majority of this body because we plead for a little delay. I contend that this subject has been, as far as time goes, better discussed by our side. We feel that the intelligent and dignified effort which has been made upon our side in defense of Democratic rights, the plan that has been formulated and advocated to give the Democratic party representation, should redound to the lasting honor of those who have made it. I vote no.

Mr. McClure — Mr. President, I ask to explain my vote. My notion of a Constitution is that it should declare the principles upon which enumerations and apportionments should be based, and should not declare a partisan apportionment. I have in my hand a little rough diagram that I made of the senatorial district in which I live in the city of New York — I will live in that district if the people are so blind as to adopt this constitutional amendment. It is less than three blocks wide, running from Seventh, by half a block short, to Third; but is eighty-three blocks long; over four

miles, gentlemen from the country; you understand miles better than blocks; it is less than four blocks wide by more than four miles long; and this is called a nonpartisan, fair and honest senatorial district in the city of New York, where it is so easy to make them, the blocks and streets being so regular. And it was not sufficient to make it three blocks and a half wide and four miles long, but there happened to be a few Republicans living in the little jut made by Gramercy Park, and so the lines were run out so as to take from Lexington to Third avenues, between Nineteenth and Twenty-third streets. And yet my friends argue that we ought to be delighted with this apportionment. I only show this as an illustration. It strikes home to me. It is emphatically evident to me, at least, that this was a carving and a fixing, not honest, not becoming to a Constitutional Convention, no matter what the Legislature of 1892 or of any other year may have done; and when I remember, Mr. President, that my city may have an excess of 128,000 population, and yet not be entitled to an additional Senator, when Buffalo can have an additional Senator with an excess of 58,000, I am convinced that this is an apportionment that I, coming here with none of the partisan feelings that have been exhibited by the majority of this Convention, cannot subscribe to. I am willing to go to the people on it, as an illustration of the ways and means by which this nonpartisan apportionment has been laid out in this one district, and I vote no.

Mr. Smith — Mr. President, I wish to explain my vote. While I regard this scheme of apportionment as one designed to commit a great wrong, yet it has some elements in it that may be of service to the people. I think that all the Democracy will have to do, to carry the city of New York at the ensuing election, will be to have a diagram made showing the Fifteenth Senate District as it is contained in this proposed apportionment. That would be sufficient as an object lesson of Republican injustice to carry the city without anything else being said. I have been ill for two or three days and have not been able to express my opinion of this apportionment as I would have done, but my opinion has been frequently expressed here that a Constitution should be made of principles: that it should not be organized of a desire to promote the success of either political party; and I have been astonished at the expressions of opinion of honorable gentlemen here citing one wrong, one crime or wrong as a justification for committing another. I vote no.

The vote being completed, the President announced that the proposed constitutional amendment, as amended by the Committee

of the Whole, was put upon the order of third reading, by the following vote:

Ayes — Messrs. Acker, Ackerly, Allaben, Arnold, Baker, Barhite, Barnum, Barrow, Becker, Brown, E. A., Brown, E. R., Cady, Carter, Church, Clark, G. W., Coleman, Cookinham, Cornwell, Crosby, Davies, Davis, Deterling, Dickey, Doty, Faber, Floyd, Foote, Francis, Frank, Andrew, Frank, Augustus, Fraser, Fuller, C. A., Fuller, O. A., Galinger, Gilbert, Goodelle, Hamlin, Hawley, Hecker, Hedges, Hill, Holls, Jacobs, Johnson, I. Sam, Johnson, J., Kinkel, Kurth, Lauterbach, Lewis, C. H., Lincoln, Lyon, Manley, Mantanye, Marshall, McArthur, McIntyre, McKinstry, McLaughlin, C. B., McMillan, Moore, Morton, Nichols, Nostrand, Parker, Parkhurst, Pashley, Phipps, Pool, Putnam, Redman, Root, Springweiler, Steele, A. B., Steele, W. H., Storm, Sullivan, T. A., Turner, Vedder, Vogt, Wellington, Whitmyer, Wiggins, Woodward, President — 84.

Noes — Messrs. Banks, Bigelow, Blake, Burr, Bush, Campbell, Cassidy, Chipp, Jr., Cochran, Danforth, Deady, Dean, Deyo, Emmet, Farrell, Forbes, Gibney, Giegerich, Gilleran, Goeller, Green, A. H., Green, J. I., Griswold, Holcomb, Hotchkiss, Hottenroth, Kerwin, Marks, Maybee, McClure, McCurdy, McLaughlin, J. W., Meyenborg, Mulqueen, Nicoll, Ohmeis, Osborn, Parmenter, Peck, Platzek, Roche, Rogers, Sandford, Smith, Speer, Tekulsky, Titus, Towns, Truax, C. H., Tucker, Veeder, Williams — 54.

The President — The amendment goes to the Committee on Revision and will be printed. (Applause.)

The President stated that a telegram had been received by Mr. Gibney from his home, requesting his presence there, whereupon Mr. Gibney was excused from attendance of the Convention for this evening and to-morrow.

Mr. Smith was excused for to-morrow and Monday.

Recess until eight o'clock.

EVENING SESSION.

Friday Evening, September 7, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber, at the Capitol at Albany, N. Y., Friday evening, September 4, 1894.

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

Mr. Root — Mr. President, I have a report from the Committee on Rules.

The President — Mr. Root, from the Committee on Rules, presents a report. The Secretary will read.

The Secretary read the report as follows:

Mr. Root, from the Committee on Rules, reports in favor of the adoption of the following resolution:

R. 199.— "Resolved, That on Tuesday morning 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 continue until they are completed.

The President — The rule is presented in accordance with the order of the Convention.

The President put the question on agreeing to the report of the Committee on Rules, and it was determined in the affirmative.

Mr. Root — Mr. President, I give notice that at ten o'clock Tuesday morning I will move a call of this Convention.

The President — Gentlemen will please take heed of Mr. Root's notice.

Mr. W. H. Nichols — Mr. President, I move that we go into Committee of the Whole on general order No. 34.

Mr. McClure — Mr. President, I call attention to the fact that the report of the Committee on Forestry is before the Convention and was placed on special orders and was only passed by to give way to the matter of apportionment.

The President — The Chair has looked into that matter and is of the opinion that Mr. Nichols's amendment has the right of way, for this reason: it was subsequent in position to the forestry amendment. The forestry amendment was called and was held in place by order of the Convention by reason of Mr. McClure's necessary absence. In the meantime Mr. Nichols's amendment was brought

on and considered, and the debate thereon was not finished. The Chair had suggested to Mr. McClure that if he could arrange it with Mr. Nichols to give way, it might be arranged. Mr. Nichols, however, insists upon the right of his amendment, and the Chair is of the opinion that the consideration of general order No. 34 is next in order.

Mr. C. B. McLaughlin — Mr. President, I was not here last night when the rule was adopted refusing to grant leaves of absences, except on account of sickness. I have some very important official appointments which were made many weeks ago and sat down for next Monday, and I ask to be excused for that day.

The President — The Chair is of the opinion that, unless the rule of yesterday is revoked, the application cannot be entertained.

Mr. McLaughlin — Then I move that the rule adopted yesterday be so far modified as to permit me to be excused for next Monday.

The President — The Chair is of the opinion that that will have to be done by a reconsideration of that rule. If there is no objection, however, Mr. McLaughlin is excused for Monday.

Mr. Morton — Mr. President, one of my colleagues, Mr. Faber, has been summoned to Brooklyn on important business, and I, therefore, ask that he be excused for to-morrow.

The President — The rule does not apply for to-morrow.

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

Mr. Goodelle — Mr. President, referring to the same subject that Mr. McLaughlin has referred to, I desire to say that on Thursday and Friday of next week it will be absolutely necessary for me to be absent in public service that I cannot avoid.

The President — The Chair is not at liberty to put an application for excuse for any day after Monday.

Mr. Goodelle — I desire the same course to be taken that was taken in the case of Mr. McLaughlin.

The President — Mr. Goodelle is entitled to be excused by unanimous consent.

Mr. Root — Mr. President, it is with great regret that I feel bound to object. We have just voted to go into the third reading of amendments on Tuesday morning. We have adopted a rule that requires eighty-eight votes to pass an amendment. I do not believe that any gentleman in this Convention has any public duty which is superior to his duty in this, the last week of this Constitutional Convention.

The President — If there is objection, the application cannot be entertained.

Mr. A. H. Green — Mr. President, I think every gentleman understands the exigency of the case. I do not think that Mr. Goodelle would ask to be excused if it was not absolutely necessary. I move a reconsideration of that rule.

Mr. Goodelle — If the gentleman will allow me, I will state that I think I can be back here by Friday noon.

The President — It is too late to move a reconsideration of the rule, as one legislative day has passed since its adoption. Will the Secretary inform the Chair when the rule was adopted? The Secretary informs me that it was passed yesterday.

Mr. Maybee — Mr. President, I rise to a question of information. Was not a motion put and carried by which a gentleman was excused for Saturday and Monday?

The President — That was on account of illness — a sudden emergency in his family.

The President put the question on reconsidering the vote by which the rule refusing leaves of absences after Tuesday was adopted, and it was determined in the negative.

Mr. Pashley — Mr. President, since the Convention adjourned this afternoon, about half-past five, I have received a telegram which makes it necessary for me to be in Brooklyn to-morrow. I, therefore, ask to be excused to-morrow.

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

The President — The Convention will resume in Committee of the Whole on Mr. Nichols's amendment (O., I. No. 253, P. 402), general order No. 34, relating to the registration of voters, and Mr. Lauterbach was in the chair on this amendment. Mr. Lauterbach will take the chair.

The Convention resolved itself into Committee of the Whole. Mr. Lauterbach in the chair.

The Chairman — The Secretary will read the substitute for the proposed amendment.

The Secretary read the proposed substitute.

Mr. Roche — Mr. Chairman, my impression was that we had not voted upon a proposition of Mr. Barhite's, that the words "ten days" should be substituted for the words "four weeks" on line 6.

The Chairman — The record in that respect, Mr. Roche, is that

the amendment having been offered by Mr. Barhite, was accepted by Mr. Nichols without objection, and by unanimous consent the amendment is so ordered. "Ten days" is substituted for "four weeks."

Mr. Roche — Yes. Well then, Mr. Chairman, my proposition is that we shall simply recognize the existing provision of the Constitution, and in order that there may be no question about the rights of the Legislature to provide for and direct the registration of voters, that we shall add to it the words "laws shall be passed for the registration of voters."

Now, this question of the registration of voters is a matter that has been considered by the courts of this country in quite a number of States, and I believe that the principle has been announced that in order that any law upon that subject may have constitutional sanction, that the methods and the time of registration both shall be reasonable; that reasonable facility shall be afforded to the citizen for registration both as to the number of days on which he shall be allowed to register, and as to the proximity of time to the day of election itself. We have run against no difficulty on that point, because of Mr. Barhite's acceptance of the proposition that the registration shall be completed at least ten days before the election. My opposition to that is based upon this ground, that it is entirely unnecessary. It is putting something in the Constitution which is now and for years has been an existing statute of this State agreed to by both the great political parties. There was passed by the last Legislature, upon the recommendation of the Democratic Governor, and I believe with the unanimous assent, or almost the unanimous assent of the Republican Legislature, a new registration and election law, and that law provides, among other things, that the last day of registration shall be the second Saturday before the election, or in other words ten days before the election. Now, that is something which, as I say, has been agreed to by both the political parties and has been upon the statute books of this State for several years. If in the course of time it shall become necessary to increase or decrease that period, why it seems to me it ought to be left to the judgment and discretion of the Legislature to do so, and that we ought not to place in the Constitution any particular time and arbitrary period beyond which and below which the Legislature should not go.

I say the same thing in regard to Mr. Nichols's provision relative to personal registration in the cities and villages of this State, or, rather, in the villages, as it would only apply to villages which are less than 5,000 in the number of their inhabitants. Now, it may be

entirely unwise and unnecessary to require personal registration in the small villages of this State which are quite numerous, and in the towns of the State. I do not think there is any great danger of any political party in the Legislature enacting such a provision, unless in answer to a public sentiment, a strong public sentiment, that it is wise and necessary to do so. It may be that to-day the public sentiment is (and I believe it is largely so) that there is no occasion for personal registration in the rural districts of the State, but the feeling might become very general within the next two, five, ten or fifteen years that it would be a prudential requirement. In that event I think it would be unwise that we should insert now in the Constitution any provision which would render it impossible for the Legislature to pass a personal registration law which would be applicable to all portions of the State.

Now, there is another thing about it; Mr. Nichols's proposition provides that personal registration shall not be required at the first meeting of the registry board except in cities and villages. It carries with it that idea, because it says that at the first meeting of the board of registry the electors may not appear in person. Their names may be copied from the registry books of the previous year, a practice which we know is liable to great abuses. It carries also the idea that personal registration shall be required of persons who have come into the district, or who had not voted at the election and whose names did not appear on the poll list, even if they resided in the district a great many years. Therefore, it requires the duty of personal registration even as to these smaller districts. It is entirely unnecessary and entirely, in my opinion, unwise that we should restrict the Legislature in the future, if the legislative judgment should be in that direction, from passing any law which would prevent or prohibit personal registration of persons even on the first day of registration in any part of the State.

Now, Mr. Chairman, there is perhaps no man in this Convention for whom I entertain higher esteem and respect than the gentleman who offers this amendment, and the earnestness with which he advocated it the other evening is certainly commendable. There is only one criticism which I desire to make on his remarks, and that is the discrimination which the gentleman makes between the rural districts and the large centers of population of the State. The gentleman asks, did anybody ever hear of corruption in these districts? Did anybody ever hear of repeating in these districts? — referring, of course, to the country districts. "No; nobody ever heard of it, or nobody ever charged it," and, therefore, the idea was that we should make a constitutional provision which should recognize,

which, indeed, should accentuate the distinction between the city districts and the rural districts. Now, Mr. Chairman, I am one of those men that do not feel any pride whatever in the shame of any portion of the State of New York, whether in the city or in the country. Neither do I like these constant discriminations, these constant differences that are introduced here between the city and the country, as to the intelligence, the manhood, the honesty of the citizens of the city and of the country. I have heard of corruption in the country districts which was unknown, or at least which I have never known or heard of, in the large municipalities of the State. On the other side of this building, in a senatorial contest where I was counsel in the case, my associate was examining a gentleman who was introduced as a witness on the other side. There was quite a friendship between the witness and the examining counsel. The witness had testified, on the direct-examination, that there was no repeating or corruption of any kind at the election under investigation. Under cross-examination, my associate said to him: "Well, now Charlie, didn't you go over into Vermont and bring over a lot of Vermonters and vote them at that district last fall?" "No, no," said the witness, "I really didn't do that, judge; I didn't do that last fall, but what you refer to took place the fall before." Now, if that was not repeating I do not know what repeating is. We had in that case undisputed, indisputable proof, undenied evidence, submitted right in the presence of the county treasurer of the county of the fact that the county treasurer all that day of the election stood at the entrance of a barn and people had passed in and out of that barn all day to the polling-place in that country district, and what it meant, what the purpose was, no sane man would for a moment affect to mistake? Certain districts in this State have been in such a condition, certain rural districts, that if they were in the empire of Great Britain they would receive the treatment that three or four, if not half a dozen of the election districts in Great Britain have received, namely, they have been disfranchised entirely because of the grossest corruption. Why, sir, it is not very far from the capitol, and I can remember it, that it was said that a certain gentleman who was a candidate for Senator, who was of a different political faith from the majority of that district, was known to have spent, it was charged that he had spent, and it was never denied, that he had spent the sum of $50,000 in that district for the purpose of securing his election, and his election was secured solely by the corruption and bribery of that district. In other towns not far from the capitol of this State elections have occurred where the sole question on the part of the political managers was, how much

money they could put in that town and whether their political corruption fund was larger than their opponents, and they made no secret the night before election as to what their majorities would be in those towns. I commend to the gentleman who made those remarks and ask him if there is any truth in this article which I read from the Brooklyn Eagle of a few days ago, and which certainly is as painful to me as it can be to any man in the State who desires pure elections. That paper says:

"It will cost over $1,500,000 to each political party to get out the vote of its rural adherents in this State. Those bucolic suffragists will not want to be bribed to vote with their party, but they will insist on not voting at all, unless 'they are paid for their time.' The pay for their time means about two dollars apiece. Farmers who are worth $250,000 in many cases demand this amount for voting even for their own party. The fact is sickening, but those familiar with country poli ics know that it is true. The lowest slums of the meanest cities produce no public enemies more malign than those fly-gobbling clodhoppers of the crossroads."

Now that is the opinion and the statement of so reputable a journal as the Brooklyn Eagle. What I dislike is these discriminations, these differences which are constantly made between the country districts and the cities. Take the Twelfth Ward of the city of Troy, which is composed almost entirely of a body of manly, sturdy laboring men, who earn their two dollars to two dollars and fifty cents per day in the great Burden Iron Works of that city, who go to the polls and cast their ballots and go to their dinner and go back to their work and no man dare offer to nineteen-twentieths of those men the suggestion of receiving or accepting one penny for the vote they cast. (Applause.) I do not like to see, Mr. Chairman, and I do not like to hear in this chamber where we should all be proud of the citizenship of this State, this constant reference, this constant distinction or attempts to draw distinction between the honesty, the integrity and the manhood of the men who vote in the cities and in the large villages of the State and those who vote at the crossroads in the country. I am opposed, therefore, Mr. Chairman, to putting this discrimination in the Constitution. I am opposed to putting in the Constitution any restriction on the Legislature as to the future in this regard. It is unnecessary and unwise. If my friends on the other side, who fondly expect to, as I believe they will, succeed in holding control of the Legislature of this State under this apportionment which was adopted this afternoon for many years to come, if their expectations are met, as I believe they will be, then this provision is entirely

unnecessary. It is offensive as well as unwise. I hope, therefore, Mr. Chairman, that we will adopt the simple proposition that the Legislature shall pass laws for the registration of voters, leaving it to the Legislature, as the times and the conditions may change, to also pass laws for ascertaining, as the Constitution now provides, by proper and reasonable proof those who may be entitled to the exercise of the right of suffrage.

Mr. Morton — Mr. Chairman, it affords me most intense satisfaction to find an amendment proposed to the Constitution of this character. I remember with great distinctness the agitation with which this State was stirred in 1857 and 1858 in reference to this subject of the registration of voters. There had been a provision in the Constitution always in existence, engrafted upon the Constitution of 1846, providing that the Legislature might provide a way for the proper proofs to be taken of the right of the citizen to exercise the suffrage. No such law was ever passed up to the time of the adoption of the Constitution of 1846 until 1857, and the first registration act that was passed in that year was the occasion of one of the most intense political excitements which the State of New York ever knew. It met with the most sturdy opposition. It was contested inch by inch in the courts. Every effort to put it into operation was thwarted, and not until the decision of the Court of Appeals was given, that it was a constitutional act, was it submitted to then. The provisions of the first registration law were exceedingly moderate as compared with the provisions of the law that now exists, and notwithstanding their moderation, they were resisted with the greatest violence. The political power of the State changed in character in the year 1870, when for the first time in thirty years the Democratic party of the State resumed its power in all the branches of the government, and one of the very first things that the Legislature of 1870 took occasion to enact is chapter 503 of the Session Laws of that year, to which I call the attention of the gentleman. The title of the bill is "An act respecting elections other than militia and town officers," a very ingenious title and not at all covering the purpose of the bill. It ingeniously disguised from the people of the State its true purpose. It provided that all laws or parts of laws which shall prescribe that the electors of this State shall be registered or enrolled are hereby repealed, except so far as it applies to the city and county of New York.

Now, Mr. Chairman, I cite the fact of the action of the Legislature of 1870 as evidence that it is a necessity that a provision of this kind should be engrafted in the Constitution, for although these gentlemen say, with great facility here that it is a legislative matter,

and that it is safe to repose it in the Legislature, it is the experience of this State that some of the most important safeguards for the liberty of the people have been engrafted upon the statutes of the State, and at some convenient season, and for purposes of their own, opportunity has been sought to repeal them. I have no doubt that it was the intention of the framers of the Constitution of 1846 that the Legislature should pass some law providing for the registration of voters, because it happens that before the meeting of the Legislature things got into such a condition in the city of New York that it was absolutely necessary that some action should be taken. I remember well, sir, what the condition of things was in the city of Brooklyn when this chapter 503 came into effect. I want to call the attention of the gentlemen here who may have any interest in this subject to the fact that the city attaches of the city of Brooklyn enrolled persons after the passage of this act and the repeal. I want to call attention to the fact that sixty-six members of the fire department were appointed to be canvassers of election by the authorities in that city after the registry law was repealed, and such scenes were witnessed in Brooklyn and in other cities as constitute a blot on the escutcheon of this State. I believe that nothing that we can put in the Constitution of this State will be so effective as the proposition to require that every man should be registered before he has the right to vote. The Constitution of 1846, notwithstanding the subject had been discussed throughout the State for twenty years made provision for it, and the first time the Democrats got into power they repealed it. Now, I do not know so much about the registration by this proposition. I do not think it goes to the root of the evil. The Legislature should certainly not have the power to change the policy of the State. I have the honor, sir, to have been influential in the passage of the registration act of 1872; it stands upon the statute books to-day with such modifications as should be necessary, and one of the most salutary provisions of that act was that the registration should be completed fourteen days before election. It provided that the registration of voters should be published in some way as a check against fraudulent registration. The old-fashioned way of obscuring fraudulent registration by providing that the names should be placed in alphabetical order was changed and they appeared in numerical order with the street and number. I think this is a vital principle and should be maintained, and with the consent of the introducer of this provision, if there are no other amendments to be made, I request that the committee do now rise and report the amendment to the Convention and recommend its passage.

The Chairman — There is a substitute pending to be disposed of.

Mr. Moore — Mr. Chairman, I want to call the attention of the committee to line 11.

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

Mr. Moore — I have the floor, Mr. Chairman.

Mr. Holls — I do not want to interrupt Mr. Moore, but I understood Mr. Morton to move to rise and report progress. I ask to be corrected if that is not so.

Mr. Morton — Mr. Chairman, I do not desire to cut off a vote on Mr. Roche's amendment.

The Chairman — That was the understanding.

Mr. Morton — I withdraw my motion, Mr. Chairman.

Mr. Moore — I want to call the attention of the Committee of the Whole to the fact that in line 11 the words are, "inspectors of election for registry voters." There is no such legal board as that in this State. I move that "inspectors of election" be stricken out and "boards of registry" be inserted.

The Chairman — Mr. Moore will prepare his amendment in writing and send it to the desk. The substitute is now before the committee.

Mr. Dickey — Mr. Chairman, the farmers of Orange county, without regard to party, will hail with pleasure the adoption of this proposition, because the attempts of one or more Legislatures of this State to pass bills requiring personal registration of the voters in the country has been very objectionable to them. They see no necessity for any such legislation. Therefore, a provision, such as this amendment proposes, forbidding the Legislature to pass any such requirement, will be pleasing to them, and, therefore, representing them, I hope this amendment will be dealt with favorably.

The gentleman from Rensselaer (Mr. Roche) surprises me, nonpartisan as he is and proclaims himself to be, that he should quote approvingly any newspaper which would so far forget itself as to call the farmers, the good honest yeomanry of the country, "clod-hoppers of the cross-roads." I say that any such quotation by him with words of approval greatly surprises me. It must be that he has not yet got over the last question that excited so much feeling, I am sorry to say, in this Convention.

Mr. Roche — I did not express approval or disapproval.

Mr. Dickey — I am very glad, Mr. Chairman, that the gentleman corrects me and says he did not, because I regarded it as unnatural and not in accord with his sentiments. But some Demo-

cratic paper did say it of my constituents, and I desire to resent it and to say that it is unworthy of any individuals for them to characterize the farmers of this State as "clodhoppers," because the majority of them happen to be Republicans.

I am glad to hear the gentleman say that nineteen-twentieths of the workingmen in the district referred to by him are above any suspicion and that nobody would dare to offer to purchase them at the polls. Nineteen-twentieths is a good proportion. I am surprised that one-twentieth of them should be under any such suspicion. Down in Newburgh we have manufacturing establishments and in them brawny, horny-handed sons of toil are employed, and twenty-twentieths of them go to the polls on election day without receiving a dollar, and no man would dare to offer them a dollar, and they are not only Republicans, but a good many Democrats are among them. The purpose of this bill is that the Legislature shall not pass any laws requiring that the farmers of the country where every one knows everybody else in the district, that they shall never be required to go through the form and be put to the additional bother and loss of time of making a personal registration.

This bill of Mr. Nichols is designed to bring about that good end, and I hope it will receive the approval of this Convention without regard to party lines.

Mr. Goodelle — Mr. Chairman, I desire to say but a single word in reference to the criticisms that were made by my friend from Rensselaer (Mr. Roche), upon the discrimination that is made between the towns and cities. Several propositions of this character were before the Committee on Suffrage and received a great deal of attention. None, as presented, were satisfactory to the committee, and after one or two sub-committees were appointed, Mr. Nichols's proposed amendment with some amendments was finally reported. I will say this, that we had hoped in presenting the measure in this form in the discrimination which is made in the last part, that we would present something that would be entirely satisfactory to our Democratic friends, for the reason that in 1892 the Legislature of our State passed a registration law which made a discrimination that personal registration should not be required on the first day of registry except in cities, and that being in 1892 when there was a good strong Democratic majority both in the Senate and Assembly, as well as a Democratic Governor, we had reason to suppose that if we framed our measure in accordance with that principle, the Democrats would very readily accept it, and I am surprised at this time that any criticism should be made upon it, because it is well known that in the northern counties of the State,

particularly in Hamilton, Franklin, Essex and Clinton, it would require two days to go and register, and as our Democratic friends passed an act that was regarded as fair, we thought they would accept the proposition in this form without any criticism. I would, therefore, move that the committee now rise and report this amendment.

Mr. Roche — Mr. Chairman, I hope the gentleman will let us have a vote on the substitute.

Mr. McClure — Don't cut us off in that way.

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

Mr. McClure — Mr. Chairman, this matter was before the Committee on Suffrage, of which the chairman, Mr. Goodelle, and myself, happened to be members, and there was some discussion about it. The objection to this amendment as I see it, is this: that there is a positive constitutional prohibition against the Legislature at any time providing for registration in places of less than 5,000 inhabitants. Now, the instance that Mr. Goodelle refers to is that of legislative provision which might be changed in any year. The Legislature of 1892 passed the provision to which he referred, but the Legislature of 1893 or 1894 had the power to revoke it and to pass something entirely different. The distinction is that we are placing in this Constitution, not to be changed in the ordinary course of events for twenty years, a prohibition against a requirement of registration in places of over 5,000 inhabitants. In the committee I opposed that provision. I oppose it here. I think it is entirely improper to say by constitutional provision that the Legislature shall not at any time pass such provisions of law as shall be a protection to the people of the State. The gentleman from New York (Mr. Root) has said here several times, that because the cities are a part of the body of the State, they shall not have any position that shall give them something that the rest of the State has not. And I say here that the country places of the State should not have a position in this Constitution, fixed by a constitutional provision, that the cities of the State have not. This is not a question of partisanship, it is not a question that is more Republican than it is Democratic, because the ills we are trying to provide against may proceed from one party as well as another; but why should we say here, to take effect and hold its place for twenty years, unless there should be a special amendment, but contemplating its holding its place for twenty years, no matter what the course of events, and no matter what the ills that may be worthy of complaint, that the Legislature shall never throw around the citizens of this State the safeguard of providing that in country places there shall

be a personal registration? My friends have said that it is a matter of personal inconvenience for the farmer to register. It was suggested in the committee that perhaps in the wisdom of the Legislature it might be provided that there should be a registration by the officials passing through those portions of the country where the people were not living near the registration place, and thus making a personal registration. Why not leave it open to the Legislature for some such course as that? I do not come altogether from a city, I am glad to say. I am country born and bred. I know something of the difficulties of country life in all its aspects, both as to education and as to voting. I know that in my native county of Westchester, within my own experience, frauds have been perpetrated; employers of large bodies of men having their names upon the roll, repeated those names upon the rolls for succeeding years, and voted under those names men who did not bear them. Now, I ask, why go so far in the interest of country districts, if it may so be called? It is not in the interests of the country people; they want honest voting. Why tie up the Legislature so that never hereafter, unless this constitutional restriction be relieved, they can provide for personal registration? My friend, Mr. Dickey, of Orange, has shown that there is a necessity in cities. He has gone one-twentieth better than my friend from Troy, and has made twenty-twentieths of those men who have been referred to as the dishonest citizens of cities as being honest in the matter of voting. And yet you provide that the twenty-twentieths, so honest in Newburgh, shall personally register. We do not ask you to provide that the people living in the remote fastnesses of St. Lawrence, where my genial friend belongs, those great people who roll up splendid Republican majorities every year, and never yet have had occasion to establish or keep within the limits of the county a single savings bank; we do not ask that they shall personally register. But I oppose, as a matter unfair to the people of the cities, and the people of the country as well, a strict constitutional provision against the Legislature hereafter at any time throwing safeguards around the people of this State by providing some means of personal registration. The tax collector in the country goes around and collects taxes, and why could not the registrars go around and register the voters of the county? But here you are going to provide that no matter what the frauds may be in the country districts, whether Democratic or Republican, that there shall be no personal registration. I have seen the most rampant secessionist Democrat seduced by a mortgage upon his house to be the most rampant, outspoken Republican in a country place. And

yet you provide here that no matter what the ills may be, the Legislature shall never throw around the people the protection of some kind of personal registration, whether at one place or in different places within the district. It is unwise, gentlemen. To my friend who introduced it here, I say it is unnecessary. I have no more confidence in Legislatures than he has. I will show that in something I shall say upon a measure that will follow this; but I claim we are not sent here to say that for twenty years no protection shall be given to the people of the cities by having the people of the country honest. I join with my friend from Rensselaer in throwing back the suggestion that because people live in cities they are not honest. I oppose this proposition. Leave it open. Do not say, we cannot do it in places that do not exceed five thousand. Leave that out, and leave that to the wisdom and honesty and justice and decency of the people to say, whenever occasion arises, as to what shall be the requirement of registration. I hope the part of this amendment which prohibits personal registration, or laws requiring it, will not prevail.

Mr. McIntyre — Mr. Chairman, I desire to offer an amendment.

The Chairman — The Chair is of the opinion that the substitute must be disposed of first.

Mr. Roche — Mr. Chairman, may we have Mr. McIntyre's amendment read, so that we may know what it is?

The Chairman — The Secretary will read Mr. McIntyre's amendment.

The Secretary read the amendment, as follows: To strike out, in line 7, the word "five," and to insert in place thereof the word "eight."

Mr. A. B. Steele — Mr. Chairman, I desire to say a few words. This is a measure that seems to me to be of very great importance. In considering the question whether or not it shall be incorporated into the Constitution, it seems to me that the first question to consider is, whether it is a proper provision; in other words, as to whether a provision as provided for by the original amendment is better for the people than as if they did not have it. As has been stated here by the gentleman who cited the statutes, the question of registration has varied. The law of the State of New York has changed. At one time it was required that there should be personal registration all over the State. At another time, as I understand it, it did not require personal registration in any place. After experimenting for some time, and in 1892, when we had a Democratic Legislature, the law was changed, and for a reason, so that personal

registration was required only in cities, or perhaps you might say, within the provisions of the original proposition here, in cities or villages that exceed five thousand. Now, there was a reason for that, and the reason why personal registration should not be required in the country I am very familiar with, for the reason that I have lived in a country village all my life, and have almost always been interested in registration, or rather, in the election, and it is a conceded fact with a voting population of anywhere from one to three thousand in a town, an inspector, at least an inspector who is at all familiar with the people, knows every man in his district or in his town, and knows whether he is entitled to be registered, or whether he is not. Therefore, he knows when he sits at the registry board, whether it is necessary or proper to put down A, B or C. Those who have had experience in the matter know very well that it would be useless, aye, it would be a loss of time, it would be a burden upon the voter of the rural districts if they were obliged to go to the polls. We have heard it stated here from the gentleman who introduced this bill as to the distance that some have to go. I think he gave my county as containing some voters that, if they were required to register personally, would have to go as far as forty miles. Of course that is in the extreme northern part of the county. But all of them, or the majority of them, would have to go quite a long distance. Therefore, Mr. Chairman, I say, and I say it without fear of contradiction, that the board of registration can properly register every man in town, and there is no danger of the frauds that seem to have been perpetrated in the county of Westchester. I never heard of a fraudulent registration in my neighborhood, neither in my county, nor in the surrounding counties of the rural districts. Therefore, I say, Mr. Chairman, that there is no reason whatever why a man should go personally from that section of the country and attend to his registration. It is a very common thing, among the farming community especially, for some one man in the neighborhood to go to the board of registration, taking with him all of the names. If he happens to be a Republican, he does not take the names of the Republicans only, or if he happens to be a Democrat he does not take the name of Demcrats only; but he takes the names of all of his neighbors, of all those in his vicinity, and he sees to it that those names are put upon the register. When he returns, the inquiry is made of him, "Have I been registered?" by both Democrats and Republicans, and he invariably gives a correct answer. If they are registered, that is all there is of it.

Now, Mr. Chairman, the Legislature of 1892 knew that to be a fact, knew that to be the situation, and adopted the present law, which is, as I understand, the provision proposed by this act. And if it works successfully, and if there is no need of this personal registration, why not, after we have tried it and found that it works successfully, incorporate it in the Constitution? Make it a provision that is not to be subject to change by the Legislature. I understand that one of the reasons why we have a Constitution is, that after a matter is found to be just, after an act is found to be what it ought to be, it becomes a part of the Constitution, and one of the principles of law that cannot be again changed unless it is changed by a submission to the people.

I hope, Mr. Chairman, that the substitute of Mr. Roche will not prevail, but that the original article, giving the proper length of time before the election, in which the registry shall be completed, will prevail.

Mr. Root — Mr. Chairman, the Committee on Rules since the meeting this evening, has had a session and is ready to report time limits in accordance with the instruction of the Convention upon this and several other matters which are before us ——

Mr. Bowers (interposing) — Mr. President, I make the point of order that the gentleman is out of order in not speaking to anything before the committee.

Mr. Root (continuing) — As to which gentlemen of the Convention wish action. I, therefore, move that the committee rise and report progress and ask leave to sit again.

Mr. Roche — Mr. Root, there is a substitute here on this proposition that ought to be voted on.

Mr. Bowers — I rose to a point of order, Mr. Chairman.

The Chairman — The gentleman will state his point of order.

Mr. Bowers — The point of order that I made was that the gentleman (Mr. Root) was speaking to no motion. This Convention is falling very much in the habit of allowing gentlemen to state reasons and then a motion afterward.

Mr. Root — May I be permitted to finish?

Mr. Bowers — Certainly not, because I was making a point of order and I have a right to the floor. Now, the gentleman has succeeded in stating what he wanted to, and he has made the Convention understand it.

The Chairman — Then the point of order has disposed of itself, and Mr. Root's motion is in order.

The Chairman put the question on the motion of Mr. Root, that the Committee of the Whole rise and report progress, and ask leave to sit again, and it was determined in the affirmative.

The President resumed the chair.

Mr. Lauterbach — Mr. President. The Committee of the Whole have had under consideration proposed constitutional amendment No. 404, have gone through with the same, and have made some amendments thereto, and instructed the chairman to report the same 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. Root — Mr. President, I have a report from the Committee on Rules.

Mr. Bowers — I move that we go into Committee of the Whole.

The President — Mr. Root has the floor.

Mr. Root — I have a report from the Committee on Rules fixing a time limit upon general order No. 34, introduced by Mr. Nichols, relating to the registration of voters, of thirty minutes further.

The President put the question on agreeing to the report of the Committee on Rules, and it was determined in the affirmative.

Mr. Root — The Committee on Rules report in favor of a time limit upon general order No. 67 (O., I. No. 392), the report of the Committee on Charities, of two sessions of two hours each, or four hours altogether.

The President put the question on agreeing to the report of the Committee on Rules, and it was determined in the affirmative.

Mr. Root — The Committee on Rules report in favor of fixing a time limit upon the further debate of general order No. 63, relating to the waters of Niagara, of thirty minutes.

The President put the question on agreeing to the report of the Committee on Rules, and it was determined in the affirmative.

Mr. Root — The Committee on Rules report in favor of fixing a time limit on the proposed amendment relating to the preservation of forests (No. 72), of two hours.

The President put the question on agreeing to the report of the Committee on Rules, and it was determined in the affirmative.

Mr. Root — I now move that we go into Committee of the Whole on general order No. 34, introduced by Mr. Nichols, relating to the registration of voters.

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

The Secretary read Mr. Roche's substitute, and the Chairman put the question on the substitute, and it was lost.

The Secretary read the motion of Mr. McIntyre, to strike out the word "five" in line 7, and insert in place thereof the word "eight."

The Chairman — The question is on Mr. McIntyre's amendment.

Mr. Roche — I would like to ask Mr. McIntyre how it could occur in villages having a population of 8,000 that persons would have to travel five or six miles to register. According to the election law such villages are divided up into election districts, and the number of election districts would be quite considerable.

Mr. McIntyre — My answer is that those districts embrace territory outside of the village limits as well as in it.

Mr. Roche — This relates entirely to villages. I can conceive — because I know of such a case in the village next above Troy, Lansingburg — where the people of that village, which number between ten thousand and twelve thousand, have eight election districts, and no man need travel more than three or four blocks, or perhaps half a dozen blocks, to register and to vote. And, besides, the people in the town, who only vote at a town election and not at a village election, need not be concerned about this amendment. There are quite a number of villages in this State of less than eight thousand and more than five thousand inhabitants, located quite near to some of the large cities, from which it is easy to pass gangs of colonizers and have them register and vote in these villages, and thus help out the political party which may be dominant in the village. I submit that when a village comes to have a population of five thousand it is high time, if we are going to throw safeguards around the purity of the ballot, to bring them within the operation of a general law. Mr. McIntyre's motion relates simply to towns, or to villages which may be located in towns, and to town elections. But wherever there is a village of five thousand inhabitants or upwards, under the present law, or under any law that may be passed by the Legislature, that village can be divided up into convenient election districts, so that no elector will be inconvenienced in registering or in voting. I submit that under these circumstances it is unwise and highly improper, and is a provision calculated to lead to fraud in connection with registration and with

election, to increasing the number from five thousand to eight thousand.

Mr. McIntyre — I would like to ask the gentleman if the election districts in many of the incorporated villages do not embrace also rural districts in the same towns, so that in general elections the people will all have to be registered, unless they are excepted by this law?

Mr. Roche — My answer to that is, that the number of election districts under the present law, or under any law which may be passed by the Legislature relating to such cases as the gentleman cites, may be so increased and are now so numerous that persons living outside the corporate limits of the village, and in the town itself, may have convenient access to an election district located either in the town proper or in the village, and there will be no trouble in going even on foot to register and to vote. The same rule would apply to Lansingburg, both to the village and the town, and would apply to every town or village in the State similarly situated.

Mr. McIntyre — But you do not answer my question. I asked you if an election district did not, in many cases, embrace part of the territory of a village and part of the rural territory outside of the village?

Mr. Roche — This article relates to villages. The villages are incorporated. They have election districts. They can increase them in number, according to legislative acts either now existing or which may be passed. When the villagers vote as townspeople, in the spring, why, they will vote according to the town law and not according to the village law; and even if they vote according to the town law the Legislature, both by existing acts and by acts which may be passed, may and does provide for a sufficient number of election districts, so that no person living in the town will be inconvenienced by having to go any great distance to either the town or the village polling-place. I say that when we make this eight thousand we are making an unwise discrimination. We are extending the population to too high a figure. We are affording facilities for fraud, particularly in those towns and villages which may lie near to the large centers of population, where many of the gentlemen on the other side believe that a great portion of the electorate is composed of dishonest and fraudulent persons. I believe there should be no interchanging between these populous villages and the cities, but that the safeguards which you desire to throw around what you consider the large centers of population in connection

with these elections shall be kept as to all the villages of this State which contain a population of not less than five thousand.

Mr. Augustus Frank — Mr. Chairman, I can see no reason why any delegate in this Convention should refuse to vote for the proposed amendment of Mr. Nichols. I think the gentleman from Rensselaer misunderstands the matter of registration in the country. The amendment that has just been proposed changing from 5,000 to 8,000 is a very proper one. There are often small villages in townships of large population. The districts are usually made up in part of the rural districts, and the voting places are nearly always in the villages. So it does not prevent the hardship caused the people who have the long distances to travel in order to register. Another thing he probably does not understand, and others who do not live in the country, is that there are times when people are not put on the registration lists, and, not being aware their names are not on the list, come on election day to the polls and, finding they are not registered, lose their votes. A voter residing in the city does not have to go five or six, or perhaps ten or fifteen, miles to register, as is frequently the case in the country. In my own township, which is about six miles square, a man living in one corner of it has to travel four miles and a half to register. He has to return, making a drive of nine miles in the fall, often when the roads are bad. On the other hand, a man in the city can go and register in ten minutes, or, at the outside, at the expenditure of not more than half an hour's time. There are many reasons why this amendment is proper and right, and I cannot see why any one should oppose it. The gentleman has spoken regarding frauds being perpetrated in the country. I never heard of frauds at the polls in the county in which I reside. It is impossible. Every man is known to almost every other man. Take the town where I live. I know, as others do, almost every man in it. I do not think the matter of fraud at elections in the country is worth discussing further. Even gentlemen from the cities must see that this amendment is right for the country, and I trust it will be adopted.

Mr. Countryman — Mr. Chairman, I always claim the right, where a question involving the country is concerned, to speak as one having authority. It strikes me that the criticism here is entirely hypercritical. It does not follow that a voter who is a nonresident of a city or a village is bound to be personally registered in order to entitle him to vote. The object, I understand, of this provision is merely to require such registration on the part of the residents of a city or a village, but if there is any doubt upon that it can be readily

obviated by excepting nonresidents of the city or the village, so as to prevent the necessity of persons living several miles from the village going there for the purpose of registration. If there be any ground for this objection it applies equally to places of a larger number of inhabitants than 5,000 or 8,000. Take the village of Lansingburg, which has about 11,000 inhabitants. The same difficulty would apply there. It is a part of the town and does not include the whole town, and some of the election districts involve a part of the adjoining country. So in the village of West Troy, in this county, which has a much larger population than even 8,000 inhabitants. Therefore, there should be no limit to 5,000 or 8,000, simply for that reason. The difficulty should be obviated by a special exception, if one be necessary, but, in my judgment, upon the wording of this section, none is necessary.

Mr. Baker — Mr. Chairman, I live in a county where there are some large villages. The village of Fulton, in my county, has from 5,000 to 8,000 inhabitants. That village is cut up into election districts relatively to the towns, and the voters come in a distance of from four to six miles to the village of Fulton to vote. Now, it strikes me that 8,000 is not too large. From different directions the districts are so constituted that the voters come down to the village of Fulton to vote, and I say, as I have personal knowledge of the town from driving through it often, they have to drive from four to six miles. I think there are some six polling-places in that town, but I know many farmers have to drive six miles. In my own town we have three small villages, located in the southern part of the town, and the farmers have to come in at least six miles to vote, and it would be very inconvenient to have personal registration there. The practice there has been for many years for different individuals to bring in the names of electors and have them put on the registry list. Of course, in the closing hours of registry or the last day of the registry, some one finds out that A, B or C, living in the northern part of the town, has not been registered, and, if not, he is brought down to register. I think a village of the size of 5,000 to 8,000 is certainly small enough. I should be in favor of making it 10,000.

Mr. Choate — May I ask Mr. Nichols a question? This provides for laws to be passed by the Legislature. The last three lines are: "But personal registry shall not be required at the first meeting of the inspectors of election for the registry of voters, except in such cities and villages."

Now, that carries, to my mind, a very strong implication which would require the Legislature in such cities or villages to require

personal registration at the first meeting of the inspectors of election; and if, as in many cities, there are several meetings of the inspectors of election prior to election, it would be very severe and probably would cut off a great part of the vote if they were required to come to the first meeting in cities and villages.

Mr. Nichols — That is not the purpose of the proposition.

Mr. Choate — But does it not have that effect?

Mr. Nichols — It is possible that the language used may be open to that criticism.

Mr. Goodelle — I would suggest that personal registration is now required in cities, in accordance with the present law.

Mr. Tekulsky — Mr. Chairman, I do not understand why there should be so much said about a poor farmer who cannot come into the village to register, as he is obliged to come in to vote on election day. Why not insert in this article that the poor farmer shall be exempted from voting and allow his vote to be counted by implication? That would save the trouble of his coming into the village. Then we ought also to amend this article so as to provide that the farmer may vote by proxy. That would prevent his coming to the village altogether. I do not see why the gentlemen are so anxious to keep the farmer from coming to the village to register. There must be a reason for it. He has to come there to sell his produce, he has to come to the village to get his horses shod; he has to come to the village to get a drink. He has to come there three or four times a month anyway, and why they should try to get into this Constitution a provision that the poor farmer shall not go to the village to register when he must come there to vote is something I cannot understand, and I would move to amend Mr. McIntyre's proposition by providing that the farmer shall be exempt from voting.

Mr. McClure — Mr. President ——

The Chairman — The question is on Mr. McIntyre's amendment.

Mr. McClure — I desire to be recognized when I address the Chair.

The Chairman — I beg your pardon, Mr. McClure

Mr. McClure — I do think, sir, that this raising the ante in the way of numbers is a trifle absurd.

The Chairman — The Chair is not familiar with that term.

Mr. McClure — I have heard it expressed in this Convention times enough, and I saw the thing raised on us this morning. It seems to me in a village of 8,000 inhabitants — and I do not speak with-

out some experience — there is altogether too much solicitude for the village inhabitants and for the farmer living in the suburbs. I never saw a farmer who lived in the suburbs who could be kept out of the village. Indeed, it would be a good thing for some of the villages if he could. Nearly every second day they are in the village. Now, to say that in the great cities the workingman shall give up his half-day for the purpose of registering for the protection of the people of the State, and that the farmer and the farm laborer, whose time is not so valuable, shall not give up his time is a discrimination that we ought not to be asked to accept. If personal registration is worth anything it is worth consistency throughout the State. I hope Mr. McIntyre's amendment will not prevail, and at the proper time I have an amendment to offer that even the provision prohibiting registration as to 5,000 shall be stricken out; so that, while we shall not require personal registration in those villages, let us leave it open so that if hereafter it may be desirable it may be adopted.

The Chairman — The question is on Mr. McIntyre's amendment.

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

Mr. McClure — Mr. Chairman, I now offer an amendment to strike out in line 9, the word "but," and the succeeding lines 10, 11 and 12.

The Chairman put the question on the amendment offered by Mr. McClure, and it was lost.

Mr. A. B. Steele — Mr. Chairman, I offer this amendment, which it seems to me will cover the question that is here raised: On line 11, after the word "except," insert the words "voters residing in such cities and villages." That would limit, then, the personal registration on the first day to those residing in villages of five thousand or more, and to cities. Then if some district in a city of six thousand or more inhabitants included a part of the country, the people who reside outside of the village and in the country would not have to personally register on the first registration day. As I understand it, after the first registration day, if they are not registered, even in the country, they have to appear personally before the board of registration to have their names inserted.

The Chairman — Are you ready for the amendment proposed by Mr. Steele?

Mr. J. Johnson — I certainly think that the amendment proposed by Mr. Steele should prevail. It causes the letter of the law to conform to what is its obvious purpose.

The Chairman — Gentlemen, the thirty minutes time provided by the rule has now been exhausted, and the Chair will put the question.

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

Mr. Marshall — Mr. Chairman, I have an amendment to offer.

Mr. Bowers — I make the point of order that it is too late to entertain any amendment.

The Chairman — The Chair holds that it is too late to offer an amendment.

Mr. Marshall — I offer it, then, as a substitute.

Mr. Bowers — It is too late for that.

The Chairman — The thirty minutes has expired, and no other amendments may be presented except that of Mr. Steele. When the limit of time has expired, the amendments which have been proposed and not previously acted upon fall.

Mr. Hotchkiss — A point of order. The ruling which the Chair now makes, if I am not mistaken, is diametrically opposed to the ruling made by the gentleman who was occupying the chair in the Committee of the Whole this afternoon on the apportionment article.

Mr. Bowers — May I ask the gentleman a question? Do you wish any better conclusion of the day's work?

Mr. Holls — Mr. Chairman, I move that the committee rise and report this proposition to the Convention favorably, and recommend its passage.

Mr. Bowers — I ask for a count.

The Chairman put the question on the motion of Mr. Holls, and it was determined in the affirmative by a rising vote — 71 ayes to 31 noes. Whereupon the committee rose and the President resumed the chair.

Mr. Lauterbach — Mr. President, the Committee of the Whole have had under consideration the proposed constitutional amendment (printed No. 402), entitled "To amend section 4 of article 2 of the Constitution, relating to registration of voters," 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 on agreeing to the report of the Committee of the Whole.

Mr. Marshall — I move that we disagree with the report and refer the matter back to the Committee on Suffrage, with directions to make the following amendment forthwith: After the word "voters," in line 5, insert the words "except for town and village elections," and strike out all of line 9 except the word "but" and to insert in place thereof the words "voters shall be registered upon personal application only." The purpose of the first amendment is to make it unnecessary for registration at town meetings or village elections in which there is no registration now, and there is no good purpose in requiring it. The purpose of the second amendment is to improve the phraseology, because there would be three clauses in that provision which would begin with the word "except," and it would not be euphonious. But the first suggestion is considered to be quite important, and both the amendments, I understand, are approved by Mr. Nichols.

Mr. Bowers — It seems to me that it would be fair that this amendment should be given in some way to the Convention so that we may understand it. Now, I understand, that we have in the Committee on Revision an amendment which is intended to prevent the Legislature from doing this very thing, namely, on the last day for the passage of a bill amending it so that nobody but the mover and one or two associated with him know what is meant by it, and then pressing it for passage. Now, it is perfectly true that in this Convention, where such an amendment is made at the last moment it still goes to the Committee on Revision, and does come before the Convention again for examination before the third reading is had; but as I understand the present plan it is to make a very material change in the amendment. It is entirely to do away with the proposition that there should be any registration at town and village elections. The whole theory of this proposed amendment seems to be another drive at the cities, and a desire to protect the country from putting safeguards about voting in their own districts. The intent of the amendment seems to prohibit the Legislature from at any time hereafter, no matter how great may be the necessity, saying that there shall be some personal registration of voters in cities of less than five thousand people. It is a very extraordinary measure. It is applying one rule to the country and another to the cities. It is perfectly proper that in common with the ruling of the Chair, which has just been made, overturning the previous ruling of a previous Chairman this day, that you should close this extraordinary session by the passage of a bill of this nature which still further seeks to restrict the rights of the voters in the city and to enlarge the

rights of the voters in the country. It may be that it is the duty of the Convention to extend the same courtesy and kindly interest to the rural districts upon this proposition that we did upon another one some few days ago, but we, at that time, had in mind that it might be that the delegates to this Convention from the rural districts would at least entertain the idea that the cities of the State might be permitted, to some extent, to govern themselves. That right has been denied. This amendment plainly manifests the intent of the rural legislators, who seem to be in control in this Convention, to legislate in every way for the benefit of their own voting population, and against the voting population and material interests of the great cities ——

The President — Gentlemen will please give attention. Mr. Bowers is entitled to a respectful hearing.

Mr. Bowers — Mr. Bowers appreciates the sarcasm of the remarks of the President, and, in obedience to those remarks, will simply present this question in the form in which he intended to present it after he might have said a few more words; not that he expected that they would be availing, under the peculiar surroundings and atmosphere of the Convention to-day, and that is that these amendments be printed, that the general order retain its place, and that it be recommitted to the Committee of the Whole for further consideration to-morrow morning.

The President — The Chair does not consider that amendment germane to Mr. Marshall's motion; but it may be made afterward. The question now is on Mr. Marshall's motion to recommit to the Committee on Suffrage, with instructions to make the amendments stated by Mr. Marshall forthwith.

Mr. Root — I move the previous question upon Mr. Marshall's motion.

The President — Shall the main question be now put?

Mr. Meyenborg — I call for the ayes and noes.

The call for the ayes and noes was not sustained, and the previous question was ordered.

The President — The question now is on Mr. Marshall's motion.

Mr. Bowers — On that we call for the ayes and noes.

The President put the question and the call for the ayes and noes was not sustained.

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

The President — What further action will the Convention take upon that? It requires a motion to be put on the order of third reading.

Mr. Bowers — I now make the motion that I made a few moments ago, that these amendments be printed and read before the Convention, and that the matter be referred back to the Committee of the Whole and hold its place and be proceeded with to-morrow morning.

Mr. Root — I move, as a substitute for that motion, that the proposed constitutional amendment be put upon the order of third reading.

Mr. McClure — I rise to the point of order that the matter having been referred to the Committee on Suffrage it has not yet been reported back, and, therefore, the substitute of Mr. Root is not in order.

The President — That has been held heretofore by the Chair to be a motion which, if adopted by itself, the amendment is made at the Secretary's table, and it does not require or admit of any report from that committee. The question is now on Mr. Root's substitute to put this on the order of third reading. Those in favor of the motion will say aye.

Mr. McClure — I call for the ayes and noes.

The President — Those opposed will say no. The motion is carried.

Mr. McClure — The ayes and noes were called for.

The President — Do you call for the ayes and noes after the vote has been taken?

Mr. McClure — I called for it before the vote was taken.

The President put the question to the House on the call for the ayes and noes made by Mr. McClure, and the call was not sustained. Whereupon the President declared that Mr. Root's substitute prevailed.

Mr. Bush — Mr. President, I move to reconsider the vote by which Mr. Root's substitute was adopted, as I think the ruling of the Chair was entirely erroneous. An amendment cannot be got rid of in that manner. If a gentleman offers an amendment before the House, and he is recognized by the Chair, there is only one way to do, either vote it down or ——

The President — Mr. Bowers did not offer any amendment.

Mr. Bush — I thought he did. Then I beg the Chair's pardon.

Mr. Root — Mr. President, I call for the reading of the special order.

The President — The next order is the forestry order.

Mr. McClure — I move that we go into Committee of the Whole on that.

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

The President — Mr. Roche will please take the chair.

Mr. Roche took the chair and the House resolved itself into Committee of the Whole on general order No. 92.

The Chairman — The House is now in Committee of the Whole for the consideration of general order No. 92 (introductory No. 393). The limit of time upon this general order has been fixed at two hours.

Mr. McClure — Mr. Chairman, I make the customary motion to strike out the first section.

The Chairman — The Clerk will please read the proposed amendment.

The Clerk read the the amendment as follows:

Proposed constitutional amendment to amend the Constitution relative to the forest preserve.

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

ARTICLE —.

"Section —. All lands of the State now owned, or hereafter acquired, constituting the forest preserves shall be forever kept as wild forest lands; they shall not, nor shall the timber thereon, be sold."

Mr. McClure — Before proceeding to make any remarks upon this amendment generally, I desire as the unanimous act of the committee to offer an amendment by inserting in the third line after the words "forest preserves," the words "as now fixed by law;" and in the fourth line after the word "not," the words "be sold or exchanged or be taken by any corporation, public or private." So that as so amended the whole shall read:

"The lands of the State now owned, or hereafter acquired, constituting the forest preserves, as now fixed by law, shall be forever kept as wild forest lands; they shall not be sold, or exchanged, or be taken by any corporation, public or private, nor shall the timber thereon be sold."

I hope the members of the Convention understand the force and effect of the amendment proposed. If I may be allowed to say preliminarily, by way of explanation, it is intended by the amendment to at first define what is meant by the words "forest preserves." The Legislature, by the act of 1893, constituted what was called in that act "The Forest Preserves." That act provided that State lands in certain counties should be and thereafter remain the forest preserves, together with lands thereafter acquired in those counties. The object of inserting in here the first amendment as now fixed by law is to prevent the Legislature from at any time limiting the extent of the forest preserves by providing that in a certain county which by the laws of the State is now a part of the forest preserves there should not be included within it, or in any way excepting, any part of the lands within that county. It was thought by the committee desirable to fix it so that as the law now constitutes the forest preserves it shall be so understood to be referred to in the Constitution. The second amendment suggested by the committee adds to the amendment as originally reported a prohibition against the exchange of the lands and a prohibition against the taking of the lands by any corporation, public or private, and the amendment as a whole, as it now stands, first fixes the fact that those lands as now constituted the forest preserves and as shall hereafter become the forest preserves within the limits fixed by law, shall be thereafter held as wild forest lands. And that no part of them shall be sold, no part of them shall be exchanged, no part of them shall be taken by any corporation, public or private, and no part of the timber which is upon those lands shall be sold. The committee, in its report, as the Convention will remember, also referred to a provision which it had been thought desirable by some should be incorporated in the report, and that was the providing for the purchase of lands, much as it was suggested that the Canal Committee should provide for the improvement of the canals; but the gentlemen of the Convention will remember that the Special Committee on Forestry, while approving of the proposition, suggested that it seemed to the committee to be more within the province of the Legislature to provide for the acquisition of additional lands than to incorporate it in an amendment to the Constitution, and, therefore, they left that part of it to the consideration of the Legislature. Therefore, the matter before the Convention is an important amendment simply providing, and insisting upon it, that the lands of the State now owned, and hereafter to be acquired, within the lines of the forest preserves, shall be and remain wild forest lands, not to be sold or exchanged,

and not to be taken by any corporation, public or private, and the timber thereon not to be sold.

The Convention here adjourned to Saturday, September 8, 1894, at ten o'clock A. M.

Saturday Morning, September 8, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber, in the Capitol, at Albany, N. Y., on the 8th day of September, 1894, at ten o'clock in the morning.

President Choate called the Convention to order.

The Rev. A. Kennedy Duff offered prayer.

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

Mr. I. S. Johnson — Some days ago I asked and received from this Convention leave of absence for to-day for the purpose of attending a reunion of my regiment, which meets at my place. I have come to the conclusion that my duty requires me to remain here, and although it would be a great gratification to me to attend the reunion of a regiment which is ——

Mr. Veeder — I rise to a point of order.

The President — The point of order is not well taken.

Mr. Veeder — I think you had better try a man before you hang him.

Mr. I. S. Johnson — I say, it would be a great gratification for me to join in the reunion with my regiment in Atlanta, but I feel that a greater duty requires me to remain here, and I shall, therefore, remain, asking to have my leave of absence canceled.

Granted.

Mr. Veeder — I wish to ask leave of absence for Mr. Phipps, of Queens, until he shall have recovered from his recent illness. He informed me last night he was under the care of the doctor, who had forbidden him to come to this chamber for a day or two. He is quite ill.

Granted.

Mr. Francis — Mr. President, I am suffering from a very bad cold. I ask for leave of absence during the sessions of to-day.

Granted.

Mr. Veeder — Mr. President, may I be excused from the session this afternoon?

Granted.

Mr. Parmenter — Mr. President, I desire to be excused from this afternoon's session.

Granted.

Mr. Platzek — On behalf of Mr. Eugene Durnin, I ask that he be excused to-day on account of illness.

Granted.

Mr. Holls — Mr. President, I move that the afternoon session to-day be from two to four, instead of from three to five.

The President put the motion, and it was determined in the affirmative.

The President — Mr. Roche will please resume the chair.

The Convention then went into Committee of the Whole, Mr. Roche being in the chair.

The Chairman — The Convention is now in Committee of the Whole for the further consideration of general order No. 72, relating to the forest preserves. Mr. McClure, of New York, had the floor when the recess was taken last evening and is now entitled to it. I will state further that the time limit of debate upon this proposition is two hours, and that five minutes of that time were consumed last evening.

Mr. McClure — Mr. Chairman, my somewhat accidental connection with this forest preservation matter, and its introduction at a very late day in the Convention, at first induced the idea of a lack of importance in the subject. But I have been wonderfully impressed, Mr. Chairman, by the importance, the magnitude of this question, and excepting a very recent interval of time when a matter to me of most solemn and imposing moment distracted me, the existence of which this Convention so gracefully recognized, and for which the members have my gratitude, I have given the subject the closest attention. It has surprised me with an ever-increasing surprise that this matter of all the questions affecting the people of the State should have been left to so late a day and be the subject of almost accidental action at last. As I look at it now, Mr. Chairman, it seems to be almost the only great and important subject, which at the inception of this Convention demanded prompt relief and action in the interests of the people of this State. So far as the State government was concerned, it seemed that the State was rolling on in magnificent greatness, out of debt, with immense special revenues that preclude the necessity of general taxation, with everything within its borders peaceable and quiet, riot and disorder shown to be unprofitable, and the State gradually increasing in wealth and

power. It seemed that the method of securing proper representation of the people in the State government was nearly correct, because a great party which benefited by an apportionment made only two years ago was easily succeeded in supremacy by the other great party. Our courts, Mr. Chairman, judging by the action of this Convention, in their regard, did not seem to require that any action of importance should be taken; looking at the subject-matter as fairly as I can and allowing for all existing conditions, in the failure of relief, as to the Court of Appeals, I fail to see that any great measure of relief to the people has been granted, so far as the courts are concerned; the officers of the militia of our State, perfectly ready and able at the command of the chief executive of the State to suppress disorders, were not in need of action by the Convention. Our cities have grown great and magnificent under the provisions of the Constitution in force and effect when this body convened on the eighth of May last, great not only in material prosperity, not only in the lack of oppression in the taxation of their citizens — great in public and private buildings, but magnificent in everything that should appertain to the cities of our great State. Our educational matters were and are the wonder and the admiration of the world, our public school system, grand and to be forever perpetuated, and our private educational system unrivaled. Our charities were immense, intelligent and widespread, and the pride of all of our people. We stood here on the eighth day of May feeling that the people of this State were convinced that they were living under a fairly good Constitution and did not need any actual, positive or sweeping change. And yet, one great matter affecting, not the success temporary or permanent of any party, not affecting any corporations or individuals in their own selfish interest, but vitally affecting the great people of the State and their great necessity, stood crying for relief at the hands of this Convention. "The hills, rock-ribbed and ancient as the sun — the venerable woods — rivers that moved in majesty — and the complaining brooks that make the meadows green," these for years had been neglected by the people of the State and the great men of our State, the men of public spirit generally, had forgotten that it was necessary for the life, the health, the safety, and the comfort not to speak of the luxury of the people of this State, that our forests should be preserved. (Applause.)

What are these forest lands, Mr. Chairman? In a report of the Forestry Commission, which has in charge the forest reserve of the State, it is stated that there are in the great forests of northern New York 3,588,803 acres of forest lands; that of these lands the State

owns 710,450 acres; that this Forestry Commission has, in these great northern forests of New York, laid out the lines of what is designated as the Adirondack Park. For the better elucidation of the subject the committee has taken the liberty of producing in this chamber a map made by the Forestry Commission, which shows upon it all of the lands within those lines, with the lands owned by the State, specially colored. You will see, gentlemen of the Convention, that those lands owned by the State, within the arbitrary blue line which marks the Adirondack Park, are very much scattered, and that on the outside and even in the extreme northeast corner of the State there are lands belonging to the State which are valuable forest lands.

Mr. Chairman, this State owns, besides the land in northern New York or the Adirondacks, in the Catskill preserve 49,332 acres, and the whole forest preserve there, as reported by the Forestry Commission, consists of 2,200,000 acres of contiguous forest lands. Now, Mr. Chairman and gentlemen, the question naturally suggests itself at this point; what do these lands consist of and what are they available for? How are they made up? What is their nature? And as in some of these matters I have had occasion to draw from the experience and take advantage of the labors of others, I will call your attention briefly to a very lucid and valuable explanation as to the condition of these lands given in a speech made a few years ago by the Hon. George W. Smith, of Herkimer, N. Y., in the State Assembly. He says:

"The State owns a vast expanse of forest, part of what is known as the Adirondack region, comprising from 3,000 to 5,000 square miles. Of this area 2,000 to 3,000 square miles are so elevated that its lakes and rivers are from 1,500 to 2,000 feet above the sea level, and some of its mountains exceed an altitude of 5,000 feet, Tahawus (Mount Marcy) cleaving the clouds at a height of 5,344 feet. This general elevation repels from its borders all profitable agriculture, with a barrier of frost. All attempts at farming at these heights have proved unsuccessful and ruinous. A belt of abandoned clearings bearing the relics of the homes of early and misguided settlers surrounds the basis of the 'foot hills' of this elevation, and marks the limit of successful cultivation. Even the lumbering enterprises that have penetrated far into these wilds have generally brought those engaged in them into bankruptcy. This territory is vastly more valuable to the people of the State in its present condition than it can be by any change.

"Now, as from the time when those rocky peaks — the first-born

of continents — rose from a surrounding chaos to meet the primeval sun at his coming, they still hold the fountains that supply an important if not the chief river system of this State. There are found the sources of the Hudson, the Saranac, the Salmon, the Racket, the Grasse, the Oswegatchie, the Indian, the Black, the East and the West Canada, and many others, a great distribution of waters upon which the future prosperity and welfare of the State very largely depends, and vast interests can be preserved only by preventing, now and forever, the encroachments and waste that are destroying our great northern forests.

"Science informs us by what slow processes that primeval rock came to be clothed with vegetation — first, by the minute growth of mosses, by their providing a slight vegetable deposit, in which forms of vegetation found a root-hold, and finally, after the lapse of ages, the soil became adequate to the support of trees and the beginning of a forest. What has been forming during the lapse of uncounted ages can be swept away in a few years by the acts of the lumbermen and the fires that follow in his path.

"At this time, in those chasms and in those lakes and streams, protected by evergreen woods, are great natural reservoirs, useful to far distant parts of the State. There, ever since forests began to grow, has been woven a mantle that covers the hills and mountain slopes, a vast spongy mass of vegetable matter made up of leaves, the needles and cones of the pine, the spruce, the hemlock, the balsam, and other growths which, in that air and temperature, are compressed, without decaying to humis or soil, into what may be fitly called a stratum of vegetable felt, or sponge, from a foot to several feet in thickness. This, lying in the deep shades of these wide-spread evergreen woods, receives and holds suspended the waters coming from the melting snows in the spring and the frequent rains that fall from the clouds that are arrested and condensed on these heights. This capacious cistern, extending over this region, is more useful in storing up the water from snows and rainfall than the lakes themselves. It thus prevents sudden floods in spring, and during summer slowly feeds from its hidden but unfailing sources, the fountains and rivulets, and fills the chasms and lakes with a gradual and constant supply."

He declares in another place that there are no natural springs of any consequence in the Adirondacks, and that all of the waters which flow from the hills of that region are the gatherings of the rainfalls, stored in the manner described by him. Now, it may be important to notice a fact which is probably well known to all of you; that in the mountains and by the trees on the mountains the

rains are gathered to an extent that, set forth in figures, may be somewhat surprising. The Hon. Verplanck Colvin, State Surveyor of this State for many years, in an address delivered in the city of New York in 1885, made this statement:

"Five years since, in my annual report to the Legislature for 1880, I called especial attention to the remarkable facts which the rainfall observations of the Adirondack Survey had revealed. The increase of the rainfall, with the increase of altitude, was shown to be very remarkable. Along the borders of Lake Champlain, at 100 feet above the sea, a rainfall of twenty-three inches was found. At an elevation of 1,000 feet, a few miles back in the Adirondacks, the average rainfall of a number of years has been found to be about thirty inches, and at an elevation of 2,000 feet, at Edmund's Ponds, in Essex county, one year's observations give a rainfall of forty-six inches.

"These results indicate that the conditions which govern the rainfall in our mountains are similar to those controlling the rainfall of Europe, and with the data obtained by the Adirondack Survey, and the known laws of rainfall, we may arrive at just conclusions as to the exact commercial value of the actually available hydraulic power of the Adirondack region."

Now, Mr. Chairman, I have presented an explanation, rather brief, but clear, of the secretive powers of this created, not natural, soil in the Adirondack region, and the great reservoir which did and to a certain extent still does exist there from and by which the streams and the rivers are fed. What is the value of these woods and why should we try to preserve them intact? First of all, because they are the woods — and in passing let me say, this State, strange as it may appear, has a very small proportion of its area in forest lands. Only eighteen per cent of all of its lands is in forests, while Germany, that crowded country where the people live much from the product of the soil, are, like the people of this State, largely engaged in mercantile pursuits and in other ways than by cultivating the soil, has twenty-nine per cent. The soil in these Adirondack mountains is unfit for cultivation. No man, no matter how industrious and hard-working he may be, can secure a livelihood from the soil in the Adirondacks. It has been tried and it has been to many a heart-breaking failure. The lands are fit for none other than public and general uses.

And what are these? First, as a great resort for the people of this State. When tired of the trials, tribulations and annoyances of business and every-day life in the man-made town, they offer to man a place of retirement. There, if he is possessed of great vener-

ation, he may find some consolation in communing with that great Father of all, whose "hand hath reared those columns and who filleth their solitude." For man and for woman thoroughly tired out, desiring peace and quiet, these woods are inestimable in value. My friend, the distinguished President, suggests that when a great question was before the body involving the stability, the dignity, the purity of family life, one distinguished member of this body, to prepare himself for the enunciation of the sentiments that should flow upon such an occasion, retreated to the fastnesses of these woods, and, sir, the result, eloquent and convincing, appears in the records of this Convention. It is priceless as a place for seeking, finding and preserving health. Any of you, if any there are, who have had relatives or friends whose lives have been prolonged in those mountains by the balmy air and soft breezes which fill the place, know how invaluable these woods are for such purpose.

And then, again, Mr. Chairman, for the wants, the actual physical wants of the people in general, we need the waters of those mountain streams and lakes, and of the rivers that are fed by them. We cannot have navigation of our rivers if we do not have the water, and railroad monopoly prevails to an extent that is grinding when there is not competition. You will not have your steamboats patrolling the rivers, not even the majestic Hudson, very long, if you do not preserve the watersheds. At this day, as my neighbor from Troy tells me, it is at times impossible for the large steamboats to reach their wharves and load at them at the city of Troy, and I am told by a delegate from Glens Falls that the great Hudson at that point, which used to be even in midsummer almost impassable, was so reduced that he could walk across it on the day upon which this Convention met without wetting his shoes. Bars have risen in the Hudson on account of the washing down from these moutains, from which trees have been taken, and everywhere we have seen the falling of the waters to an extent that has been dangerous. Lake Champlain has fallen, as testified by one of the residents of that section, to an extent that, whereas the head of navigation was at Whitehall some years ago, it is now some thirty or forty miles to the north, and the lake has visibly decreased in quantity. Lake George is one foot lower than it was a few years ago, and the dire effects proceed directly from the denuding of the Adirondack forests of the trees that were the protection of this great reservoir.

We will one day need that water stored in the Adirondacks to drink in the city of New York. That city, growing as it is immensely every day, not only in general greatness, in wealth and

prosperity, in refinement, in charity, but growing in numbers and growing steadily to the north — what is to happen when it shall include Yonkers and the places above that city, as it will within your time, Mr. Chairman, and mine, and where will the people get their water supply? The Croton Vally now is barely able to meet the wants of the people. That water, which is necessary, which is not only luxury, but which is life, will have to be taken from the Great Lakes, from Lake Champlain and the other lakes in the Adirondack mountains. This is not my idea alone. Mr. Chairman; and allow me for a moment upon this subject to quote from the language of a writer well known to the members of this Convention, the Rev. W. H. H. Murray, known as Adirondack Murray. Speaking of the increase of population of New York city and its future, he says:

"England and Wales have 26,000,000 of population. Out of this mass London has arisen, with over 4,000,000 of inhabitants. Can any intelligent person doubt that within a century, or two centuries at the latest, New York will equal, if not exceed, London in point of citizenship? Are not the same forces which created London in operation here, and even more potentially? Where will New York get her water supply then? That such a densely populated city must have water in plenty and of the purest goes without saying. Where can she find it? To this there is but one answer: she must go to the Adirondacks. There, amid the mountains and woods, adequate as to elevations, perfect as to quality for human uses, inexhaustible in supply, God, as if in providential foresight of coming need, has benignantly stored ample provision for all coming time. Never before did a city have such reservoirs of health and blessing, filled, without cost to her, to the brim and held in everlasting reserve. Heretofore the Adirondacks have stood as a symbol of sport, of recreation and pleasure-seeking, but the time will come when every man, woman and child in this great city, as they quench their thirst with the soft, pure water that has come to them fresh and cool from the lakes and rills of the far-away woods, will recognize the higher uses of the great wilderness, and thank God for it as His choicest gift to them." (Applause.)

And then, Mr. Chairman, as a protection against fire! Science has not yet devised or discovered the means of quenching great fires except by water, and I believe that the gentlemen of this Convention will be amazed when they are given the aggregate amount of property insured against loss by fire in the great city of New York alone. I have had furnished to me by the chairman of the Board of Underwriters a statement which shows that the amount of policies

now written covering property in the city of New York alone, not regarding the territory north of it or in any way connected with it, but in itself, as being two thousand millions of dollars. And where shall we get the water for the safety of our property when we shall have drained the Croton Valley dry, unless we protect our interests in these woods and take the waters from them? (Applause.)

Now, Mr. Chairman, these are some few suggestions as to the value of these woods, the influence of the protection of these watersheds. What has been the experience of and what has been the action in other States and countries in the matters of the destruction and protection of the watersheds of those countries, and what have they suffered from their effects? In a petition which was sent here, there is recounted the terrible disasters that fell upon the people of the old world as well as of the new. This petition states:

"Of the regions bordering on the Mediterranean sea, there is none, perhaps, that presents a more forcible example of the evils that follow forest-extirpation than that of Africa. During the centuries just preceding the introduction of Christianity, the country extending from the Straits of Gibraltar to the Nile bore witness to a high state of ancient civilization — the Carthagenian and afterward that of Imperial Rome. In the seventh century the period marking the rise of the Mohammedan power, the section now known as Tripoli supported a population estimated at about the same number as New York State at present, of which but one per cent is left. A similar fate has befallen almost all of these provinces, formerly the sites of flourishing commercial and agricultural communities, and possessing a climate resembling that of our eastern border States. With the clearing of their woodlands that protected them from the encroachments of the one and modified the heat of the other, they have been surrendered to the sands of the sea and the furnace breath of the Sahara Desert.

"From Syria, where the land that once 'flowing with milk and honey' has become 'the abomination of desolation,' this death-line of vegetation continues onward to the Persian Gulf in a broader path. The former greatness of the population of this region and the richness of its soil compared to the sparseness now of the inhabitants and its present sterility may be somewhat realized when it is considered that it was over this highway of the nations that so many of the earlier conquerors led their huge armies to and fro to conquest, from which they were drawn, and upon whose fertility they subsisted. Not less apparent are the effects of forest extirpation upon the healthfulness and productivity of Ceylon, Mauritius, and the Island of Cyprus, so celebrated for its commerce and the sylvan

attractions that nature had lavished upon it. The deserts of South Africa, without rain for months, testify to the same terrible blight. The repeated epidemics that have decimated the Cape Verde and other islands, the famines and droughts in India and China, the decrease in population of inland and seaboard cities with the decay of their wealth, enterprise and importance, can be traced to deforestation.

"In Europe at the present time some of its many evils are realized in the inconveniences to navigation, proceeding from a decrease in the volume of water in many of the larger streams. In fifty years the Elbe and Oder have fallen seventeen inches; the Vistula, twenty-six; the Rhine, twenty-eight, and the Danube, fifty-five, while the partial clearing of the Valley of the Volga of its forests has had a perceptible effect upon the immense area of the Caspian sea."

Gentlemen, I trouble you with these facts because they are important, because there is no way of providing for the future, except by benefiting by the experience of the past of all of the peoples. I am now recounting to you some of the experiences of the old world.

Translated into measurements for some of our own great lakes, it would mean that a fall of one foot of water in the Caspian sea would be equivalent to a fall of about six feet in Lake Superior, about eight in Lakes Michigan and Huron, eighteen in Lake Erie and twenty-seven in Lake Ontario.

Nor are these evils confined to her waters alone. Some of her most fertile sections, overwhelmed by torrents and avalanches of snow, mud, gravel and rock, have been deserted by their inhabitants. Blanqui, the eminent political economist, in a memoir read before the Academy of Moral and Political Science, thus expresses himself: 'The Alps or Provence present a terrible aspect. In the more equable climate of northern France one can form no conception of those parched mountain gorges, where not even a bush can be found to shelter a bird; where, at most, the wanderer sees in summer here and there a withered lavender, where all the springs are dried up, and where a dead silence, hardly broken by even the hum of an insect, prevails; but if a storm bursts forth, masses of water suddenly shoot from the mountain heights into the shattered gulfs, waste without irrigating, deluge without refreshing, the soil, they overflow in their swift descent, and leave it more seared than it was for want of moisture. Man at last retires from the fearful desert, and I have, the present season, found not a living soul in districts where I remember to have enjoyed hospitality thirty years ago.'

"Warned by the magnitude and the deplorable consequences of

such disasters, the 'French government has adopted the policy of reclothing the denuded slopes with tree growths and sods in seventeen departments impoverished and depopulated by the washing of the soil, the torrential action of the rivers, and the repeated floods. In those departments the population had diminished from ten to twenty per cent within less than twenty years, and fertile fields had been covered up for more than 100 miles from the source of the soil with the debris brought from the mountains by the rushing torrents. During the last thirty years the government has expended over $35,000,000 for the restoration of these mountains, and expects to expend more than the same amount in addition before the damage is repaired.'"

Germany is also spending untold millions endeavoring to restore the forests; but in the two countries of France and Germany, the authorities take such care of the trees that an individual owner is not allowed to cut a tree unless a forest expert has marked it and declared that it might properly be cut down, having regard to what remained; and the requirement is that for every belt of trees cut another belt shall be planted; and those are countries where there is the natural rich soil in which the trees grow and flourish with rapidity, not like the soil in the Adirondack and in the Catskill mountains.

In our own country great suffering has resulted from deforestation. The commerce of the Connecticut river has been to a large extent destroyed by the destruction of the trees along its banks and in the watersheds and the steamers are not able now to go as high, by miles, on the river, as they were some years ago. The Ohio river is not navigable near some of its large cities in the summer time for the same reason; and everywhere we find the result following the evil of the great destruction of these forest trees. Why, the government of the United States has seen fit to take care of its forests away off in the Yellowstone region and to employ some of its small army to guard the forests from the inroads of those who would produce devastation among them. And yet, in the State of New York men have sat still during all of these years while our forests have been swept of their trees, the people deprived of the life-giving waters which would have flowed thereunder, and our commerce allowed to suffer. No Legislature has given relief and no Constitutional Convention has deemed the subject worthy of an infringement upon the time to be given to matters of what seemed to be of more material importance.

Mr. Chairman, we must recognize the loss we are suffering. Not only do we lose the water itself, but as every one will agree when you

denude the mountain top of its trees you reduce the acquisition of the water on those mountain tops, you make the water which falls there, in the quantities it does fall, a flood — that flow sweeps down the mountains and tears away whatever of soil may have accumulated, which goes scudding down the streams and from the streams into the rivers, injuring them and destroying our commerce.

I said that no action had been taken on this subject to any great extent. No positive action has been taken by the citizens or by the people generally assembled in great bodies. No political convention of either party has sought to evidence to the people of the State its great interest in the people's interests by providing that that party when in power should give relief in the protection of these forests. Yet the subject has had official action as far back as when De Witt Clinton was Governor of this State. In a message to the Legislature he used these words with reference to the preservation of the forests:

"Gentlemen, the vast interests of the cities of the seaboard, the interests of commerce and manufacture, the interests of agriculture and health, demand at your hands this session the enactment of stringent laws that shall effectually remedy the evils here complained of."

At that time, gentlemen of the Convention, he was regarding with that far-seeing power that was his, with that genius which insured the immortality of his name in this State, what would be in the future the interests of the seaboard. Horatio Seymour sought some means not only to preserve the forests, but, where they had been cut down, to have trees planted, and, surveyor and engineer as he was, sought a means to accomplish that end. But the soil even in the valleys does not warrant it. It is not a soil that will readily grow to be trees. Governor Hill, in 1890, in a message to the Legislature, called emphatically to its attention the importance of this matter, and that action resulted in the formation and organization of the Forestry Commission. Governor Flower, by repeated, not only annual, but special messages, has called the attention of the Legislature to the necessity not only of saving the forests themselves by protection and the non-sale of lands, but to the necessity of preserving even the timber upon the lands for the protection of the interests of the State. They were only doing what has been done in the old days. As far back as Edward IV, I find there were laws in effect to preserve the forests.

Mr. Chairman, we have lost some of our lands. These lands came to us for nothing upon sales for non-payment of taxes. They cost the State nothing, and yet will you believe it, gentlemen of the

Convention, this imperial State, with no debt, opening the year 1894 with an actual surplus in its treasury, derived during the last year by extraordinary means of taxation, such as collateral inheritance tax, three million of dollars and upwards, and for taxes upon corporations, an extraordinary tax, nearly two millions of dollars, the exact figures being $1,967,000, will you believe it, that this State has seen fit to peddle out some of those glorious lands, with their trees on them, and even to sell, or contemplate the sale, of the trees themselves for a paltry sum a trunk? Why, the Comptroller of the State, in his report on the first of January, 1894, said:

"The tax rate for 1892-1893 was the lowest, with the exception of 1890-1891, in thirty-six years. The tax levied for the year 1893-1894, deducting extraordinary appropriations for the purchase of Fire Island, and the expenses incurred by reason of the threatened invasion of cholera, the appropriation for the New York State exhibit at the World's Fair, the payment of troops called out during the Buffalo strikes, and the appropriation to pay the balance of the State debt recommended by this department to the Legislature of 1893, was less than for the year 1892-1893.

* * * * * * * * *

"If, at the close of the past fiscal year, all the unexpended appropriations in force were paid, and the revenues from all sources due the State were received, the balance in the treasury to the credit of the State would amount to the sum of $1,600,000. By the increased valuation of the taxable property of the State, about $500,000 more in taxes will be realized next year, based upon the same tax rate as this year. By the sale of Ward's Island by the State to the city of New York $500,000 will be received. These items, together with the estimated increase of $1,000,000 in the corporation and inheritance taxes, amount to $3,600,000.

"There will be collected and paid into the State treasury for taxes upon corporations and transfers of property during the fiscal year ending September 30, 1894, at least $6,000,000.

"It will thus be seen that the next tax levy can be safely reduced by at least $3,000,000, in addition to the $1,000,000 of extraordinary expenditure that appropriations were made to cover by the Legislature of 1893.

"The people can, therefore, be assured of an exceedingly low tax rate for the ensuing year."

In 1893 three millions were raised by taxation of dead men's estates and nearly two millions by taxation of corporations. By these extraordinary means, in part, this State is in this grand financial condition.

And how does it spend its money, gentlemen? Twenty millions have been lavished upon this pile, in which at eleven o'clock in the morning it is necessary that the electric light shall be turned on, so that we may see each other's faces, and more millions to go into it before it will be completed; six or eight hundred thousand dollars expended for the transient glory of a State representation at the World's Fair, which passed away in a month or two; nearly two millions for a sentiment in buying the Niagara Falls Reservation as a park. The State has gone on spending untold millions each year, and will you believe, Mr. Chairman, that last year the Legislature which sat here, coming specially to represent the people, refused to give to the Forestry Commission for the preservation by wardens of the forests more than a paltry sum? And the Forestry Commission, hampered by want of funds, has been actually obliged to attempt to sell the timber on the land to obtain the money with which to pay the salaries of the foresters who are supposed to be looking after the interests of the State in the woods. What is the relief?

What shall we do, Mr. Chairman? For every wrong there should be a remedy. For every position not wise or safe there should be some relief. First of all, we should not permit the sale of one acre of land. We should keep all we have. We should not exchange our lands — in an exchange the State is in danger of obtaining the most of the taxing — and there is no necessity why we should part with any of our land. We should not sell a tree or a branch of one. Some people may think in the wisdom of their scientific investigations that you can make the forests better by thinning out and selling to lumbermen some of the trees, regardless of the devastation, the burnings and the stealings that follow in the lumberman's track. But I say to you, gentlemen, no man has yet found it possible to improve upon the ways of nature. In the primeval forest when the tree falls it is practically dead, and when it falls it is a protection to the other trees; it takes in the moisture through its bark, and rottenness, and diffuses it down and into the soil. I do not like the notion of the lumbermen cutting the woods and taking out the best trees and destroying, with every tree he takes, fifty in addition. The plan may work in France, where it is looked after by government officials, where every twig is gathered up and carted away by the poor people to be burned; not left as in the Adirondacks to feed and induce the forest fires. What more should be done? We should prevent the lands being taken by corporations. Corporations generally have little regard for the pleasure, the safety, the wants of the people. Every man in a corporation is willing to shoulder upon his fellow the responsibility when it affects the rights or the interests of

the people. Corporations have destroyed more property in the forest trees than can ever be restored. We do not actually need them in the woods. There ought to be no business there that would require them to be there; and, as a matter of fact, I find from the reports that there is not a railroad in those woods able to pay scarcely more than its operating expenses.

Mr. Choate — Will Mr. McClure allow me to ask him a question?

Mr. McClure — Certainly.

Mr. Choate — Whether the scope of the amendment as it stands is that in no event could the Legislature authorize a railroad or highway to be built through these forests while the amendments lasts?

Mr. McClure — I think so, sir. I would say, Mr. Chairman, in answer to the question that the scope of the matter, as it is amended, is to prevent its being taken by any corporation, public or private.

Mr. Choate — In the case of necessity?

Mr. McClure — In the case of necessity. If our action here is practically unanimous, as I believe it will be, it will probably be followed by action on the part of the Legislature looking to the purchase of more forest lands. We can buy these lands for a trifle. Many of the clubs owning large tracts are willing to put them into the forest preserves so far as preserving the lands as wild lands. Mr. Chairman, our lands should not be sold or exchanged; our timber should not be sold. Finally, the Legislature should purchase all of the forest lands, both in the Adirondacks and the Catskills, not now owned by the State, and should preserve them, even though it costs millions of dollars to do it. The millions so invested will be well spent. Mr. Chairman, the action of this Convention in this regard will prove to the people that it has had the people's interests at heart in sitting here; the action of this body in the adoption of this amendment will be appreciated by all of the people, its benefits will be beyond our most enthusiastic expectations, and the services of the men who accomplish the giving such benefits will be sung by "millions yet to be."

The Chairman — The Chair desires to make this suggestion: there are quite a number of gentlemen who are desirous of speaking upon this subject, and there is but one hour of time left. If each one of them should occupy only five minutes, more than the allotted time would be required. I make this suggestion, so that the gentlemen will govern themselves accordingly, and an effort will be made to accommodate all who desire to speak upon the subject.

Mr. Goodelle — Mr. Chairman, I desire to offer an amendment.

Mr. A. H. Green — Will the Chairman allow me to ask a question of Mr. McClure?

Mr. Goodelle — I give way.

Mr. A. H. Green — By the courtesy of the gentleman fron Onondaga (Mr. Goodelle), I am permitted to ask Mr. McClure a question. Will the chairman of the Forestry Committee kindly inform me whether there is anything in this provision which would prevent a private individual or company not incorporated to do the things which you wish to prevent the corporation, public or private, from doing?

Mr. McClure — It provides that they shall not be sold. That is the only way a private individual can take the lands. That applies to every individual. As to corporations it provides that they cannot be taken by eminent domain. I do not know as we can go any further. The proposed amendment provides that the lands of the State now owned or hereafter acquired, constituting the forest preserves, as now fixed by law, shall be forever kept as wild forest lands. They shall not be leased, sold or exchanged, or be taken by any corporation, public or private, nor shall the timber thereon be sold or removed.

Mr. Goodelle — Mr. Chairman, I offer the following substitute.

The Chairman — The Secretary will read the substitute.

The Secretary read the substitute, as follows:

Amend the substitute by adding at the end thereof the words "or destroyed," so that it shall read, "nor shall the timber thereon be sold, removed or destroyed."

Mr. Goodelle — Mr. Chairman, I agree in every detail with the eloquent remarks of the distinguished gentleman from New York (Mr. McClure), and I wish it were in my power, or in the power of language, to impress more strongly, if possible, upon the members of this Convention the importance of this question. I am not going to even allude to the discussion that has been taken up and so well carried on by the able gentleman who has just taken his seat, except to say that while it is true that Germany and Spain and northern and southern Africa, Arizona and New Mexico have furnished to us impressive lessons of the great importance of preserving our forests, and while they present to us strongly all the results which will necessarily follow when the great forests of this country, or of this State, shall have been destroyed, yet I appeal to every delegate in this Convention, if they will set their minds to work, they will

have no trouble in finding within their own experience some stream or some river that has become dried and has become extinct from the destruction of forests from which they sprung. Therefore, I say that I concur in every particular with the eloquent remarks which have been made by my distinguished friend, but I would go further.

Now, I may not be considered biased upon this question, but I am somewhat familiar with the Adirondacks and their great forests. I have received the benefits that are derived from them, and I appreciate the great reservoir which is there constructed by nature, which feeds and supplies the great Hudson, one of the great wonders and beauties of this State to-day, and I understand full well what will be the result when that reservoir is extinguished and, instead of the benefits now derived, there will be lack of water that will cause destruction rather than benefits, I say that I would go further. I would not only prevent this State from selling, but I would prevent it from destroying the timber within this preserve. I would not only do that, but I would inhibit them from the purposes of the destruction of our forests.

To illustrate what I mean, and it is all that I desire to say, in order to emphasize and show the importance of the amendment which I have made to the substitute in this case — I refer to that system which has been for some years carried on by our State in destroying our forest, in piling up great burdens upon the State for that purpose, by reason of building the dams and reservoirs which they have constructed in certain regions of the Adirondacks. I call the attention of the Convention to what is known as the Beaver river chain. The river itself, one of the finest in its primitive condition that I ever looked upon, has given inspiration to every lover of nature. What has been done by the State in reference to that? Within several years past a dam has been put across that river at a point above number four, and the result is that the water has been set back upon thousands and thousands of acres of the forest of those mountains, the spruce, the pine, the balsam. The result is that they stand there to-day by thousands and thousands of acres, a ruined scene to look upon. The trees have all died; the beautiful river is wiped out and is gone, and we have there a vast pond or a vast sea, with those dead trees standing upright in the water, or else the foundation given away and they are jumbled in together. Now, if you stopped there it would perhaps be of little consequence. But does it stop there? What is the object of this? I speak, Mr. Chairman, mainly from personal knowledge. It was claimed that certain mills in the city of Watertown desired to have this water stored up

in order to feed their mills. The measure was put through by one of the Forest Commissioners then in office. When they came to build the dam this same Forest Commissioner had the contract, and built the dam at a large expense to the State. That same contractor, that same Forest Commissioner, then purchased below that dam the western third of what is known as township five in John Brown's tract. There he has his lumber camp, and there the logs are put into the river, and when the gates are lifted, the logs are shoved down to his saw-mill. That is the only substantial benefit that has come from that dam, the expense of which was incurred by the State.

Now, Mr. Chairman, further than that, my friend from New York has eloquently argued upon the value from a financial and material standpoint of preserving these great forests. I want to say to you, Mr. Chairman, that the Adirondacks furnish a vast sanitarium, not only for the people of this State, but from all over the country. They go there by the thousands to have their health restored and to have their vigor renewed and to have their constitutions built up, and if the members of this Convention could look upon the influx into that region, as they come from the far west, clear beyond the Rocky Mountains, and the east to get the benefits of the Adirondacks, they would understand how, outside of this State, at least, the sanitary effects of these great forests are appreciated. Not only that, but what is the result? When these vast acres have been overflowed, as thousands and thousands have, they cause a great decay of vegetable matter, or rather become foul, putrid and unfit for use. The waters of the Adirondacks flow into the Hudson and contaminate the waters which are used at some places for drinking purposes. That is not the worst of it. As these waters are drawn down in the depressions which are so numerous in that country, they stand there as stagnant pools, and acres and acres of water become foul and putrid, and instead of that region being one of the greatest sanitariums, it is a source or cause of malaria, of disease, and of death. I would suggest, therefore, that in destroying these forests, it not only cuts down and destroys the water supply, but it converts what was a sanitarium into the cause of sickness and death. Not only that, Mr. Chairman, but I want to go a step further. They have done this at the expense of the people of this State (that dam has cost the people of the State up to this time over $75,000). I see upon the calendar of the next session of the Board of Claims to be tried for the damage caused therefrom, a claim in the case of William Seward Webb against the State of New York, where he claims $189,000 on account of the construction of that reservoir.

No man has received a dollar of benefit from the dam except the man who brought it about; the man who floats his logs and lumber.

I would, therefore, in conclusion say, Mr. Chairman, that the amendment which I have offered prohibits the State from doing things of that kind, which they have been doing for years past, constructing reservoirs to the destruction of the woods and forest as well as the sanitary condition of that country, to the detriment of the State.

Mr. Floyd — Mr. Chairman, may I ask if an amendment is in order.

The Chairman — An amendment is in order, but we cannot very well allow more than five minutes for any speaker.

Mr. Floyd — I offer the following amendment which, with the permission of the Chair, I will read.

Amend by inserting after word "exchange" the words "except that lands without the lines of the Adirondack park as now determined by the Forest Commission may be exchanged for lands within such lines."

And add at the end thereof, "except that fuel may be sold to State lessees or residents within such park."

So that the whole shall read as follows:

"The lands of the State now owned or hereafter acquired constituting the forest preserve as now fixed by law shall be kept as wild forest lands. They shall not be sold or exchanged, except that lands without the lines of the Adirondack park may be exchanged for lands within such lines, or be taken by any corporation, public or private, nor shall the timber thereon be sold or destroyed except that fuel may be sold to the lessees of the State or residents within such park.

If the gentlemen will cast their eyes on the map suspended on the side of the chamber they will notice the tracts owned by the State. The Adirondack park is altogether a different matter from the Adirondack preserve. The Adirondack park is determined by two lines on the map there. The State does not own all the lands within the Adirondack park, and within it there are two million eight hundred acres. Of this the State owns but five hundred and fifty thousand acres leaving the rest to be acquired in some way. It is held by individual owners. It is for sale. Without the line of the Adirondack the State owns lands in detached portions, which have come to it by tax sale, but they are detached and separate parcels. These can never be united in one solid tract. All the State can do is to solidify the Adirondack park. It seems to me

that where it can be advantageously done the lands outside of the park should be exchanged for lands inside of the park. That seems to me to be a simple business proposition to exchange the lands without for the lands within. Moreover, the Forest Commission are able to exchange the lands outside of the park for three or four times the area within the park.

Now, one word more in vindication of the present Forest Commission. The members of that commission are serving the State faithfully and well, and without pay. What has been said by the gentleman from Onondaga (Mr. Goodelle), was in reference to the Beaver dam, that was concocted before the Forest Commission was organized and by a man who subsequently became connected with the Forest Commission. He now has nothing to do with it. We all want to preserve the forest. Within this are the Adirondack park lessees of the State who are found camping upon these lakes and it has been impossible for them to secure fuel. It is desired that the Forest Commission should have the power to sell such timber as may be necessary for fuel to these lessees. These two considerations are the objects of my amendment.

Mr. Forbes — Mr. Chairman, I have an amendment which I will read. I wish to add this section:

"Sec. —. The Legislature shall, by suitable laws, provide for the permanent preservation and protection of the forests in the State and may provide for rebates of taxes on agricultural lands where forests are preserved or maintained in connection therewith."

Mr. Chairman — In order to bring myself within the time allowed me, I must condense my argument, and I request the earnest attention of every gentleman of the committee.

In the first place the section added is not antagonistic to the first section proposed by the committee. The first section prohibits the sale of timber and provides that the lands shall be kept as wild forest lands. That requires protection and preservation, and that is all that my amendment prescribes. But it prescribes that that protection and preservation shall extend throughout the whole State. The committee are proposing to build an impassable mountain, as it were, in a corner of the State. What interest is that to those in the western part of the State? What interest is that to a great majority of the State? If the amendment is carried out to the extent of having the whole of the forests in the State preserved, instead of one little park, it will bring about a long-desired and long-needed reform. Every argument that has been so far made in favor

of preserving forests has been made in favor of my amendment for the protection of the whole of the forests of the State. These arguments which apply to the Adirondack forests solely, may be opposed. For example, it has been said that it is necessary for the protection of the Hudson river that the Adirondack forest should be preserved; but it was stated this very week in an Albany paper that the tides rise and fall as far up as Troy, and, therefore, that the Adirondacks are unnecessary to the preservation of the Hudson river.

In the second place, the section added makes it the special duty of the State to protect the people of the State in a matter in which they cannot individually protect themselves. For example, it is prescribed in section 7 of article 1 of the Constitution that private roads may be opened in the manner prescribed by law. Further, private property may be taken for public use. Again, it is provided in cities, for the general good, that buildings shall be of a certain height and shall be on a certain portion of a lot.

The next point is — and it has been already amplified by others — the forests of the State are necessary to the material growth of the State, to protect the health of the people, and to insure the fertility of its lands. Upon the forests depends the very existence of our water power and our waterways; also of our watersheds which supply our great cities. Take, for example, the watershed of the Croton. We need the forests in that watershed for conserving the waters used by the city of New York. Again, we need the forests of the Catskills for the recuperation of the people of the city of New York, who cannot afford to go so far as the Adirondacks, the sanitarium of the rich.

A clause of the added section is permissive to the Legislature to encourage the preservation of forests in connection with agricultural lands by a remission of taxes. It is not just to the farmer to ask him to preserve forests in connection with his agricultural lands without compensation therefor. I am very sorry that the time allotted does not allow a further consideration of this clause.

Lastly, it has been the custom of the framers of our various constitutions to put into them restrictions on the Legislature similar in kind to those proposed by this amendment. This State has gone in advance of all the other States in matters of this kind. We have always, in this State, put into our Constitution, matters material to the whole people. Let us not stop at one little corner of the State, no matter how advantageous that may be, but let us put into the Constitution a broad provision that shall affect every hamlet and every farm in the State as well. Wealthy people can go to, and

spend their money in, a pleasure ground where the poor and the common people cannot go. Let us apply this amendment to the whole State; and let us set an example to the rest of the people of the United States.

Mr. Mereness — Mr. Chairman, Mr. McClure, the chairman of our committee, has covered the question so thoroughly that I shall necessarily say what I have to say in a very few words. Having been born and reared within sight of the western Adirondacks, and having resided all my life, except about three years, so near to them that a two-hours' drive enables me to enter the forest known as the great North Woods, I have an exalted opinion as to the vast importance of our forest preserve as a health resort, and, what is of far greater importance, its incalculable value to the commercial and material interests of the State as a natural reservoir of pure water. If I should ever be tempted to make an effort at oratory, I am sure my subject would be: "The preservation of the forest lands within the State of New York." It is a subject worthy of the best efforts of an Edward Everett or a Wendell Phillips. But I am admonished that our time here is limited; that the subjects yet demanding attention are of such a character, that necessarily only a reference can be made to this important subject.

I have traversed this great forest in true aboriginal style, with my boatman and skiff, and a pack on my back from Long Lake and Blue Mountain on the southeast to Paul Smith's on Lake St. Regis on the north; from the Fulton chain on the southwest to the lower Saranac on the north, and have visited a large number of the beautiful lakes and ponds in that region, of which there are not less than one thousand. I have stood on the highest mountain peaks and admired the beauty of the green leafage stretching out as far as the eye could reach, and where none of the ravages of man were discernible, and have frequented the places inhabited for centuries, and until recently by the denizens of the forest; where the deer, the moose, the black bear, the beaver and many smaller animals flourished, notwithstanding the presence of panthers and wolves. The moose and the beaver are gone, never to return, I fear, and I suppose the brutal instincts of man will not be satisfied until the last deer is shot, and the last speckled beauty caught.

The screech of the locomotives, introduced into that lovely section by Doctor Webb and others, can now be heard, and the time is fast approaching when the whole region will be made desolate and barren, unless the hand of the despoiler is stayed. We have already waited too long, but I implore you, do not longer hesitate to take measures to stop this outrage.

If the money that has been wasted on the huge pile in which we are now assembled, in Assembly Chamber ceilings, for shoveling snow, for building artificial reservoirs for the benefit of the canals and many other purposes, had been used for the preservation of the great natural reservoir built by God, we would not now be at the pass to which we have arrived. But it is useless to spend our time finding fault with what has been done or winnowing a harvest of vain regrets. "It is a condition, and not a theory, which confronts us."

I need not spend time to demonstrate, to the representatives in this body of the great cities located where the noble Hudson enters the ocean, the immense value of this great pure-water section, for you all know that competent judges are of the opinion that it will not be long before your cities will be obliged to look farther north than the Croton Valley for a sufficient supply of wholesome water, and that the section I am speaking of is the only one to which you can go. Nor to the representatives of the whole valley of the river to which I have alluded, nor to those of the Champlain section, nor to my nearer neighbors who are here from those parts of the State through which the Grass river, the Racket, the Oswegatchie, the Black river and the Mohawk, find their way toward the sea, nor to the many representatives here that must necessarily feel a special interest in the canals. It is as a twice-told tale — well known to you all.

As I have intimated, we cannot do much, but I exhort you to do your utmost. Let us recommend to the people that they put into the organic law the declaration that our forest preserve and the timber thereon shall be inviolate forever.

If the time ever comes that timber culture in this State shall be a live issue — I am sure it will not be within the next twenty years — and it is not worth while at this juncture to consider the question of the great State of New York going into the business of selling logs and trees; we can cross that bridge when we get to it. We are not yet within fifty years of it.

I have already taken too much time, but let me ask you, if it is possible that this great Empire State that has spent more than twenty millions for a Capitol building, that has invested untold millions on its great waterways, that has assessed property within its borders valued at $4,199,882,058 for the purposes of taxation, and probably worth double that sum, that exempts from taxation property of the value of $581,178,701, cannot and will not from time to time, in the immediate future, appropriate from its vast resources

sufficient moneys to the end that the State may acquire and forever hold our yet beautiful forests for the benefit of all our people?

I trust, sir, that this much may be done, and that we shall do all we can to preserve what is left of our great natural reservoirs as nearly as possible as they were designated and constructed by the Almighty, for the benefit of the generations yet unborn that are to inhabit these peaceful shores, and to the honor, glory and perpetuity of the greatest of all the States, our own grand Empire, New York. (Applause.)

Mr. McIntyre — Mr. Chairman, just a word I wish to say upon this subject, and in what I have to say I want to take a very practical and financial view. The necessity of preserving this park seems to me to be beyond any question and I think every gentleman here knows that to be a fact. I think as a financial matter to the State, it is the thing to do. Now, within my memory those lands have been sold time and time again for the taxes, and now they have so increased in value that they are worth anywhere from five to ten dollars an acre, and upon some of the lovely ponds a very much larger sum. So, if the State of New York takes these lands and holds them now it will be for the benefit of the State.

Now, I am not in favor of exchanging any of the wild lands outside of the forest preserve for lands within. We want to keep all the land that the State has preserved and all that we may hereafter acquire. We want to feel as though we started with a foundation and then look forward to having the whole of that territory as a large park. No one man, sir, objects to the simple proposition that the wild lands owned by the State, or hereafter owned by it, must be preserved, and I am decidedly opposed to exchanging these lands or selling any timber or allowing anybody to get control of these lands for any purpose whatever. I come from the northern part of this wilderness, and I know the amount of money that the Legislature has appropriated for building dams and improving the navigation of Racket river. Why, the river has a fall of four hundred feet, and it is impossible to make that stream navigable. You cannot make it navigable for canoes. Notwithstanding that fact the State has appropriated money time and time again for the improvement of the Racket river. Make it navigable for what? To float saw logs down it; make it navigable for lumbermen living in Potsdam. I think the time has come when we should hold what we have got and get all we can.

Mr. Crosby — Mr. Chairman, I offer the following amendment: After the word "preserves," in line 4, insert the following: "Except

all such lands within the limits of any incorporated village or city, and except all such lands, not wild lands, as have been, or may be, acquired by the State of New York upon or by foreclosure of, or sale pursuant to, any mortgage upon lands made to the commissioners for loaning certain moneys of the United States, usually called the United States deposit fund."

This has been suggested, Mr. Chairman, by the gentlemen sitting here that that is the law now, and that is why I desire to preserve it in this proposed amendment of the Constitution if it is adopted.

The Chairman — Are you aware of the fact that Mr. McClure has put into the amendment here after the word "preserves," "as now fixed by law?"

Mr. Crosby — Mr. Chairman, I desire to make it specific, so there will be no misunderstanding, so that we will not have to refer to the statute law to know what the Constitution is. I desire to call attention to what is the boundary of the forest preserve, because by referring to chapter 8 of the Laws of 1890 a description of what comprises the forest preserve may be found: "All the lands now owned or which may hereafter be acquired by the State of New York, within the counties of Clinton, except in the towns of Altona and Dannemora, Essex, Franklin, Fulton, Hamilton, Herkimer, Lewis, Saratoga, St. Lawrence, Warren, Washington, Greene, Ulster and Sullivan, shall be kept forever as wild forest lands, and shall constitute and be known as the forest preserve."

So that every village, every city, including the city of Kingston, in the forest preserve, which is defined by the boundaries of the counties mentioned, if the State acquires title by tax sale hereafter, if the State acquires title by a sale under the United States deposit fund, a mortgage which is but little known in a large portion of the State, but a large portion of the acres in a number of those counties partially improved and partially forest is held under the mortgages peculiar to that fund, so, I say, if the State acquires title to any of those lands, it can never sell any of them if this provision is adopted. I simply suggest that it be incorporated in the proposed amendment, so that there may be no misunderstanding, and that it may not be necessary to look through the statute books. I have copied verbatim the section which I have read. I have incorporated the provision of section 7, word for word, so that there will be no misunderstanding hereafter. I trust it will be accepted without opposition.

Mr. McArthur — Mr. Chairman, after wandering through the barren fields of home rule, and along the thorny path of sectarian

appropriations, and under the burning sun of reapportionment, how refreshing it is to come to the cool and quiet forest, where we may rest, as it were, for a time and consider our summer's work.

Now, I came here, Mr. Chairman, not intending to make a speech in this Convention at all, but a subject has been reached, at last, through the instrumentality of the gentleman from New York (Mr. McClure), that I am very much interested in, and I trust that the committee will pardon me for taking five minutes' time in talking about this, because it will be my first and last speech in this Convention.

Now, I live in the suburbs of the Adirondack forest. I think I know something about them. I have been through them many times. I have watched the destruction of the woods, and I have also watched the diminution of the flow of water in the summer months in the rivers that have their sources in that forest, and in the limited time that I have, all that I can do is, in a sort of Methodist way, relate some experiences.

Now, I was at Lake George the day before yesterday, and by actual observation on my part I know that the present level of the water in Lake George is three rods further out in the lake than the oldest inhabitant ever knew it to be. I was brought up on the banks of Lake Champlain, and I spent the first twenty years of my life there. I know that the head of navigation in Lake Champlain, within my recollection, has moved northward to Fort Ticonderoga, a distance of twenty-five miles, and that the bed of that lake which below that point is more nearly a creek, has filled up to such an extent that within the last three years there have been two and, I think, three dredges trying to dredge out the accumulation of sand and dirt. I know, within my experience, since I was twenty years of age, that on the bank of the Hudson, there are only two months of the year when the magnificent power of the Hudson at Glens Falls, where I live, is available for manufacturing purposes, and only this summer one of the largest concerns we have in that place, the Morgan Lumber Company, owning a large amount of these woods, have abandoned water power in their saw-mills and have introduced steam power in them. I made a remark before the committee, and some people thought that in my zeal for this movement I overstretched the bounds of reason and good faith, when I said that at Fort Edward where the Delaware and Hudson crosses the Hudson river, I could walk across that river and not wet my feet. I am here to reiterate that statement. I came down across the Hudson river the day before yesterday and I walked across the river at Fort Edward and did not wet my feet. I could

do the same thing to-day. Now what is the cause of all this? Mr. McClure has shown the absolute importance of preserving all the forests of the State. I do not speak particularly of the Adirondacks, because I wish to include the Catskill region just as well, because, while the Adirondacks are the source of a great many rivers, the Catskills are also the source of some rivers. These forests are one vast sponge. To illustrate, you turn a tumbler of water quickly on to a sponge. It will retain but one-tenth part of the water in the tumbler. Now, if you turn that water on to the sponge very carefully and gradually, that sponge will retain every particle of that tumbler full of water. Now, that is the importance of the Adirondack region. It is one immense sponge. As everybody knows when you are caught in a storm you rush for a tree. If you will stay under the tree long enough you will get wet, but you will get wet gradually. The rain works its way down gradually. Now, every man knows that in the forest we never have what is called a wash-out. Why? Because the water comes down slowly in the trees and gradually works its way out into the rivers. Now, if you wish to preserve the waters of this State, if you wish to preserve the waters of the Hudson river, and if there are any friends of the canal system of this State in this Convention, if they wish to preserve the canals, it seems to me they must vote for this amendment which may eternally preserve the Adirondacks.

But the amendment does not thoroughly suit me. It is not the amendment I would propose if I had control of the question; but it is a step, a long step in the right direction, and I hope there is not a man in this Convention that will vote against this proposition which will certainly do some good. (Applause.)

Mr. C. B. McLaughlin — Mr. Chairman, I have no desire to enter upon a discussion of the merits of this bill at this time further than to say that I am heartily in favor of the adoption of it in the original form in which it was introduced. I am opposed to every amendment which has been offered here except the one offered by the gentleman from Onondaga (Mr. Goodelle). In reference to the amendment of Mr. Crosby, I desire to say that it seems to me that it would destroy to a large extent the very purpose which this amendment has sought to accomplish. Now, I have had some experience in the Adirondacks. I have spent some two months each year for the past ten years there. In every section of it you will see some parts of this immense forest destroyed. The moment you put in any provision that anybody can cut timber there, then you destroy the effect of the whole amendment. Now, I say that I am heartily in favor of the proposed amendment, and I hope that

every amendment proposed here should be voted down except the amendment offered by the gentleman from Syracuse (Mr. Goodelle).

Mr. Durfee — Mr. Chairman, I do not intend to consume the time of this committee in repeating the arguments that the State should take these lands, but I desire to call the attention of the committee to the amendment proposed by Mr. Forbes. With him I desire to go further than the proposition introduced by the committee does, which relates to the State lands only. I think we have come to the point where it is wise for the State to take such measures as will make it to the interest of the individual owners of forest to preserve the forest lands.

That, I believe, is the intent of the amendment of Mr. Forbes. In my own personal experience I have had occasion to observe the baneful effects of the destruction of the primeval forest. It has caused the droughts of summer in a good many instances. The destruction of the wind-brakes has permitted storms to sweep over the farms and orchards. Cyclones and hail-storms have become vastly more numerous of late years than they were formerly. It seems to me to be of the greatest importance that every man that owns a few acres of woodland in connection with his farm should have it made to his interest to retain "the forest primeval, the murmuring pines and the hemlocks." The object to be accomplished, if the amendment proposed by Mr. Forbes is adopted, seems to be in line with the welfare of this State, and that is what we are all here seeking to subserve. I hope, Mr. Chairman, that the amendment of Mr. Forbes will not be lost, and that it will receive the favorable consideration of the Convention.

Mr. Vedder — Mr. Chairman, I was extremely pained this morning to hear the genial chairman of this committee, the gentleman from New York (Mr. McClure), drag in by the hair of the head, as it were, a matter entirely foreign to the orderly and logical consideration of this question. Why the gentleman should have traveled so far for the express and only purpose apparently of striking my favorite legislative child is more than I can understand. Although the honor, if it be one, has been attempted to be filched from me by the senior Senator of the State of New York, I am the author of the collateral inheritance bill and the direct inheritance bill, having drafted every word of those acts, and introduced them at different periods into the Legislature, and they had twice been passed by majorities of one hundred and sixty members of the Senate and Assembly, elected from all parts of the State, mostly for their intelligence and patriotism, and I wish now to defend that act

against the attacks of the gentleman, brought in, as they have been, disconnected from this subject entirely. The collateral inheritance law does not tax, as he says, the property in a double sense. It neither taxes those who earned that property, nor does it tax those who have any interest whatever in saving the property which is taxed. It taxes those, as it suggests — the collateral, and it is a tax imposed because it is just. Formerly that property, when a man died, went to the State, and the State, in its benevolence, says it may go to the persons whom the testator directs, or where the law says the testator shall make a disposition of it. That is what the law says. The direct tax is a tax upon personal property where the property exceeds $10,000, and I pretend to say this in that behalf, that you can find on the tax rolls of every rural county of this State widows and aged men, whose whole estate does not exceed more than twenty-five thousand dollars, who pay each year more tax upon personal property than the score of millionaires of the city of New York. Taxation and protection are co-relative terms, and these men with their millions receive protection and give to the State no equivalent whatever for it. It is not a double taxation. It is not at all like the infamous income tax which his party friends in the Congress of the United States has imposed as an additional burden upon the people of the State, and stands upon the statute books as a lasting dishonor to the party which passed it.

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

The Chairman — The gentleman will state his point of order.

Mr. Osborn — My point of order is that the gentleman's remarks are not pertinent to the question at issue.

The Chairman — The Chair is of the opinion that the gentleman's remarks are not entirely in order.

Mr. McClure — Consider me, Mr. Vedder, as withdrawing all reference to it. I was not aware that you were responsible for those measures.

Mr. Vedder — Very well, if he withdraws it, I have nothing more to say, because, if his was an argument in reference to this bill, mine is germane in answering it. If he withdraws it, and on his sober second thought believes that I am right in what I say, I am satisfied.

Mr. E. A. Brown — Mr. Chairman, I would like to ask the gentleman a question. I would like to ask whether or not the amendment in his opinion includes all the forest lands owned by the State, whether located within or outside of the forest preserves?

Mr. McClure — I will answer the gentleman by saying yes.

Mr. Brown — I see the proposed amendment reads, "Lands of the State now owned or hereafter acquired constituting the forest preserves." Now, the State owns hundreds, and I may say thousands of acres of forest lands that are not technically within the confines of the forest preserves. If the gentleman will accept an amendment so as to include all those lands without question, I think the measure will be in better shape than it is now; and from a familiarity with the Adirondack forest which goes back for over forty years of my life, I desire to say to the gentlemen of this Convention that I believe then, and in that case, that of all the amendments now proposed upon the floor of the House, the amendment offered by the chairman of the committee is the best. I do not believe, sir, in hampering it with any insignificant provisions about giving away fire wood to lessees of the State within the Adirondack forests. That, sir, will simply open the door, or keep open the door that is already open, for the incursions of thieves and destroyers upon the magnificent domain of the State. I do not believe, sir, in any provision that will give to any person whatever the privilege to enter upon the forest preserves and destroy all that remains to the State of that magnificent domain. Why, sir, on one of the oldest maps of the State of New York and of that territory, of which only a fraction remains to us, is inscribed this significant statement: "These lands have not yet been seized by the land harpies." Now, sir, to-day they have nearly all been seized by the land harpies, and it is within only a few years past that a certain large lumbering corporation of this State built a railroad into the heart of the Adirondacks, and cut down all the valuable timber within such a distance upon each side of its railroad, as was profitable for its uses, and conveyed the logs to its mills. The State, through its Forestry Commission, brought an action to recover for the land, and they were charged with stealing over two hundred and twenty-five thousand dollars worth of State timber, and despoiling the forests to that extent. Then, out of sympathy, fearing that this great corporate thief would be crushed and ruined, this claim was settled for the paltry sum of ten thousand dollars. Only a few days ago before the committee of this Convention, in the Assembly parlor, one of the Forest Commissioners of the State of New York told us that it is necessary to peddle out, to sell, the timber now standing and growing on the forest preserve, in order to pay the expenses of the Forestry Commission of the great State of New York. I say, sir, that it is necessary that something be done; I say, sir, it is necessary to close the door

unless you want this great water supply, this great sanitarium, this great health resort of our State that is known from ocean to ocean, and from land to land, destroyed, that you must shut the door, and you must close it tight, and close it right away; and not only that, you must keep it closed for twenty years. This is not an individual matter with me, sir, I am not interested to the extent of one dollar in the forest lands of this State, but when I see the great number of pleasure seekers, the great number of invalids that annually visit that territory, not only in summer, but also in winter, it appears to me that we here, now and to-day, should do something to protect that great and magnificent forest from further spoilation. In and out of the forest preserve, every dollar's worth of land that is now owned by the State of New York should be enjoyed by the people of the State of New York, should be as free as air, as free as the God-given sunlight of heaven.

Again, sir, more should be done, which is not proposed by this amendment. More should be done, in that the State should own all the lands within this great forest preserve. It should be so, sir, that the poor man as well as the rich man might enjoy its benefits. It should be so that no great corporation, no wealthy individual, or association of individuals, should be able to select out the choicest, most beautiful spots of this domain, and set up in front of them a forbiddance, a sign of "no trespassing." I say, sir, it is our duty to the people whom we represent — and I thank God there is no politics in this — to give a sufficient, a proper and adequate protection, so that when the foresters tell us that within twenty years a forest will recuperate, within the time in which another Constitutional Convention will assemble within the walls of this magnificent pile, we shall have a forest domain that will be of some satisfaction, that will be a credit, as this great building is a credit, to the great, the magnificent Empire, the State of New York. (Applause.)

Mr. McClure — Mr. Chairman, I would like to ask Mr. Brown whether the lands which he refers to are not within the limits of the counties named in the act of 1893? If they are, they are within the forest preserve, whether they are now owned by the State or will be hereafter acquired.

I have only a word to say with reference to each of the amendments proper. First, with reference to that of Mr. Forbes. It is a very good measure, and I would favor it if it were a separate one, but you will see, Mr. Chairman, it is a discrimination in favor of an individual, if he owns land, by way of taxation; that is, there is to be a rebate of taxes if he saves his trees. I think that it is not germane to the question. This is the great, broad question relating

to State lands. I do not think that it might affect our amendment added to it; and with a great deal of regret I have to announce on behalf of the committee that we cannot agree to it.

With reference to Mr. Floyd's proposition, we think it would be exceedingly dangerous to allow the commission to sell timber for camp-fires. Any campers that cannot pick up something on the shores, that will not be timber, to warm themselves with, would better either carry in their fuel or stay out. It would be opening the door to a great danger.

And as to the exchanging of our lands, the State, as I said before, has always got the worst of it on the exchange. We do not need to exchange our lands to get others. We will buy inside of our park lands the lands we want, and we will keep this land outside of the park lands.

Now, with reference to Mr. Goodelle's amendment as to the destroying of the timber, of that we will accept, and I will in the amendment offer one or two little verbal amendments which will include that. I do not think there is any other amendment which has been suggested to which I need make any response; and if the Chair thinks it better to take a vote on the amendments proper, I think that will be the better way myself; then I will offer one or two little verbal amendments.

If you will permit me, I did not say a word about Mr. Crosby's amendment. But this constitutional amendment refers to the forest preserve as now fixed by law. The law is contained in the statute of 1893, which excepts from the forest preserve, towns and villages, and lands bought by the State on foreclosures of mortgages, so that those lands are not taken in. Now, I ask for a vote on the several amendments. I will ask the Secretary to note my amendment because I have it a little roughly. You have before you the amendment as it will read when completed.

The Secretary — Your substitute?

Mr. McClure — Yes, sir.

The Secretary — Yes.

Mr. E. R. Brown — May I ask the chairman of the Committee on Forestry a question?

Mr. McClure — I will be glad to answer it, Mr. Chairman.

Mr. Brown — Do you think that under the language of this proposed amendment you will have prevented the Legislature reducing the limits of the present forest preserves in the future?

Mr. McClure — We do, sir. We carefully considered that. The

act provides that "the lands of the State, now owned or hereafter acquired," within certain counties.

Mr. Brown — If I may be allowed, Mr. Chairman, as it seems to me, this is a very vital point. I would like to say one word more upon it. "Lands of the State now owned or hereafter acquired, constituting the forest preserve." That does not say that the forest preserve shall remain, shall never be less than it is now, or that it shall cover ——

Mr. McClure — My friend was absent when the amendment was handed up.

Mr. Brown — I beg pardon.

Mr. McClure — Let me first offer my amendment, if the Chair please.

Mr. I. S. Johnson — I would like to inquire, Mr. Chairman, whether amendments are now in order, under the claim as made by gentlemen on the other side the other day? I only want to know whether they desire to take their own medicine?

Mr. McClure — I do not think there will be any medicine in this, except for the people who oppose it.

Before the word "sold" — that is, in the sentence beginning "they shall not be sold" — the committee suggests an amendment by way of the word "leased." "They shall not be leased, sold or exchanged," and after the word "sold" at the end of the whole amendment, add the words "removed or destroyed." That relates to timber. So that the whole amendment will read, if I may be allowed to read it, as follows:

"The lands of the State now owned or hereafter acquired, constituting the forest preserves as now fixed by law, shall be forever kept as wild forest lands. They shall not be leased, sold or exchanged, or be taken by any corporation, public or private, nor shall the timber thereon be sold, removed or destroyed."

Now, I move ——

Mr. I. S. Johnson — I desire to raise the point of order that the amendment is not now in order, the time having past at which a vote was to be taken. (Laughter.)

The Chairman — We are clearly within the time still, there being one minute more.

Mr. McClure — I now call for a vote on the amendments.

The Chairman — I think Mr. Crosby's is the first amendment which will be submitted to the committee.

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

After the word "preserves" in line 4, insert the following: "Except all such lands within the limits of any incorporated village or city, and except all such lands, not wild lands, as have been or may be acquired by the State of New York upon or by foreclosure of or sale pursuant to any mortgage upon lands made to the commissioners for loaning certain moneys of the United State, usually called the United States deposit fund."

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

Mr. Durfee — Mr. Chairman, I desire to offer an amendment, which, I understand, is acceptable to Mr. Forbes, to his amendment, which I ask the Secretary to read.

Mr. Forbes — I accept the amendment.

The Chairman — This can only be received now by unanimous consent. Is there any objection to receiving this proposed amendment of Mr. Durfee's to the amendment of Mr. Forbes?

Mr. Goodelle — I object, Mr. Chairman.

The Chairman — If not, it will be received. It is received.

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

"The Legislature may provide for the remission of taxes on forest lands in this State owned by private individuals or corporations."

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

The Chairman — The committee will now vote on Mr. Forbes's amendment.

Mr. Mereness — I rise to a point of order. My point is that Mr. Forbes accepted Mr. Durfee's amendment and that has already been voted on and lost, and embraces Mr. Forbes's amendment.

The Chairman — The Chair holds the point to be not well taken. The Chair did not hear Mr. Forbes accept Mr. Durfee's amendment. The committee will vote on Mr. Forbes's amendment.

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

"The Legislature shall, by suitable laws, provide for the permanent preservation and protection of the forests of the State,

and may provide for rebates of taxes of agricultural lands where forests are preserved or maintained in connection therewith."

Mr. Forbes — Mr. Chairman, this is a question in which there are two propositions contained. Now, I desire that they be voted on separately, that the first part of that amendment be voted upon by itself.

The Chairman — The gentlemen has the right to call for a division of the question.

The Secretary again read the first clause of the amendment, to and including the word "State."

The President put the question on agreeing to this clause of the amendment, and it was determined in the negative.

The Secretary then read the remaining clause of the amendment.

The Chairman put the question on agreeing to this clause of the amendment, and it was also determined in the negative.

The Chairman — The question now arises on the amendment offered by Mr. Floyd.

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

Amend by inserting after the word "exchange" so that the whole shall read as follows: "The lands of the State now owned or hereafter acquired, constituting the forest preserve, as now fixed by law, shall be kept as wild forest lands. They shall not be sold or exchanged, except that lands without the limits of the lines of the Adirondack Park may be exchanged for lands within such lines, or be taken by any corporation, public or private, nor shall the timber thereon be sold or destroyed, except that fuel may be sold to lessees of the State or residents within such park."

The Chairman put the question on agreeing to the amendment of Mr. Floyd, and it was determined in the negative.

The Chairman — Mr. Goodelle's amendment is next in order, but I understand that has now been accepted by the committee.

Mr. Goodelle — Inasmuch as Mr.McClure has incorporated that in his amendment, I will withdraw that amendment.

The Chairman — The amendment is withdrawn. The question now is on the main proposition. The Secretary will read the substitute.

The Secretary read the substitute of the committee, in the language following:

"The lands of the State now owned or hereafter acquired, con-

stituting the forest preserves, as now fixed by law, shall be forever kept as wild forest lands. They shall not be leased, sold, or exchanged, or be taken by any corporation, public or private, nor shall the timber thereon be sold, removed or destroyed."

Mr. Floyd — How does the word "leased" come into the substitute?

The Chairman — It was read a short time since.

Mr. Floyd — Then was it not an amendment that should have been passed on?

The Chairman put the question on agreeing to the substitute, as read, and it was determined in the affirmative.

Mr. McClure — Mr. Chairman, I move that the committee do now rise, report this amendment to the Convention and recommend its adoption.

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

President Choate resumed the chair.

The Chairman — Mr. President, the Committee of the Whole have had under consideration the proposed constitutional amendment (printed No. 452), entitled, to amend the Constitution, relative to the forest preserves, have gone through with the same, have made an amendment thereto, and instructed the chairman to report the same to the Convention and recommend its passage.

The President put the question on agreeing with the report of the Committee of the Whole.

Mr. Durfee — Mr. President, I move to disagree with the report of the Committee of the Whole; that the measure be recommitted to the special committee, I think it is, from which it was reported, with instructions to add thereto as follows:

"The Legislature may provide for the remission of taxes on forest lands in this State owned by private individuals or corporations," and to report forthwith.

Mr. McClure — On that, Mr. President, I move the previous question.

The President — The gentleman still has the floor.

Mr. McClure — I beg pardon. I did not know he wished to say anything upon it.

Mr. Durfee — Only one word. This amendment which I propose, Mr. President, is in line with the few remarks which I had

the honor to submit in the Committee of the Whole. If more time were at our disposal, I should feel very much inclined to urge at length upon this Convention the importance of giving the Legislature power of this character; but considering the amount of work we have to do and the limited time we have in which to do it, I trust that the Convention will act favorably upon my motion without any extended speech. It seems to me that it is a subject which ought to command the approval of the entire Convention — simply giving the Legislature power, not requiring them to take action, but putting it in their power to take action in that regard so that something may be done in the future; the exigency having already arisen, and being likely to continue and to increase, that something may be done to preserve in this State what remains, at least, of the forests which have so eloquently been said upon this floor, and, particularly, in Committee of the Whole, to subserve such great and useful purposes for all its citizens.

Mr. C. B. McLaughlin — Mr. President, I want to say just one word upon that amendment. I believe it to be most pernicious in principle. We have now in this State corporations, individuals, who have bought large tracts of land, and it seems to me that they should not be exempted from taxation. It creates a class distinction between the citizens of this State, those that are subject to taxation, and those that are not. Now, it seems to me that this proposition should go through as the committee has proposed it, and to tack on this, it seems, would be, in effect, to kill it. Now, I hope this motion, as made by Mr. Durfee will not prevail. I know that in the Adirondacks there are large tracts, thousands of acres, that have been bought for a mere song, and, if they can be exempted from taxation for years to come, it will be simply increasing their property in value when the time shall come that they can sell and dispose of it.

Mr. E. A. Brown — Mr. President, I am decidedly opposed to any provision being tacked to this proposed amendment releasing any property from taxation whatever. I believe, as Mr. McLaughlin has said, that it is pernicious in principle. It opens the door to all sorts of fraud, and, I think, it is unjust to the poor laboring man, as well as to the rich millionaire that we should say, "this man shall be exempt from taxation, and this man shall bear all the burdens of taxation."

Mr. Mereness — Mr. President, just a moment. It seems to me entirely unworthy that this great subject should be lumbered up with a proposition providing that because a farmer sees fit

to keep a small sugar bush or a little piece of woods for his own accommodation for fire-wood, that we should have a matter of pure legislation fastened on to the tail end of this great question upon which an amendment has been perfected in the Committee of the Whole. I think that the motion should be voted down.

Mr. McClure — Mr. President, I move the previous question on the amendment of Mr. Durfee.

The President put the question "Shall the main question now be put upon the motion made by Mr. Durfee?" and it was determined in the affirmative.

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

The President — The question now recurs upon agreeing with the report of the Committee of the Whole.

Mr. Forbes — Mr. President, I make the same motion as Mr. Durfee in regard to this clause. "The Legislature shall, by suitable laws, provide for the permanent preservation and protection of the forests of the State."

Mr. McClure — I rise to a point of order, Mr. President. I understood the previous question was not only on Mr. Durfee's amendment, but that it applied to the whole matter.

The President — The point of order is well taken. Mr. Forbes's motion cannot be put. The question now is upon agreeing to the report of the committee.

Mr. Forbes — Mr. President, I rise to a point of order, that the previous question was on the motion of Mr. Durfee. A vote has been taken upon that motion.

I move that this report be referred back to the committee, with directions to report the proposed amendment which I have offered.

The President — The proposition of Mr. Durfee was the main question of disagreeing with the report of the committee, with some qualifications, and the Chair is of the opinion that the previous question upon that went to the bottom, and the question must be put upon agreeing with the report of the committee.

The President put the question upon agreeing with the report of the Committee of the Whole, and it was determined in the affirmative; the amendment referred to the Committee on Revision, to be printed, and put upon the order of third reading.

Mr. Cookinham — Mr. President, I have just received a telegram from Mr. Kellogg, to the effect that he is sick and not able

to be here to-day, and he asks that I present his request to be excused.

Granted.

The President — The Chair is sorry to announce that both Mr. Alvord and Mr. Griswold have gone home ill, and requests are made that they be excused until their recovery. Granted.

The President — The next order of business is the consideration of general order No. 63, relative to the waters of Niagara river, in respect to which the limit of time has been fixed at thirty minutes from now. That will carry it to one o'clock.

The Convention resolved itself into Committee of the Whole in consideration of general order No. 63, and Mr. Cady resumed the chair.

The Secretary read the proposed amendment, in the language following:

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

ARTICLE —.

"Sec. —. The right to divert the waters of the Niagara river, above Niagara Falls, pursuant to any grant or license heretofore or hereafter created by the Legislature, and the right of any person or corporation who was, on the 1st day of September, 1894, actually engaged in the diversion of the waters of the said river for business or manufacturing purposes, shall be regulated by and be under the direction and control of the Commissioners of the Land Office, who shall, from time to time, after notice to the Commissioners of the State Reservation at Niagara, and to the parties interested, make such orders and give such directions in regard to the diversion and use of such waters and the compensation to be paid therefor to the State, as shall be just and proper. This section shall not be deemed to recognize or affect any right, privilege or license under which any person or corporation may claim the right to divert the waters of said river."

Mr. C. B. McLaughlin — Mr. Chairman, I offer the following amendment.

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

In line 4, page 2, strike out the words "or affect."

Mr. McLaughlin — Mr. Chairman, when this matter was under discussion the other day I opposed the proposed amendment in

the form in which it then was. As it comes back from the committee, I am in favor of it, providing the two words which I have stricken out should be stricken out by the Convention. As I construe the legal effect of those words, it is to nullify this whole provision, so far as relates to present corporations. Now, the proposed amendment, as it seems to me, with those words out, is just exactly as it should be. I do not believe that we should, as a Constitutional Convention, adopt an amendment which recognizes a present corporation in any of its features, or any of its forms. We should pass a constitutional provision and submit it to the people preserving that river in all its grandeur and beauty, and when we are asked to go to the extent of saying that whatever we shall do shall not affect any of the existing corporations, it seems to me that we are subjecting ourselves certainly to criticism, if not going to the legal effect of legislating something directly in favor of them. I am opposed to that. If those words can go out, I am heartily in favor of this amendment.

Mr. I. S. Johnson — I do not believe that it is wise to say in one section, or one part of a section, that we distinctly recognize something in existence, and in the next breath say that it shall not be affected. If I understand this amendment, or substitute for the amendment, we distinctly recognize the existing corporations and their rights under it, and we expressly provide that they shall be regulated by and be directly under the direction and control of the Commissioners of the Land Office. I would like to know how it would be possible to recognize it in any stronger language, and whether it can have any effect to say afterward that this section shall not affect it? I am opposed to the recognition and the continuance in power by a constitutional amendment of these corporations and their rights to take water from the Niagara river.

Mr. Hottenroth — Mr. Chairman, I desire to propose an amendment.

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

Amend to read as follows: Striking out all of lines 1, 2, 3, 4, 5 and part of line 6, and to read as follows: "All diversions of the Niagara river above Niagara Falls for business or manufacturing purposes shall be regulated by and be under the direction and control of the Commissioners of the Land Office, who shall, from time to time, after notice to the Commissioners of the State Reservation at Niagara and to the parties interested, make such orders and give such directions in regard to the diversion and use of such waters

and the compensation to be paid therefor to the State as shall be just and proper. This section shall not be deemed to recognize or affect any right, privilege or license under which any person or corporation may claim the right to divert the waters of said river."

Mr. Hottenroth — Mr. Chairman, the committee seemed to be agreed upon the fact that this amendment should not recognize any supposed or alleged right on the part of any corporation or individual in the waters of the Niagara river. I was compelled to vote against the proposed amendment reported by this committee, for the reason that it appears to me the words "the right to divert the waters of the Niagara river" in themselves signify plainly and clearly that this Convention determines there is in existence such a right. The amendment goes on further to say that this right is created, presumably, pursuant to any grant or license heretofore or hereafter created by the Legislature, and the right of a person or corporation assuming the existence of such a right who was, on the 1st day of September, 1894, actually engaged in the diversion of the waters. Now, I propose to amend by striking out any possible recognition of any right whatever. If that is the intention of this committee, it seems to me that the amendment should exclude any statement of the possible existence, or any statement that might be construed to assume the existence or any right, or grant, or license by the Legislature. I think that this proposed amendment will cover the ground entirely. As it reads now, we provide that all diversion of the waters of the Niagara river above Niagara Falls for manufacturing purposes shall be regulated as provided in the present proposition before this Convention. I suggest that, if it is advisable not to recognize any right, it must clearly be advisable not to allege the existence of any; and, therefore, I believe that in this amendment, if we can accomplish the purpose by making a general and broad statement that all diversions shall be under those regulations, that it is necessary to say specifically that there are or exist some assumable rights. I think this amendment will cover the ground.

Mr. Barhite — Mr. Chairman, after the debate that was had at previous sessions upon this matter, I now desire to take but a very few minutes of the time of this committee. The amendment which is offered here to-day is the result of the work of the full Committee on Legislative Powers and Duties, derived from the original amendment offered by the committee, the substitutes and amendments which were offered in the Committee of the Whole. We think that, upon the whole, the amendment now is in better shape than it was

when it was presented to this Convention the other day. As will be well remembered, one serious objection which seemed to be urged by the members of this Convention was, that the amendment in the previous form might create a monopoly in behalf of the companies which had already received their charters from the State. That was not the intention of the committee, and while I personally do not admit the full force of that argument, yet I have yielded to the views of my associates, and I believe that the amendment as it is offered in its present shape will fully and adequately protect the people of the State of New York from the undue diversion of the waters of that river by private corporations. As I have said repeatedly, as was said in the report made by the committee, there is a certain amount of the water of that river which can properly be used for manufacturing purposes. Beyond a certain limit, those companies and corporations should not be allowed to go; but there ought to be a power somewhere where the State of New York, when those corporations, urged on by their own greed and their own desires, go beyond a just limit, there should be somebody interested in the welfare of the State who can stop them at the proper point. I believe that this amendment will effect that purpose. It does not say that no further grants shall ever be made, but it places all corporations which may be organized in the future, all corporations which have been organized in the past, under the control of the Commissioners of the Land Office, who are composed of the general elective officers of the State and the Speaker of the Assembly. There is a definite board, who derive their power directly from the people, who are recognized in the Constitution, and who can be called to account if they act improperly in this matter. But further than that, the amendment provides that they shall not make any order with reference to the diversion of this water without notice, not only to the parties interested, but to the Commissioners of the State Reservation at Niagara. The purpose of that is this, that that body is charged with the duty of protecting and preserving the property of the State at that point. They are the body who will know what effect the diversion of the waters by these corporations will have upon the property of the State, and they will have an opportunity to be heard, and the other side can be heard also; and only after a full and a free hearing can any order be made by this body. I see no special objection to the amendment offered by the gentleman from Essex (Mr. McLaughlin), to strike out the word "affect." Perhaps that will improve it. With regard to the amendment of the gentleman from New York (Mr. Hottenroth), while he agrees with the committee in part, the only point of his

objection, as I understand it, is that he fears this amendment may recognize in the Constitution some of the companies which are already organized there. I do not believe that. I have submitted this amendment to eminent lawyers in this Convention; I have submitted it to the Deputy Attorney-General of this State, and they all agree that there is no constitutional recognition of the corporations in this proposed amendment. If there is, it certainly ought to be corrected, for that is not the intention of the committee.

I desire to say but a few words further. The arguments upon the last matter before this body, the forest preserves, can be applied equally well to this matter. The question of the preservation of the forests is a serious question to the people of this State. The preservation of the waters of the State is likewise a serious question, and there is no better time than the present to see that the evils, which have grown up by allowing private corporations and persons to use the property of the State without compensation, without adequate knowledge of what they intend to do, no better time than the present to correct those evils. The people are aroused upon that subject, and I do not believe that there is anything more popular that could be adopted by this Convention than the amendment which is now under consideration. Popular because the people demand it; popular because they believe it is right. The newspapers of the State have taken it up from Niagara Falls to the city of New York. Only the other day in a Niagara Falls paper I found these words " The effort which American syndicates are making to turn the falls of Niagara into electricity, to the destruction of the natural spectacle, will likely be put a stop to; if not, in a few years the tourist will be shown where the falls once were, and the holes into which they were diverted to earn money for the syndicators." I believe the amendment is a good one and should prevail.

Mr. Forbes — Mr. Chairman, I wish to ask the gentleman a question; what has been done by his committee with the resolution that was referred to it in regard to waters of the State other than those of the Niagara river? That will have an influence upon my vote in regard to the amendment concerning the Niagara river.

Mr. Barhite — Mr. Chairman, in answer to the gentleman, while that is not pertinent to the subject under discussion, I can say that that matter is still under consideration; it is still in the hands of the committee. It is a very broad subject. A great many things must be taken into consideration, and the committee expect to give it the consideration which it deserves. I agree with the gentleman perfectly; it is a proper subject for this Convention to consider, and should be disposed of either one way or the other.

Mr. Hottenroth — Mr. Chairman, I desire to ask Mr. Barhite a question, if permitted by the Chair. I desire to ask whether the word "all" is not sufficiently comprehensive to include every one of the diversions included in lines 1 to 6.

Mr. Barhite — I do not see, Mr. Chairman, that there is any special objection to that amendment. I do not know but that it is an improvement to the amendment as offered by the committee.

Mr. Hottenroth — Will you accept it?

Mr. Barhite — I will, so far as I can accept for the committee. I think it covers the ground.

Mr. Cookinham — Mr. Chairman, I shall address the committee but a moment in favor of the amendment as proposed by Mr. Hottenroth. If that amendment is made, and the amendment suggested by Mr. McLaughlin, it seems to me the proposed constitutional amendment is perfected, and that the object will be attained which is desired, I believe, by the Convention, to prevent the destruction of Niagara, and to prevent, also, a monopoly in the existing companies. I, therefore, hope the amendment will be adopted.

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

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

On page 2, line 2, strike out all after the word "water" down to and including the word "State," in line 3.

Mr. McMillan — Mr. Chairman, I desire to say a word to the committee, and to call their attention specially to the provision of this proposed amendment, which the amendment just offered is intended to strike out. It is that provision of the amendment by which we provide in the Constitution that the State of New York shall go into the business of selling the waters of Niagara river. Now, it seems to me with this amendment, that no reasonable objection could be taken to the proposed amendment as it now stands. The objections that were urged before this committee when it last had this subject under consideration were, first, that the provisions of the proposed amendment created a monopoly in favor of those corporations which at the present time were diverting the waters from the Niagara river. That has been entirely overcome. The discussion on that occasion developed, it seemed, very clearly in the minds of the delegates that some protection, some restriction should be made; some commission, or board, should be clothed with authority to regulate the use of that water, so that we have

in this bill, first, eliminated from it all those provisions which make a monopoly on behalf of the corporations now using the water; second, it clothes the Land Commissioners with the power to regulate the use of that water so that the water from the Niagara river shall not be diverted to such an extent that the beauty of the Niagara Falls shall be in any manner impaired. But the provision which provides that the Land Commissioners may sell this water seems to be unjust, unfair and unreasonable on the part of the State. It is not the province, the prerogative, or the duty of the State. And, further, I call the attention of the committee to the fact that the Niagara river is an international stream, over which the State of New York has very slight control. They can do nothing in regard to the waters of that stream, except subject to the control of Congress. That is well-settled doctrine, not only by the decisions in this State, but by the decisions of the Supreme Court of the United States, that every act of a State is subservient to the power of Congress, whenever Congress may intervene; that the State itself for canal purposes cannot divert the water of Niagara river to such an extent that Congress may not intervene and stop the diversion in so far as it may interfere with that stream as a navigable stream. It seems to me again, upon this suggestion made by my proposed amendment to strike out the provision as to compensation, that the State is receiving almost directly all the compensation which it has a right to expect for the use of these waters, in the improvement of the property in that vicinity. It is enough, it seems to me, to call the attention of this committee to the fact that the taxable property in this vicinity, by reason of the proposed water-power improvement, has been increased from two and a half millions to nearly fourteen millions of dollars. That development of power in that vicinity will afford employment to hundreds and thousands of mechanics and workmen, and it seems to me that it is unwise, improper and unjust to put into the organic law of the State a provision which shall require or provide that the Commissioners of the Land Office be authorized to sell the water of the Niagara river upon any terms.

Mr. Hawley — Mr. Chairman, when this question was up some days ago, I had something to say in opposition to the proposition as it was then advanced. It has been very much improved by putting most of it into the waste basket, and I think it would be still further improved by sending the rest of it in the same direction; but there seems to be a feeling, a sentiment, mostly based, I apprehend, upon the recognized fact that my distinguished friend from New York (Mr. Green) is known everywhere as an honest man,

that something should be done about Niagara, because he has proposed it. If we adopt the amendment of Mr. McLaughlin, the amendment of Mr. Hottenroth, and the amendment of Mr. McMillan, this legislation will then be vastly improved, and it will be vastly improved by each one of those amendments. I am in favor of every one of them, and sought to get the floor to offer the identical amendment proposed by Mr. McMillan. We shall then have left only this inconsistency, that the State, as we are now informed, by the solemn act of its Legislature, has granted to certain corporations, or individuals, certain water rights. Upon the faith of that grant, these corporations have invested several millions of dollars, and now, this Constitutional Convention proposes to go in and break faith and say that the use of that grant shall be regulated arbitrarily by the State. It was proposed in this amendment as it now comes from the committee, without the proposed amendment of Mr. McMillan, that there should be added to that injustice, that this same State board should put upon the top of this grant their own assessment as to what the companies should pay for the use of the thing which the State heretofore granted to them. That, I trust, and have no doubt, will be stricken out; and if the amendment of Mr. Hottenroth, which says in two words what occupies five or six lines of this proposed amendment, and recognizes these corporations in occupying those lands, shall be passed, the amendment of Mr. McLaughlin, and that of Mr. McMillan are adopted, I shall have no very serious opposition to the passage of the proposed amendment as thus amended.

Mr. Durfee — Mr. Chairman, I take a different view altogether of the amendment offered by Mr. McMillan. It does not occur to me that this authorizes the sale of the waters of the State at all. But we are confronted with a condition here. It is claimed that the Legislature has done that already. Now, there is one company, I am informed by the report of this committee, which has expended certain money in developing rights which have been accorded it by the State. There are half a dozen, more or less, of other companies which have not, as yet, expended a single dollar. The considerations which have been advanced by the gentleman from Seneca (Mr. Hawley), would be considerations properly addressed to the Commissioners of the Land Office, or any other body that might be determining the amount which the several corporations should pay the State for the waters of the State, for they are the waters of the State at least until the possession and use of the State is interfered with by act of Congress; but they have, as it seems to me, no place here. Now, Mr. Chairman, if the probability of transmission of power by

means of electricity shall be realized in the future, and these companies shall be allowed to divert the waters from this stream, which is the water of the State, so far as our connection with it goes, they will be enabled to realize revenues surpassing the wildest dreams of avarice. A little computation that I made here the other day showed that the development of 200,000 horse-power, which is the limit proposed for the grant of the water now in use by the company which has its works there, would produce a revenue approximating, if not exceeding, ten millions of dollars annually. Now, I would like to know if the State of New York ought to furnish the means of such princely revenue free to any corporation. The State of Pennsylvania derives nearly all the money necessary for the carrying on of the State government from taxes on corporations. The same line of taxation has been pursued to some extent in this State, and yet, if we are to continue this diversion of the waters of the Niagara river, for the benefit, the gratuitous benefit, of corporations in this State, we are depriving ourselves of a source of revenue which would, in all probability, in a few years, without producing any hardship at all to these corporations, be sufficient to pay all the taxes necessary for the purposes of the government of this State. I object most strenuously, Mr. Chairman, to the adoption of the proposition of the gentleman from Buffalo (Mr. McMillan).

Mr. McMillan — Mr. Chairman, I am surprised at the suggestion of the gentleman who has just taken his seat. It is something unheard of in the history of riparian rights, that an owner of a riparian interest cannot divert the water. It is as free to him as the air we breathe. I defy this gentleman, or any other delegate, to show a single instance where the right of a riparian owner has ever been interfered with by the State. The only prerogative of the State of New York in this particular instance is to so protect the waters of the Niagara river so that the great cataract shall be preserved. It is not its duty, it is not its prerogative, it is not its right, to say that a party who desires to divert the water from the Niagara river shall pay for it. I do not believe that this Convention, or the State, should ever demean itself to that extent.

Mr. Woodward — Mr. Chairman ——

The Chairman — You have one minute, Mr. Woodward.

Mr. Woodward — Mr. Chairman, I am in favor of leaving this matter wholly to the Legislature. The Niagara river takes the overflow of Lake Superior, Lake Huron, Lake Michigan, Lake Erie and Lake St. Clair, with all the large rivers that flow into those lakes, and there is an abundance of water pouring through there.

Now, we are here trying to put a veto on the building of manufacturing establishments below the falls, with the object of preserving those falls for sight-seers. Is it more important that there should be something done for sight-seers than it is that there should be large manufacturing villages below the falls ——

The Chairman — The time limited for debate on this proposition has expired, and under the rule, the vote will now be taken.

Mr. Becker — Can that time be extended?

The Chairman — The Chair has no power to extend it.

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

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

The Secretary read the amendment offered by Mr. McMillan, striking out from page 2, line 2, all after the word " waters " down to and including the word " State," in line 3.

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

The Secretary read again the amendment of Mr. Hottenroth.

Mr. Jacobs — How about line 4, page 2, the words " or affect? "

The Chairman — That is another amendment.

Mr. Hottenroth — I accept that, Mr. Chairman.

The Chairman — The question, then, arises upon the amendment of Mr. Hottenroth, which accepts and incorporates the amendment offered by Mr. McLaughlin.

The Chairman put the question on agreeing to the amendment offered by Mr. Hottenroth, and it was determined in the negative, by a rising vote — 34 to 26.

Mr. Foote — Mr. Chairman, I move to reconsider that vote, for the reason that, as the amendment is now framed, I understand it will put into the hands of the Commissioners of the Land Office the regulation of the waters of the Erie canal that are drawn from this river.

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

Mr. Acker — Mr. Chairman ——

Mr. Dickey — I raise the question of no quorum, Mr. Chairman.

The Chairman — Mr. Acker is recognized.

Mr. Acker — Has the committee voted on all amendments?

The Chairman — There are no other amendments.

Mr. I. Sam Johnson — Mr. Chairman, I would like to raise the point of order that the substitutes that were offered the other day have not been considered.

The Chairman — They were referred back to the committee having the matter in charge, and are not before this committee, and as the Chair understands the matter, the point of order is not well taken.

Mr. Acker — I move, Mr. Chairman, that the committee do now rise, report this proposition to the Convention, and recommend that it be rejected.

Mr. Hottenroth — I move to amend, Mr. Chairman, by striking out the word "rejected" and inserting the word "adopted."

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

Mr. A. H. Green — Mr. Chairman, I now move that the committee now rise, report progress, and ask leave to sit again. I think that this is too important a matter to be dealt with in this way. There are so many technical words to be used that we may do mischief, and I would like to have further time for consideration.

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

The hour of one o'clock having arrived, President Choate resumed the chair.

The President — Before announcing the recess, the Chair desires to state that Mr. Andrew Frank has received an announcement of the death of his sister, and asks to be excused until Tuesday morning.

Granted.

The Secretary read the notice of a meeting of the Committee on Revision and Engrossment in the Secretary's office at 4 P. M.

Mr. J. W. McLaughlin — Mr. President, Mr. J. I. Green was called suddenly to New York and desired me to ask that he be excused.

Granted.

The President declared the Convention in recess until 2 P. M.

AFTERNOON SESSION.

Saturday Afternoon, September 8, 1894.

The Constitutional Convention of the State of New York met in the Capitol, Albany, N. Y., Saturday, September 8, 1894, at 2 P. M.

Second Vice-President Steele called the Convention to order.

Mr. Roche — Mr. President, I understand that a limit of three hours was fixed for the consideration of the several propositions relating to the canals. Now, there are three different amendments upon that subject, and it must be evident to members that justice cannot properly be done to this very important subject in the short period of three hours. The people of the State are very deeply interested in this question, and particularly so the commercial bodies of this State, and they have become very much aroused to the importance of the action that will be taken, if any is taken, by this Convention on that subject. There is quite a number of gentlemen who desire to be heard; and, as I say, to consider three important amendments upon so important a subject in so short a time, is impossible; certainly it is impossible that they should receive ample consideration; and it is doing very great injustice to a subject in which the people of the State are interested more, perhaps, than in any other question which will be passed upon by this Convention. I, therefore, move a reconsideration of the vote by which the limit of time was fixed at three hours, and move instead that it be fixed at five hours, for the consideration of those three amendments.

Mr. Root — Mr. President, I rise to a question of order. That time was fixed several days ago. The time has expired during which a motion for a reconsideration can be entertained. Under the rule the motion must be made the same day or the next legislative day. It would be manifestly improper to reverse the action taken by a full Convention, at all events as we are now.

The President *pro tempore* — The Chair would suggest to Mr. Roche that he might move that the time be extended.

Mr. Roche — I was just about to move that, if the other be improper. I did not know when the time limit was in fact fixed; but I will move instead, that the time be extended two hours in addition to that which was reported by the committee.

Mr. Root — Mr. President, I rise to a question of order. It is but putting in other words a reconsideration and a proposed reversal of the action of the Convention. It may well be that, after we have entered upon the debate of the questions arising upon the report of

the Committee on Canals, after new considerations have arisen, there may be a new question to present to the Convention; but now there is nothing more and nothing less than the very question which was presented to the Convention and acted upon, and which cannot now be reconsidered.

The President *pro tempore* — Inasmuch as the gentleman's rights will not be interfered with, the Chair will hold that the gentleman can properly make that motion after it is ascertained that the time is not sufficient for the consideration of the amendment.

Mr. Jesse Johnson — Mr. President, on page 593, is a motion of Mr. Bowers instructing the Committee on Cities to report the fifth and sixth sections. That is now on the table. I shall move to take it from the table, and then will offer an amendment, and will then move that it be laid on the table again. If there will be an opportunity later in the afternoon, after the Convention is again out of the Committee of the Whole, I would be very glad to give way until that time.

Mr. Holls — Mr. President, I rise to a point of order, that we are out of the Committee of the Whole. When we adjourned at one o'clock the committee had reported and we were considering the report of the committee.

The President — We are still in Committee of the Whole.

The Convention then resolved itself into Committee of the Whole in further consideration of general order No. 631, relating to the waters of Niagara river, and Mr. Cady resumed the chair.

Mr. Barhite — Mr. Chairman, I move that the committee now rise, report this amendment favorably, and recommend its passage to the Convention.

The Chairman put the question on the motion to rise, report the amendment favorably and recommend its passage, and it was determined in the negative, by a standing vote — 18 to 25.

Mr. Platzek — Mr. Chairman, I raise the point of order that there is not a quorum, and that the count shows that there is not a quorum.

Mr. Root — Mr. Chairman, I move to strike out all of the proposed amendment after the enacting clause.

Mr. Barhite — I rise to a point of order that that is not in order, Mr. Chairman.

The Chairman — The Chair overrules the point of order.

Mr. Barhite — There is no quorum, Mr. Chairman.

The Chairman directed the Secretary to proceed with a count of the House, and announced that the result showed the absence of a quorum.

Vice-President Steele resumed the chair.

The President *pro tempore* — Mr. Cady from the Committee of the Whole reports to the Chair that there is not a quorum present. The Secretary will please call the roll.

The Secretary proceeded to call the roll.

Mr. McMillan — I move that the roll-call be suspended and that we go into Committee of the Whole on the next order.

The President *pro tempore* — The question is on the motion of Mr. McMillan, that the roll-call be suspended.

Mr. Platzek — Mr. President, I desire to raise the point of order that we cannot go into the Committee of the Whole on another matter when the Chairman has just reported that there were not a quorum here on the consideration of this matter.

The President *pro tempore* — The Secretary will call the roll.

The Secretary resumed calling the roll.

Mr. McMillan — Mr. President, I rise to the point of order that there was a motion made that the roll-call be suspended and that we go into Committee of the Whole. It is entirely in the power of the Convention to suspend the roll-call and take up some other matter.

The President *pro tempore* — The Chair holds that the Convention has but very little power where there is not a quorum present.

Mr. McMillan — That fact has not been ascertained yet, and the motion is that the roll-call be suspended.

The President *pro tempore* — The Chair holds that it is necessary to proceed with the roll-call in order to settle that question.

The Secretary resumed the reading of the roll.

Mr. Powell — I ask that Mr. Hecker be excused from the session of this afternoon. He has received a telegram stating that there is illness in his family, and has gone in response to that telegram.

The President *pro tempore* — That excuse will have to be made after the roll-call is finished.

Mr. Goeller — Mr. President, I ask that Mr. Ohmeis be indulged ——

The President *pro tempore* — That must be deferred until after the roll-call is finished.

The Secretary completed the calling of the roll, when the following delegates answered as their names were called:

Messrs. Acker, Ackerly, Arnold, Baker, Barhite, Barnum, Barrow, Becker, Bowers, Brown, E. A., Brown, E. R., Cady, Church, Clark, G. W., Crosby, Danforth, Davenport, Dean, Deterling, Dickey, Doty, Durfee, Floyd, Foote, Forbes, Fuller, C. A., Fuller, O. A., Goeller, Green, A. H., Hamlin, Hawley, Hill, Holls, Hotchkiss, Hottenroth, Johnson, I. Sam, Johnson, J., Kimmey, Kurth, Lewis, M. E., Lincoln, Lyon, Manley, Marshall, Maybee, McClure, McIntyre, McLaughlin, J. W., McMillan, Mereness, Moore, Morton, Nichols, Nicoll, O'Brien, Osborn, Parker, Peabody, Platzek, Powell, Pratt, Putnam, Redman, Roche, Rogers, Root, Sandford, Spencer, Steele, W. H., Storm, Sullivan, W., Tekulsky, Towns, Truax, C. H., Vedder, Vogt, Wellington, Whitmyer, President — 79.

Mr. Powell — Mr. President, I now renew my request that Mr. Hecker be excused upon the grounds which I stated a moment ago.

Granted.

The President *pro tempore* — Mr. Lauterbach left word with the President of the Convention this morning, asking that he be excused on account of severe illness calling him away. The President, it seems, forgot it, and the Secretary informs me that an excuse has not been asked for. The Chair would now ask the Convention whether they will excuse Mr. Lauterbach this afternoon?

Granted.

Mr. Dickey — Mr. President, I ask that Mr. Hedges be excused. He had to take a train home at two o'clock, otherwise he could not have got home to-night. There is no train that stops at his home leaving here after that time.

Granted.

Mr. Arnold — Mr. President, Mr. Turner was obliged to go home at one o'clock and requested me to ask that he be excused for this afternoon.

Granted.

The President *pro tempore* — There are seventy-nine members present; not a quorum. What is the pleasure of the Convention?

Mr. Goeller — Mr. President, I made application a moment ago in behalf of Mr. Ohmeis, who is called home to his family. Some members of his family called here and took him away, and I would like to have the Convention indulge him for this afternoon.

Mr. Acker — Mr. President ——

Mr. Johnson — Mr. President, no motion can be received now except for a call of the House, or to adjourn.

The President *pro tempore* — A quorum being present, what is the further pleasure of the House?

Mr. Jesse Johnson — Mr. President, I offer the following resolution in order to get the matter in the way of being printed. I shall make a motion, as soon as that is passed, that it lie on the table.

The Secretary read the resolution offered by Mr. Johnson in the language following:

R. 200.— Resolved, That the Committee on Cities are directed forthwith to report complete as a substitute for sections 5 and 6 of general order No. 13, and as additional sections to article 8, a proposed amendment, as follows:

Mr. Holcomb — May we have it read, Mr. President?

The Secretary proceeded to read the proposed amendment.

Mr. Holcomb — Mr. President, I ask leave to withdraw my motion that it be read, and move that it lie on the table, and that it be printed.

Mr. Johnson — That motion has been made, that it lie on the table and be printed. I think that that might be made as a report, and then I will ask that it lie on the table. I showed Mr. Bowers the resolution. Is there any objection to it?

Mr. Bowers — We are perfectly willing that the gentleman should bring it before the House and have it printed, so that we may examine it, but we are not willing to have a motion carried ——

Mr. Johnson — A motion to report, that is all, and then to lay it on the table.

Mr. Holcomb — I object, if an objection be in order.

Mr. Johnson — I shall then have to make a motion to take up Mr. Bowers's motion, which will ——

Mr. Bowers — We are perfectly willing to let them take it up seriously, but we cannot let them carry a motion right through the Convention. I have no objection to the matter being printed and letting it lie on the table; then we can consider what it is, and have it taken from the table without trouble.

Mr. Johnson — If it is understood that it then be in order, after it is printed, to take it up, I will accept Mr. Bowers's suggestion.

Mr. Holcomb — It may be taken from the table in the regular order of taking matters from the table.

The President *pro tempore* — If there is no objection, the resolution will take that course. None being offered, it is so ordered.

Mr. McMillan — I move that the Convention now go into Committee of the Whole on general order No. 77, relating to Governor and State officers.

Mr. Barhite — I make the point of order, Mr. President, that we were in Committee of the Whole ——

The President *pro tempore* — We have not disposed of the subject which was under consideration in Committee of the Whole at the time of the recess. The Convention will now resume in Committee of the Whole and Mr. Cady will please take the chair. The chair was taken by the President in order to obtain a quorum. A quorum having been obtained, the House now resumes in Committee of the Whole.

Mr. Cady in the chair.

Mr. Barhite — Mr. Chairman, I move that the committee rise, report the amendment favorably and recommend its passage to the Convention.

Mr. Root — I rise to a question of order, that that motion has already been put and lost.

The Chairman — The point of order is sustained.

Mr. Barhite — It was put when there was not a quorum present. That was the point of order that was raised.

The Chairman — That is strictly true, although the point of order had not been raised before the vote was taken upon the motion.

Mr. Tekulsky — Under what business are we, Mr. Chairman?

The Chairman — We are now in Committee of the Whole on general order No. 63.

Mr. Root — Mr. Chairman, I withdraw the point of order raised by me.

The Chairman — Mr. Root withdraws the point of order raised by him, and the question now occurs on the motion of Mr. Barhite, that the committee do now rise, report this amendment to the Convention and recommend its passage.

Mr. Holcomb — May I ask, Mr. Chairman, that the proposed amendment in its present condition be read, before this motion is put?

The Chairman — The Secretary will read the proposed amendment.

The Secretary read the proposed amendment in the language following:

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

"Article , section . All diversions of the waters of Niagara river above Niagara Falls shall be regulated by and be under the direction and control of the Commissioners of the Land Office, who shall, from time to time, after notice to the Commissioners of the State Reservation at Niagara, and to the parties interested, make such orders and give such directions in regard to the diversion and use of such waters, and the compensation to be paid therefor to the State, as shall be just and proper.

This section shall not be deemed to recognize any right, privilege or license, under which any person or corporation may claim the right to divert the waters of said river."

Mr. Becker — I call for a roll-call.

Mr. Roche — Mr. Chairman, before that motion is put we ought to have an answer as to the matter that was suggested here this morning, whether any waters of the Niagara river are taken for the use of the State canals.

The Chairman — The Chair cannot answer that question.

Mr. Maybee — Perhaps some gentleman from the western portion of the State can. If so, we ought to except it in this proposition.

Mr. McMillan — Mr. Chairman, I desire to state that all the water for the Erie canal is taken from the Niagara river at the city of Buffalo and at Tonawanda.

Mr. Hottenroth — May I ask the gentleman from Erie a question? He says that all the water is taken ——

Mr. McMillan — For that level.

Mr. Hottenroth — I understand there is a good deal of it taken from Skaneateles lake and other sources.

Mr. McMillan — That is the other level.

Mr. A. H. Green — Mr. Chairman, when I introduced this resolution in regard to the Niagara Falls ——

The Chairman — No debate is in order on this motion. As the Chair understands it, the time expired for debate at five minutes of one o'clock.

Mr. Green — I move to amend then, by substituting the original

report of the committee. I think that is far better and more likely to protect the interests of the State.

The Chairman — The Chair holds that the amendment is out of order.

Mr. Dickey — I move, Mr. Chairman, that unanimous consent be given to Mr. Green to speak for five or ten minutes, if he wishes.

Mr. Tekulsky — I object.

The Chairman — Objection is made.

The Chairman put the question on the motion of Mr. Barhite, and it was determined in the negative, by a standing vote.

Mr. Roche — Mr. Chairman, I now move to amend by inserting after the words "Niagara Falls," "other than those taken for the use of the State canals."

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

The Chairman — The Chair holds that the amendment is out of order.

Mr. Root — Mr. Chairman, under the rules it is now the duty of this committee to rise and report to the Convention in accordance with its action.

Mr. Durfee — I desire to call the attention of the Chair and the committee, to the fact that no action has been taken, and, therefore, I move that the committee do now rise, report progress and ask leave to sit again.

Mr. Root — Mr. Chairman, a question of order.

The Chairman — The gentleman will state his point of order.

Mr. Root — I beg leave to refer to rule 27, which provides that, "Proposed constitutional amendments and other matters shall be considered in Committee of the Whole in the following manner, viz.: They shall be first read through, if the committee so direct; otherwise they shall be read and considered by sections. When the limit of time has expired"— that is the situation, sir, I believe — "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." This amendment has been acted upon, and my point is this, that it is now the duty of the committee to rise and report in accordance with its action.

The Chairman — The point of order, in the opinion of the Chair, is not well taken.

Mr. McMillan — Mr. Chairman, I move to amend the motion of Mr. Durfee, that the committee do now rise and report this proposed amendment to the Convention adversely.

Mr. Mereness — I make the point of order that that motion is out of order.

The Chairman — The Chair so rules, and had ruled so before the point of order was raised by Mr. Mereness.

The Chairman put the question on agreeing to the motion offered by Mr. Durfee, and it was determined in the affirmative.

Vice-President Steele resumed the chair.

Chairman Cady — Mr. President, the Committee of the Whole have had under consideration the proposed amendment (printed No. 459), entitled "To amend the Constitution by the addition of a new article relating to the diversion of the waters of the Niagara river," 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.

Mr. Acker — I move you, sir, that the Convention disagree with the report of the committee, and that the proposition be rejected, and on that I move the previous question.

Mr. Barhite — I ask for the ayes and noes on that.

The President *pro tempore* put the question, "Shall the main question be put?" and the Secretary proceeded to call the roll.

Mr. Barhite — Mr. President, I desire to explain my vote. It has been frequently adverted to, and animadverted upon, that this Convention is composed largely of lawyers. It has been openly charged in the newspapers of this State, time and time again, that this Convention has been packed with corporation lawyers who would see to it that the interests of their clients did not suffer. I do not believe that charge to be true, and I do not propose, sir, by my vote in this matter, to make the charge true. Here is a matter which is simply and solely in the interest of the people of the State of New York, and yet there has not been a matter brought before this Convention in which there has been so powerful a lobby as in this very matter that we are considering now. Corporations that have come to the Legislature time after time, and by means which it would not be proper to speak of here, have taken away the rights of the people of the State without one cent of compensation, and now they are coming here and working, and saying, "We buncoed the

Legislature and now we propose to bunco the Constitutional Convention." I do not mean, Mr. President, to be a party to any such proceeding as that. I do not call in question the motives of any gentleman on this floor, whichever way he may vote, but I do say that this is a question which should be provided for now; that we, coming directly as we do from the people, should be willing to stand up here now, and assert the rights of the people against persons and against corporations. They come, and in unknown ways, get the rights, and then when we are asked to do anything to cut them off, they come and plead the good faith of the State. They say, "We have spent thousands upon thousands of dollars." I say that whoever comes to a court of equity and ask for equity, should come with clean hands. Mr. President, I vote no.

Mr. Becker — Mr. President, I desire to explain my vote. If there is any corporate influence at work in this body, it is in favor of an amendment which places the right to use and divert the water of this stream in the hands of a single board composed of four or five members, always belonging, or usually belonging, to the same party, and taking it away from the Legislature, where the whole people of this State are represented. For that reason, Mr. President, and because there are twenty-seven miles of this river concerned in this thing; and because under the report of this committee itself, using every drop of water that can be used with the grants that have heretofore been given, or can possibly be granted for commercial purposes there, the whole diminution of the volume of water will not exceed two feet, which is insignificant, to which extent it is affected by the wind every time it blows a day or so to the westward, piling back the waters of the lake; and for the reason that this matter puts the regulation of the amount of water which can be used by the Erie canal, which is fed from this river at Buffalo and Tonawanda, in the hands of the Land Commissioners, and takes it away from the Legislature, where we all know it belongs, where the Constitution has placed it ever since 1846; and for a hundred other reasons which relate to the use of the water and to the riparian rights, it seems to me that this amendment is a very improper one. I do not question the motives of the gentlemen that introduced it, but in their desire to do something they have undertaken too much. They have overreached themselves. Electrical science is in its infancy, and it should not be in any way prevented from full development. We cannot tell, nor is any one that has anything to do with this question, as yet, able to tell how this will be developed, under what circumstances or to what extent. These matters can be regulated entirely by the Legislature. I am

unalterably opposed to placing it in the hands of any board composed of four or five gentlemen, no matter how able or distinguished and honest they may be at the present time. I prefer to leave it with the representatives of the people in the Legislature. For these reasons, Mr. President, in what I believe to be the interests not only of Western New York, but of the whole State, and with entire sympathy for the motives and purposes of the gentlemen of this committee in attempting to do what they propose, I vote aye.

Mr. Bigelow — I adopt all the objections which have just been briefly stated by the gentleman from Erie (Mr. Becker). I would state in addition, that it seems to me to require some explanation, for taking out of the power of the Legislature, the properly constituted representatives of the people of the State of New York in all legislative matters, a power, and conferring that power upon a Board of Land Commissioners, of whom I dare say not one in ten of this Convention knows even the names, and whom not one in a thousand in this State would be able to designate, and who are entirely irresponsible to the public, except indirectly through superior officers. I do not see the propriety of taking from the people of the State the right to grant these concessions of water rights, if they are to be granted at all, and transferring that power to a band of three or four land commissioners. And, besides, as Mr. Becker very properly suggests, this is an international question, and should be dealt with in connection with the federal government. We are not at all prepared to deal with the question here to-day, nor are we likely to be. Therefore, I vote aye.

Mr. Bowers — Mr. President, I desire to explain my vote. I am sorry that this matter is to be disposed of by the previous question, because the previous question comes on a report in a form that probably will not be accepted by the people of the State. That there is a demand that the waters of the Niagara shall be protected, must be conceded, and the energetic efforts of Mr. Green in that direction have heretofore failed, because he cannot, even with all his ability and efforts, prevent the Legislature from continuing to make these grants. I listened to the remarks of the gentleman from Erie (Mr. Becker) the other day, and learned from them quite sufficient to justify the demand that is made that some steps be taken to protect these waters. He told us, if I recall correctly, that the great majority of the people who visited the falls instead of speaking of their grandeur and their beauty, dropped the exclamation, "How much power running to waste!" He exhibited to us then, a feeling which I believe to be extant, that the power there in

existence shall be used for commercial purposes to the destruction in the end of the great falls themselves. We need no better illustration of the danger that the falls are under, from the inhabitants of that part of the State, than the remarks made by that gentleman at that time in opposition to this measure. Now, the present measure simply allows regulation and does not prohibit future grants. The whole intent of the resolution offered by Mr. Green was that there should be a prohibition of future grants, and that there should also be regulation and protection to those now in existence. That was right; but the amendment prepared by Mr. Root, is in language sufficient to protect it, and ought to be passed by this Constitutional Convention, but we are cut off from even discussing in the present form of the suggestion, by the moving of the previous question. I regret exceedingly that the matter has taken that shape. I think the people of the State are entitled to protection in that great wonder of this country; I think that we shall be recreant in our duty if we fail to take some steps in that direction. I am aware of all the arguments on the ground of its being an international question, and the possibility of Canada using the same power, but this will be a first step in the right direction, the passage of the bill as originally proposed, or as amended by the suggestion of Mr. Root. It is an act which ought to be performed. I vote no.

Mr. E. A. Brown — Mr. President, I desire to explain my vote in relation to this amendment. It is very strange that the assertion should be made upon the floor of this House that it seemed as if this proposed amendment were in the interests of corporations. I had the honor of being upon the Committee on Legislative Powers and Duties, to whom this matter of the control or regulation of these waters of the Niagara river was committed. The matter was carefully considered, investigation was made, and hearings had; and on no measure, no proposed amendment before this Convention, has there been the persistent lobby, the persistent effort, the persistent presence of the parties interested in these great corporations upon the floor of this Convention, that there has been in regard to this proposed amendment. The sub-committee gave up what I believe to be the proper position in relation to this matter, that there has been too much laxity and sacrificing and giving up of the property of the great State of New York without compensation, and even without restriction; and while I do not sympathize with these wholesale attacks that have been made here upon the Legislature of this State, I do say, sir, that when grant after grant has been made of the property of this State by the Legislature, without any

limitation as to the amount of water to be taken from this river, or the length of time during which the use shall be made, I say it is time to call a halt in that direction. The sub-committee now has submitted a simple provision for the regulation and use; and that we are told was in the interest of corporations. I say, sir, it would appear here that although it has been cited before this Convention that the great magnificent scenery and the beauty of the falls are being destroyed, that we should, in the interest of the people of this State, stand up here and protect the great scenic beauties of Niagara. When one of these great corporations went to the Dominion of Canada they agreed to pay an immense amount of money for the privileges that they got on this side of the river for nothing, for the asking. I contend, sir, that the interests of the State are better regulated and controlled by the Commissioners of the Land Office. I, therefore, vote no.

Mr. Deterling — Mr. President, I am paired with Mr. Meyenborg on this question.

Mr. Dickey — Mr. President, I wish to explain my vote. I am opposed to the proposition as it now is, and must, of course, vote against it. At the same time, I am very anxious that there should be a prohibition against the further use of the waters of the Niagara river that may tend to interfere with its grandeur and beauty. I have a promise that if this motion is voted down, there will be a chance to vote on such a prohibition, such as the committee first brought in, and have now taken out. I, therefore, vote no.

Mr. Durfee — Mr. President, I desire to explain my vote. The Committee of the Whole reported progress and asked leave to sit again. The question coming upon granting leave, it was sought to be superseded by Mr. Acker, by a rejection of the proposition, and upon that the previous question was moved. Now, Mr. President, the proposition in its present form may not be entirely acceptable to me; as I understand, it is not to the gentleman who primarily introduced the measure in this body and who has advocated it in some form during all the hearings that have been had upon it. For my part I hope that this measure may go back to the Committee of the Whole and be perfected, if it is not now in proper form, so that it will accomplish something for the benefit of the people of this State; and with that view, perceiving that if this motion should be voted down and the following motion tending to supersede the motion to permit the committee to sit again, that result may be reached, I vote no.

Mr. Bigelow — Mr. President, I would like to change my vote.

I understood that we were voting upon the main question. I understand from my neighbor that we are voting on the previous question. If I am correct, I wish to vote against that, and I would, therefore, like to change my vote to no.

Mr. Foote — Mr. President, I desire to explain my vote. I think the proposition presented by the committee embodies some features which should be adopted by this Convention. I think some regulation should be had in the granting of these water privileges at Niagara Falls. I think, however, the form in which the matter is presented now affects the water supply of the canal in a way not thought of and in a way not intended by the committee; and I think that if this motion is defeated the Niagara Falls proposition can be separated and put before the Convention upon its merits, and for that reason I vote no upon the previous question.

Mr. Forbes — Mr. President, I desire to explain my vote, which will be in favor of the motion. I have been trying this whole week to have this committee, or some committee, take up this question of the waters of the State. It seems to have been impossible to do so. There is an apparent disposition to put the whole matter aside. Now, if we vote at the present time to disagree with the report of the Committee of the Whole, then we are in this position, that this committee must report at once on the whole subject of the waters of the State, and make some disposition of the subject which will be applicable to this whole question. I vote aye.

Mr. A. H. Green — Mr. President, the very short time that was given for the discussion of this very important subject this morning, thirty minutes, rendered it impossible for, I presume, others besides myself, to say a word here. I introduced a resolution, not requesting any particular measure, but after an experience of ten years with this great work, asking this Convention whether any measures were required to prevent the diversion of the waters of the Niagara river in the interest of millionaire corporations, and against the interests of this State. That is the whole proposition here now. I read from the report of the Commissioners of the Niagara Reservation and two succeeeding reports, showing their anxious desire that some measure should be taken to prevent the Legislature from diverting these waters and destroying that spectacle. Gentlemen say here that there is no danger of that; that they go there now and these diversions do not seem to destroy it; yet it is well known that only one or two of these concerns are as yet at work, and to only a partial extent, and there are six or seven others authorized besides that are not yet at work at all. When all

these concerns get to work there, does any one suppose that they are not going to divert enough water from this river to damage this cataract? I say there is very great apprehension of it, very great apprehension; and I think the committee to whom this resolution was referred went at it intelligently, and presented a very able report, a very satisfactory original resolution. It was again referred to them. The resolution was measurably satisfactory the second time. How it happens that it is filtered down to its present form I can hardly understand, but it is infinitely inferior, as a protection to the State, to the original proposition of the committee. I hope that some means will be taken in a matter so important as this, and involving so many technical questions, to get it in some shape that will be satisfactory. My friend from Erie (Mr. McMillan), who is so very urgent that nothing shall be done here, speaks of the water being taken by the State. There is nothing on earth here to prevent water being taken by the State, if it wants to. The State can take from its own water what it pleases. But I do not understand the intense anxiety to protect these corporations here.

The President *pro tempore* — The gentleman's time has expired.

Mr. Green — I vote no.

Mr. Hawley — Mr. President, we have now spent upon the discussion of this chimera nearly a day. Twice the production of the committee has been sent back for repairs. The only question of any consequence connected with this whole subject now is, how much more time shall this Convention, in the present stress and pressure of its work, devote to this scheme, which never in any form in which it has been proposed to this Convention, or in which it can be proposed, will receive on third reading, eighty-eight votes? One thing more. My friend (Mr. Green) presented for my perusal yesterday morning, a magazine, which illustrated what is going on at Niagara Falls; and the final statement of that recent investigation was, that a development of mechanical power equal to all the mechanical power now in use in the State of New York, would diminish the flow of that river nine inches out of six feet and a half, which would be utterly, so the writer said, imperceptible in its effect upon the beauty of the great natural wonder that there exists. In the interest of getting through with our work and abandoning the chase of this rainbow, I vote aye.

Mr. Hottenroth — Mr. Chairman, it was not the desire, as I understand it, of the committee, to put any barrier in the way of existing corporations drawing water from the Niagara river, except to limit and put a control and regulation over the amount of water

used by those companies in the hands of some responsible body. The Legislature is appealed to from year to year to make grants on this river. From time to time, more and more of the water is taken, in fact, given away. Now, it is not the purpose, as I understand it, of this amendment, to deprive those who have rights there of existing privileges. On the other hand, there is a grave question, if you tie up this matter entirely, as to whether a great monopoly will not be created. Those are the difficulties which confronted the committee. Now, if an amendment can be proposed which will obviate all of those questions, but at the same time will limit the amount of the supply required by some of these corporations, which under the charters they claim a right under, or the assumed grants, give them unlimited control of the water, so that if they so desire, and if the demand for their supply was great enough, they could practically absorb the entire river if they saw fit — now, it is that thing that we desire to limit. The question also presented itself as to whether the State had jurisdiction. Now, if we have, these grants are valid. If we have not, they cannot be affected by a provision in the Constitution. Therefore, if we assume to make a provision here which restricts, if it has the power to restrict, it is advisable. If, however, it has not, it can do no harm. Particular stress was laid upon the words "or affect" in this provision. Now, if those words have the strength that it is asserted here they have, why not put the amendment in such a shape that it will effect its purpose, and not, as it is claimed on the other side, pervert its object. I think the amendment can be corrected to meet all these difficulties. There ought to be no difficulty presenting itself to a body of this kind that cannot be met on this question. I, therefore, vote against this motion for the previous question.

Mr. M. E. Lewis — I desire to announce, Mr. President, that I am paired with Mr. Davis, of Erie, on this motion.

Mr. McClure — Mr. President, I was not present when this matter was under discussion. I am naturally, from the position I took this morning, on the forestry matter, in favor of the preservation of the waters of this State; and if it was in my power to revoke the charter, or right, by which any private corporation can reduce the waters of Niagara river two feet, I would go to the extent of doing it, when there is other power available for their work. We cannot prevent the wind taking the water and setting it back, but we can prevent private corporations depriving the people of this State of a body of water equal to two feet in depth. Now, I am in favor of restricting the taking of the waters of that river, or of any

other river of this State, and I have no sympathy with any corporation when any great question like that comes up. Understanding, therefore, that the carrying of the previous question now deprives this body of the right and power in some way to protect the rights of the people in this matter of the Niagara river, I am opposed to its being carried. It ought never to be moved on a question of such magnitude as this; and the matter of an hour or two of time ought not to enter into the calculation. I am willing to stay until midnight on a question of the importance of this. Why, we have wasted days and weeks on matters of trivial importance compared with this. I vote no.

Mr. Maybee — Mr. President, I desire to say that I should have voted no, but I am paired on all questions relating to the waters of the Niagara.

Mr. Osborn — Mr. President, I had intended to vote for the previous question in the interest of economy of time. But the spectacle of Mr. Bowers pleading against the previous question on the ground that it would cut off an amendment by Mr. Root appealed to me so strongly in the light of the history of recent events that it has changed my feelings with regard to the matter, and I wish to vote no.

Mr. Peck — Mr. President, I wish to explain my vote by saying that the only reasons that I have heard why this should succeed to any great extent have been two. The first is that we have spent considerable time over it already, both in the committees of this body and in the Committee of the Whole. It seems to me that that is a reason why it should be finished. The next reason is, that it appears that only one-tenth, or a little more than one-tenth, of this cataract has as yet been used. It seems to me that that is a reason why no more should be used, and why we should make haste very rapidly to stop it. And I, therefore, vote no.

Mr. Platzek — Mr. President, I desire to explain my vote. The discussion had this morning, especially the utterances of Mr. Durfee, impressed me very much that this amendment should prevail; and I regret the previous question was moved to cut off in that way debate upon the main proposition. What has been said indicates to my mind that the amendment in its present form is imperfect and requires considerable alteration and correction; and if ample time is given I believe that it will be done. I can understand how an interstate, and even an international, question might arise, and the State be obliged to memorialize Congress in the matter in order to get it completed in all its details a little later on;

but, in the meantime the State undoubtedly ought to put a stop to this reckless waste, I won't say waste, this reckless taking of State property for private uses. If there is valuable power there it belongs to the people, and if to an individual or a private corporation, they should come forward and pay for the power that they require. As to leaving it to the Legislature, we are told by a gentleman whom we all admire and whose honesty is not doubted, a member of the commission, that year after year it has become his duty to come here to the Assembly and fight hard against corporations and individuals desiring for nothing rights that are worth millions, possibly. Therefore, I vote no.

Mr. Putnam — Mr. President, believing that the Legislature are the proper officers of the State to whom the care of the Niagara river should be delegated, I vote aye.

Mr. Spencer — Mr. President, in explanation of my vote on this matter I desire to say, that I have had no care to investigate how far the waters of this river had been diverted, or what the dangers may be of their being diverted. My view of the duties of a delegate to a Constitutional Convention does not permit me to vote in favor of special legislation like this, or like that which was adopted this morning in regard to the Adirondacks, or which was adopted some days ago in regard to the employment of prisoners. I believe, sir, that if this matter is of sufficient importance it should be left with a commission like the present Commissioners of the Reservation of Niagara, or to the Board of Land Officers. I do not believe that this is the place or the time to deal with the matter as the bill proposes it shall be dealt with. It may be that the Legislature is not competent to deal with a matter of this kind. If the Convention so thinks, it can very readily pass a provision referring it to a vote for one of these commissions. I, therefore, vote aye.

Mr. Vedder — Mr. President, I ask to explain my vote. There is no doubt of the fact that it is possible for enough water to be drawn from the Niagara river, near the falls, to destroy them. That is true, is it not? Does not every one admit that? I believe, however, that you might draw water at a sufficient distance above the falls, in very large quantities, two or three or four times as large as is contemplated now near the falls, without injuring them to any appreciable extent. I desired to have incorporated in the report, which Mr. Barhite and his sub-committee made, that there should be a point fixed above the river, below which no water should be taken, more than now is. There is a point above the falls where the waters divide, one portion going over the falls on the Canadian

side, and the other on the American side. Any water taken on the American side below that divide prevents the waters from the Canadian side coming over and maintaining the equilibrium, before it precipitates itself over the falls. So, the nearer you get to the falls, the more it injures them by taking water from the river. That is owing to the nature of water, always trying to seek a natural level. But as you get nearer to Buffalo — I believe at Buffalo you might carve out another Niagara river and have just as much water in the two as you now have in the one. Therefore, I was in favor of fixing a point above the falls, below which no more water should ever be taken. Now, Mr. President, it has been stated that by stopping the diversion we erect and create a monopoly. No more so than when we passed a law that no Chinaman should come into this country after the law took effect, a monopoly was created in Chinamen; no more so than if when merchants' warehouses are full of goods and we increase the tax upon further importations, that would make a monopoly in those who received them. If there is danger, no matter whether it creates a monopoly or not, we should stop that danger now.

The President *pro tempore* — The time of the gentleman has expired.

Mr. Vedder — Not liking this present amendment, and believing it can be improved, I vote no.

Mr. Roche — Mr. President, I desire to explain my vote. It seems to me it would be a very singular contrast if this Convention, with substantial unanimity, should adopt a provision caring for the wild forest lands of the State in the Adirondacks, in the morning, and in the afternoon should refuse to adopt any prudent regulation whatever with reference to a State park, and with reference to a great natural wonder and beauty that the entire people of the State of New York feel proud of. Now, the beneficiaries of the prodigality of the Legislature appeared before the Committee on Powers and Duties of the Legislature in considerable numbers, backed up by the presence and the representations of some gentlemen who have votes upon this floor; and it was very evident from their arguments that all they desired was to be let alone, both as to legislative incursions and the incursions that these gentlemen and the corporations that they represent would like to be at liberty to make in the future. Their arguments did not seem to have much effect upon that committee, and I should be very sorry to believe that they had any more power, or any greater force, with any considerable num-

ber of the members of this Convention than they had ten days ago. I do not like the proposition in just the form in which it now stands, but believing that something should be done by this Convention upon this subject, and in order that it may remain in the committee where it can be perfected, I vote no.

The Secretary having concluded the call of the roll, the following result appeared:

Ayes — Messrs. Acker, Ackerly, Arnold, Barrow, Becker, Cady, Crosby, Dean, Doty, Forbes, Hamlin, Hawley, Hill, McMillan, Nichols, O'Brien, Putnam, Spencer, Woodward, President — 20.

Noes — Messrs. Baker, Barhite, Bigelow, Blake, Bowers, Brown, E. A., Church, Clark, G. W., Danforth, Davenport, Dickey, Durfee, Floyd, Foote, Frank, Augustus, Fuller, C. A., Fuller, O. A., Green, A. H., Holcomb, Hottenroth, Johnson, I. Sam, Johnson, J., Kerwin, Kimmey, Kurth, Lincoln, Lyon, Manley, Marshall, McArthur, McClure, McDonough, Mereness, Moore, Morton, Nicoll, Ohmeis, Osborn, Parker, Parkhurst, Peck, Platzek, Powell, Pratt, Redman, Roche, Rogers, Root, Rowley, Sandford, Steele, W. H., Towns, Vedder, Vogt, Wellington, Whitmyer — 55.

The President *pro tempore* — The hour for adjournment having arrived, no further business can be considered, except a report from the Committee on Revision, which is always in order.

Mr. Foote — Mr. President, I present a report of the Committee on Revision and Engrossment of the judiciary article, together with a memorandum at the close of the report, of such changes in phraseology as have been made in the committee.

The President *pro tempore* — This will go on the order of third reading.

Mr. William Sullivan — Mr. President, I ask to be excused from attendance on Monday.

The President *pro tempore* — Under the rule that cannot be granted. The rule provides that no excuses shall be granted after to-night.

The Secretary announced a meeting of the Committee on Revision and Engrossment, immediately after adjournment.

The President *pro tempore* — The Convention stands adjourned, and the Committee of the Whole will resume, Monday morning at ten o'clock, the consideration of Mr. Acker's motion.

Monday Morning, September 10, 1894.

The Constitutional Convention of the State of New York met in the Capitol, Albany, N. Y., September 10, 1894.

President Choate called the Convention to order.

Prayer was offered by the Reverend D. G. McKey.

Upon motion of Mr. O'Brien the reading of the Journal of Saturday, September eighth, was dispensed with, excepting the last page relating to the action of the Convention after coming out of the Committee of the Whole, on general order No. 63, relative to the waters of the Niagara river.

Mr. Bowers — I make the proposition, Mr. President, that there is not a quorum present, for this reason. The Niagara business is important, and we have some ——

The President — Delegates are coming in now in great numbers. You have no objection to the reading of this part of the Journal so that we may all understand just how it stood?

Mr. Bowers — I have no objection to proceeding until you come to a vote.

The President — Upon Saturday, when we adjourned, the situation was this. The President stated the pending question to be upon the motion of Mr. Acker to disagree with the report of the Committee of the Whole on the Niagara river matter in the words following:

"The Committee of the Whole have had under consideration proposed constitutional amendment (printed No. 459), entitled: 'To amend the Constitution by the addition of a new article relative to the diversion of the waters of Niagara river, 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, and that the said proposed constitutional amendment be rejected."

Now, on that he (Mr. Acker) moved the previous question, and a vote being taken, the previous question was denied. So that the question is open for debate on Mr. Acker's motion to disagree with the report of the Committee of the Whole and to reject the amendment, the Committee of the Whole reporting progress and asking leave to sit again.

Mr. Augustus Frank — Mr. President, I offer the following resolution and ask that it be read and brought up for discussion on Thursday morning of this week.

The President — Before resuming the matter that was under consideration on Saturday, if there are any motions to be made they will be received, and Mr. Frank offers a resolution.

The Secretary read the resolution offered by Mr. Frank in the language following:

"Resolved, That when this Convention adjourns, on Saturday of this week, the fifteenth instant, it adjourn to meet on Tuesday, the twenty-fifth, instant, at noon."

Mr. Bowers — Mr. President, I understand that that is to be laid on the table until Thursday.

The President — By the rules, of course, it is subject to debate, and might go over to to-morrow. Mr. Frank asks that it be postponed until Thursday morning.

Mr. I. S. Johnson — Mr. President, it seems to me that it ought to be determined earlier than Thursday what we are to do in reference to this adjournment. It seems to me that we should know, and very speedily, whether this Convention is to adjourn on Saturday for good, or whether it is to continue its labors, and whether it is to leave undone the work which has been prepared by the several committees, passing only a few propositions; and hence I think that this matter ought to be discussed and determined to-morrow, that we may know when we adjourn whether we are to adjourn absolutely, or whether we are to adjourn to some future day, too late to complete our labors.

The President — Mr. Johnson, perhaps, is not aware that to-morrow has been specially set apart for third readings of amendments.

Mr. Johnson — Then I would suggest an amendment that it be as early as Wednesday morning, so that we may know. All I care is that the Convention may determine speedily what course it is to pursue. This will undoubtedly bring it up. All I desire is, that it be not delayed too long.

The President — The Convention will be better able to tell after its sees what progress is made with third readings to-morrow.

Mr. Root — Mr. President, it seems to me that the best way is, to have this lie on the table, and then be called up at such time as the Convention is really ready to consider that question.

The President — Mr. Root moves that the resolution offered by Mr. Frank be laid on the table, with a view of its being called up later.

Mr. Augustus Frank — On Thursday?

The President — Any time. Will that be satisfactory?

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

Mr. Doty — Mr. President, I desire to make a request. I have received a telegram announcing the death of my father-in-law and I desire unanimous consent to be excused until Thursday morning.

Granted.

Mr. Hottenroth — Mr. President, I have received a letter from Judge Sandford, of New York, asking to be excused on account of illness. He may be here this afternoon.

Granted.

Mr. Hill — Mr. President, I would ask for an excuse for Mr. Mantanye. He was called home on account of illness, and is likely to be unable to be here to-day. He was taken sick on Saturday.

Granted.

The President — Are there any other motions, resolutions or reports of committees?

Mr. Hill — I desire to waive my leave of absence for to-day, Mr. President.

The President — Do you still make your point of no quorum, Mr. Bowers? I think there is a quorum present. However, to determine the fact, the Secretary will call the roll.

Mr. Pool — Mr. President, I had leave of absence for to-day, but I now waive it.

The Secretary concluded the calling of the roll.

The President — There are eighty-one members answering to the roll-call. The Chair will order the name of Mr. Joseph Koch stricken from the roll, as he has never accepted his membership. That still leaves the Convention short of a quorum, however. Mr. Bowers, this matter having been thrown open for debate by denial of the previous question, will it not answer your purpose to discuss it now?

Mr. Bowers — I am willing to proceed. I offer the following resolution: That the report of the Committee of the Whole be disagreed with, and the proposed amendment be referred back to the Committee on Legislative Powers and Duties, with instructions to report the same forthwith in the following form: "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, or for the use of the Erie canal, or the ship canal at Buffalo, or for the canal

slips leading to docks and wharves. All corporations, persons and companies now vested with the right to divert such waters, or who, for upwards of twenty years by themselves and grantors, have been engaged in the diversion of said waters, 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 in regard to the diversion and use of such waters as shall be just.

"This section shall not affirm, enlarge, or impair any existing claim of any person, companies or corporations to divert such waters."

The President — There is now a quorum present, and Mr. Bowers's motion, if he will offer it as an amendment to Mr. Acker's motion, would seem to be in order.

Mr. A. H. Green — Mr. President, I desire to make an amendment to that amendment.

The President — Will Mr. Bowers move that as an amendment to Mr. Acker's motion to disagree?

Mr. Bowers — I do; I want to be heard upon it.

Mr. A. H. Green — Mr. President, I have prepared an amendment on this subject which I think covers the ground better than anything I have seen, and I say that without any vanity of authorship. I would like to submit it, and if the matter is to go back to the committee, I would like this to go with it.

The President — The Chair has received an elaborate communication on this subject from the Niagara Power and Development Company. I do not know whether it is sent specially to the Chair for the Convention, or whether each member has a copy.

Mr. A. H. Green — I have never seen a copy of it.

The President — Does the Convention desire to have it read? It is a very elaborate document.

Mr. Barhite — May I ask the nature of the communication, generally?

The President — Well, there is a very elaborate map, and a communication which begins in this way:

"The Niagara Power and Development Company, building the modern city in Niagara county, New York, being interested in the question before the Convention regarding the diversion of the waters of the Niagara river, having no counsel before the committee, and no special friend or advocate on the floor of the Convention,

desires to present direct to you certain important facts that each member of the Convention should be conversant with before the vote on the pending amendment is taken."

Now, I do not regard it as the property of the Chair. Any member can see it, or the Convention can order it to be read.

Mr. A. H. Green — I think, Mr. President, the interests of that corporation are sufficiently represented on the floor of the Convention now.

The President — The Chair is not aware of any corporation being represented by anybody in any matter upon the floor of the House.

Mr. Green — The Chair is then very much behind in information ——

The President — Not up to date? (Laughter.)

Mr. Green — I desire to explain what I mean. I think that nobody on this floor desires to affect or injure any vested rights that are possessed by any one. Therefore, I say that they have representatives on this floor in a general way, not in a particular way, as the Chair says they have not. Now, the amendment that I have prepared seems to me to protect everybody, and to protect the interests of the State as well. I would like to have the amendment read and I will explain it.

The President — An amendment is not in order. The Committee of the Whole has asked leave to sit again. Mr. Acker has moved to disagree with that report and reject the amendment. Mr. Bowers, as an amendment to that, moves to disagree with the report, and send it back to the special committee with instructions to report an amendment which has been read.

Mr. Green — Now, I move to amend that they be instructed to report this amendment which I offer.

The President — I think we shall have to consider one amendment at a time, and after Mr. Bowers's amendment has been disposed of, this may be put.

Mr. I. S. Johnson — A question of information. I would like to inquire of the Chair whether that would not absolutely dispose of the entire matter, whichever way it is disposed of.

The President — It probably would. If the House adopted that, it would, in my judgment, adopt the amendment.

Mr. E. R. Brown — Mr. President, it seems to me we could get more light upon this subject by having the amendment read again. It has never been presented to the delegates.

The Secretary again read the amendment offered by Mr. Bowers.

Mr. McClure — Mr. President, it seems to me it will be almost impossible for us to pass intelligently upon this matter. There necessarily must be a great deal in the amendment, unless we have it before us. I think we ought to put this over to another day, have it printed and brought up, to-morrow morning if necessary. But if there is any disposition to do that, I wish to move to strike out all commencing with the words "all corporations and persons now vested," all following, including the provision that it shall not affect the rights of parties.

I do not see any reason, Mr. President, why we should recognize existing rights here any more than we did in the matter of the salt works; and for one, as I intimated on Saturday, if there is any way of divesting some of these people of their occupancy and possession, to the detriment of the people of the State, I am in favor of doing it. I am very much opposed to any such, even qualified, recognition as there is in this substitute. If there is a disposition and a desire to put these companies and persons under the control of the commissioners, it can be done by some general language which will say that any corporations or persons who have the right to use waters, shall be under the control of the commissioners, but here we propose to say that because they have been there twenty years, even though they may have been trespassers, they have a right which the Constitution now vests in them to remain there, only that they shall be under the direction of some commissioners. I understand that Mr. Root also had a substitute or an amendment, and I move that this or any other amendments that may be offered be printed, and the matter taken up to-morrow morning after the reading of the Journal.

The President — To-morrow, by special order, has already been set aside for the third reading of all bills ——

Mr. McClure — Wednesday morning.

Mr. Green — I would move mine as a substitute for the whole matter, and I desire to have it read now, if there is no objection.

The President — Mr. Green offers now, to amend Mr. Bowers's motion by substituting the matter now to be read as the thing that the committee shall be instructed to report.

The Secretary read the substitute offered by Mr. Green in the language following: "The Legislature shall not, except for adequate compensation, grant, sell, lease or otherwise dispose of any right, title or interest, or license or permission to use any of the waters of the Niagara river; nor shall the Legislature grant, sell, lease, or otherwise dispose of the right, license, or permission to divert any

of the waters of said river, if the volume of water passing over Niagara Falls is thereby diminished. The said river and its waters, so far as the same are within the jurisdiction of the State, shall be and remain its property, under its control and management forever. All grants, sales, leases, or other disposition of any of said waters may be revoked by the State."

The President — The Chair will state the situation. Mr. Acker has offered a motion. Mr. Bowers has offered an amendment to that motion. Mr. Green now offers a substitute for that, and Mr. McClure moves that all these matters be printed, and that the subject be laid over until Wednesday morning, immediately after the reading of the Journal. The question is on Mr. McClure's motion.

Mr. Hottenroth — Do we understand, Mr. President, that the printing includes the printing also of the amendment as it was taken out of the Committee of the Whole last Saturday?

The President — Undoubtedly.

Mr. Becker — Will it be in order, Mr. President, to move an amendment to Mr. Green's substitute, a general substitution for the whole?

The President — Yes, you can offer an amendment to Mr. Green's substitute, and then the question will finally be put on all the amendments, and the Convention can choose between Mr. Acker's original proposition and Mr. Bowers's substitute ——

Mr. Becker — I offer that as such, then.

The President — Do you wish to have that included?

Mr. Becker — Yes, sir; I would like to have it read, Mr. President.

The Secretary read:

Mr. Becker moves to refer the matter back to the special committee, with directions to report as follows: "The right to divert the waters of the Niagara river above Niagara Falls pursuant to any grant or license granted by the Legislature, and the right of any corporation other than a municipal corporation, and of any person actually engaged on the 1st day of September, in the year 1894, in the diversion of the waters of said river above said falls, for business or manufacturing purposes, shall be subject to regulation by the Commissioners of the Land Office, in such manner that any diversion of the said water shall not impair the beauty and grandeur of the American falls of said river, or of the said reservation at Niagara Falls. Said Commissioners of the Land Office may

from time to time, after notice to the Commissioners of the State Reservation aforesaid, and to all other parties interested, make such orders and give such directions in regard to said diversion and use of said waters as shall be just and proper.

"This section shall not be deemed to recognize any right, privilege or license under which any person or corporation may claim the right to divert the waters of said river, or to affect the power of the Legislature to regulate the diversion of said waters for the purposes of the Erie canal, or the ship canal at Buffalo, or for canal slips leading to docks and wharves along the shores of said river, or for sanitary or domestic purposes."

The President — Will Mr. Becker say why he wants this referred to the Committee on Legislative Powers and Duties? The committee from which it originated was a special committee.

Mr. Becker — I stated to the Secretary in offering the amendment that the portion of it which was in pencil at the top should be disregarded. I prepared this Saturday, not knowing the status of the matter. I do not make that motion. The motion that I make is, I offer this as a substitute for Mr. Green's, and expect it to take the same course as all the other amendments that have been offered.

The President — The question cannot be taken up until Mr. Green's amentment is disposed of, as that was an amendment to Mr. Bowers's.

Mr. Becker — I only want to have it printed.

Mr. I. S. Johnson — In leaving the five lines which constitute the substitute that I suggested the other day, it covers the matter entirely. I offer it again, and ask, if it is to be referred back to the committee, that that section, together with the section offered by Mr. Forbes, which changes it slightly, be also printed and referred to the committee.

The President — Ultimately the question might be put on that.

Mr. Roche — Mr. President, I desire to offer an amendment to Mr. Bowers's substitute.

The President — It will be received, but, of course, gentlemen understand that the question cannot be put on every thing at once. Now the question is to postpone this until Wednesday morning.

Mr. Roche — I would like to have that read, Mr. President.

The Secretary read:

Mr. Roche moves to amend Mr. Bowers's substitute, after the words "use of such waters" by the words, "and the compensation to be paid to the State therefor."

Mr. Acker — I understand that the special order for Tuesday morning, the third reading of propositions, is to continue until all the propositions now on third reading are disposed of.

The President — It is.

Mr. Acker — Therefore, I suggest that this proposition, instead of being brought up Wednesday morning, be brought up immediately after the propositions now on third reading are disposed of.

The President — Will that be satisfactory to Mr. McClure?

Mr. McClure — On the understanding that the third readings proceed immediately after the reading of the Journal, if there be any left over on Wednesday.

Mr. Acker — Certainly.

Mr. A. H. Green — Mr. President, I would like to be indulged for a moment to explain the amendment that I offered. I have taken some pains to look over every amendment that has been offered. My proposed amendment contains four distinct and simple propositions. One is to provide for compensation for the water taken. The second is that any diversion of the waters for commercial or manufacturing purposes that does not injure the falls may be allowed. The third is that these privileges granted may be revoked at any time. That is already in the Constitution of the State, and revocation is possible now under the Constitution. The fourth is that these waters remain, so far as they are within the jurisdiction of the State of New York, be and remain under the control and management of the State forever. Those are four distinct propositions, and simple propositions, and affect nobody that has any rights already obtained. Nothing is necessary to be said in the Constitution about that, for what they have obtained they retain until some action may be taken by the Legislature under the existing Constitution to repeal their charters or do whatever may be necessary to be done. Now, those four propositions seem to me to protect every interest that is now engaged there, and to protect the waters of Niagara Falls, without preventing their uses. Now, as to putting all the poetry in, which my friend from Erie (Mr. Becker) suggests, that seems to be a little out of place. Some days ago, you may recollect, Mr. President, he thought that my judgment had been a little affected by reason of my interest in this subject. I have no more interest in it than any other man here, except as a representative of the State on the Niagara Reservation Commission, and I made no proposition originally about it, except to institute here an inquiry as to what ought to be done. I would like to have the thing settled on a basis that would be equitable and

just for the State, and equitable and just for every one concerned, and in no other way; and I think the amendment ought now to go back to the committee and let them do it.

The President — The pending motion is to put it over until Wednesday morning, to be taken up immediately after the completion of the third readings.

Mr. Green — I want to say one word more, Mr. President. My amendment leaves it in the hands of the Legislature. It does not put it in the hands of the Commissioners of the State Reservation, nor in the hands of the Commissioners of the Land Office. It leaves it in the hands of the Legislature to deal with it, subject to the limited restrictions that are put here, as the Legislature may deem best. For one, I am opposed to leaving it to the Land Office Commissioners, and I am opposed to recognizing in the Constitution in any way the rights that are claimed by corporations or persons in the Niagara river. Whatever these rights these corporations have they have, and we cannot impair them.

The President — Mr. Bowers, the motion is to put it over until Wednesday morning, and that is the question before the Convention.

Mr. Bowers — I understand that is the question, Mr. President, having been told so several times by the Chair; and I now propose to amend that by providing that it shall be passed upon immediately after the reading of the Journal; and on that amendment I desire to be heard. This is what I wish to say. The motion as it now stands, to postpone the consideration of this subject until the third reading of bills has been disposed of on Wednesday, may result in this matter never being considered by the House. It is now in a condition to be heard and disposed of, and if we yield at the present time it ought to be heard on Wednesday morning, and we ought not to be put behind sixteen or seventeen general orders, and then be heard for the last time. Therefore, I oppose that amendment and I hope that if this Convention is willing to consider and pass some resolutions which shall protect the waters of the Niagara, it will adopt my amendment and give us a chance to be heard on Wednesday morning. And, as bearing upon the right to have this matter heard at that time, and as bearing upon the propriety of having it heard then, I wish to say one word upon the proposition which I originally offered. The object was to reconcile so far as possible the conflicting interests which prevent our getting any amendment to the Constitution upon this question. It was absolutely essential that further grants should be prohibited, and any amendment which does not prohibit further grants is futile.

Neither can we attempt entirely to destroy rights which are now vested. At the same time, Mr. President, this amendment was drawn with the utmost care in that direction, so as not to affirm or enlarge any existing rights, and the only clause put in here, bearing upon the existing vested rights, is, that those having such rights, or those who have used the waters for twenty years, can do so hereafter only under the direction of the Commissioners of the Land Office. They are not given anything. The right to use for twenty years is not put into this proposed amendment in such language as to confirm any right. This amendment thus drawn simply arranges that those who now have rights, or who are now employing the waters of Niagara, shall do so hereafter under the direction of the Commissioners of the Land Office, but it carefully avoids recognizing those rights, for it reads that the section shall not affirm, enlarge, or impair any existing claims. That section keeps the faith of the State; that section does not recognize any rights which are not valid in law, and it gives protection all round. It protects the waters of the falls. It must resist the attack of any person who claims any right, and if you are going to do anything for Niagara, it must be done somewhat in this form. If we attempt to pass the amendment of Mr. Green, which has already failed two or three times; if we attempt to pass the resolution of the committee, which has plainly failed, we find that we are limited to a choice between doing nothing and doing something. That forces me to the conclusion that so long as we give nothing that does not now exist, but merely regulate that, that it is better for the people of the State that the amendment should be passed in this form. We are quite willing, Mr. President, that the discussion on Wednesday morning should be limited, and I will offer a further amendment that the matter be heard immediately after the reading of the Journal, that the discussion be limited to one hour; and in that form I think this Convention ought to pass it.

Mr. I. S. Johnson — Mr. President, I make the point of order that this resolution is entirely out of order under rule 14, which reads, that resolutions and amendments shall not be entertained which affect the rules. The Committee on Rules have reported the special order for Tuesday morning, and it has not been reconsidered.

The President — The Chair thinks it is competent for the Convention to do what Mr. Bowers proposes, that is, he evidently proposes to interrupt third readings if they are in progress. Now, what is your point, Mr. Johnson?

Mr. Johnson — My point is that rule 55 provides that equivalent motions, resolutions and amendments thereto shall not be entertained, that is, in reference to the rules. The Committee on Rules ——

The President — The Chair does not understand that this is an equivalent motion. The Convention has voted to begin to-morrow morning with third readings, and continue them until completed, which may run into Wednesday. Mr. Bowers moves that this Niagara matter be set down especially for Wednesday immediately after the reading of the Journal, intending that it shall interrupt the third readings if they are not then completed.

Mr. Johnson — I make the point of order that this must go to the Committee on Rules, as of course.

The President — I think that that is correct, that the point is well taken.

Mr. Vedder — I will suggest to Mr. Bowers then, to modify his resolution so that the matter shall be taken up Wednesday morning if the third reading is concluded.

The President — That is the original motion.

Mr. Bowers — May I ask for information, what the point of order was?

The President — The point of order is one that Mr. Bowers has frequently made and been sustained in, that this must go to the Committee on Rules, your motion.

Mr. Bowers — And I have no doubt that the President will order, as he has frequently done, an immediate meeting of that committee.

The President — Undoubtedly. (Laughter.) But will not Mr. Bowers accept Mr. Vedder's suggestion, which is really Mr. McClure's motion, that it be taken up immediately after the conclusion of the third readings already ordered?

Mr. Bowers — If the Convention would guarantee that we shall sit long enough to dispose of the matter, I should be disposed to do it; but as that cannot be done, I am afraid it will be lost.

The President — Then, Mr. Bowers's resolution, carrying Mr. McClure's with it, goes to the Committee on Rules.

Mr. Bowers — One moment, Mr. President. I make the point of order that it was ruled the other day that a motion to change the rule coming in the shape of a motion, could be here heard, and need not be sent to the Committee on Rules.

The President — But Mr. McClure is not the Committee on Rules, neither is Mr. Bowers.

Mr. Bowers — Not on the Committee of Rules? No; I do not think I am any more.

Mr. McClure — Not as much as Mr. Bowers, Mr. McClure is not.

Mr. Bowers — I do not think I am on it at all any more. (Laughter.)

The President — Well, that has gone to the Committee on Rules.

Mr. Forbes — Mr. President, I would move that this communication, from one of the power companies taking waters from the Niagara river, be printed. I make that motion because it is one of the companies to be affected, and because we have established a precedent in regard to the subject of railroad passes, which refers to the whole subject and presents the question on the side of the company; and I think that side ought to be considered by the Convention, but we cannot possibly consider it if we do not have it on our desks. My motion is that it be printed exclusive of the map.

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

Mr. Hawley — Mr. President, I move that any gentleman who has an amendment or a substitute to present on this proposition, may present it to the Secretary, and have it printed, and laid upon the desks of the members, provided that the total number of substitutes and provisions upon this subject shall not exceed seventy-five. I will accept the proposition which Mr. Veeder makes, to make it one hundred.

The President — Does Mr. Hawley press that motion?

Mr. Hawley's motion was withdrawn.

Mr. I. S. Johnson — I move, Mr. President, that the Convention now proceed with the regular order of business.

The President — The next business is the amendment proposed by the Committee on Governor and State Officers.

Mr. McMillan — 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. Barhite — I would like to ask, Mr. Chairman, the condition of this Niagara Falls matter. Does it go to the Committee on Rules?

The President — It goes to the Committee on Rules.

Mr. Barhite — That is, to determine the time when in shall be taken up?

The President — They are going to propose something to the House about it.

The House then resolved itself into Committee of the Whole in consideration of general order No. 77 (printed No. 457), introduced by Mr. Lauterbach, and Mr. Vedder took the chair.

The Chairman — The Secretary will read the bill by sections, if there is no objection.

The Secretary read the first section in the language following:

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

Section 1 of artcle 4 is hereby amended so as to read as follows:

"Section 1. The executive power shall be vested in a Governor, who shall hold his office for two years; a Lieutenant-Governor shall be chosen at the same time and for the same term. The Governor and Lieutenant-Governor, elected next preceding the time when this section shall take effect, shall hold office until and including the 31st day of December, 1896, and their successors shall be chosen at the general election in that year."

Mr. McMillan — Mr. Chairman, I move to strike out line 3, section 1. The proposed amendment before the committee, I desire to State to the delegates, is made up from amendment No. 35, and also from proposed amendment No. 37, each introduced by Mr. Lauterbach, and prepared by the committee in New York, having in hand the suggestion to separate the municipal and State elections. The committee have taken section 1 of the proposed amendment No. 35, and sections 1 and 2 of amendment No. 37. Under the present provisions of the Constitutions, the term of the Governor is three years, which would make it impossible to separate the municipal and State elections, and the Convention having already passed upon that question in favor of separating municipal and State elections, it becomes necessary that the term of office should be changed so that the election may take place in the even years. This proposed amendment provides that the Governor elected this year shall hold until the 31st day of December, 1896, and that his successor shall be elected in the fall of that year. That is the only proposed change with reference to the chief executive. In the proposed amendment to article 5, section 1, there has been no change. Although the words "State Engineer and Surveyor" seem to be put in italics, it is only for the reason that sections 1

and 2 of article 5, as it now stands, have been consolidated. All of the State officers are named in section 1 of that article excepting the State engineer. He is named alone in section 2, so that in order to make one section, all of the State officers, including the State Engineer and Surveyor, have been grouped in one section. And the only addition made there is that the State Engineer and Surveyor is made a "practical civil engineer," instead of a "practical engineer," as provided in the old Constitution, using identically the same language, except the addition of the word "civil." Section 2 to amend article 5, is entirely new, and is made for the purpose of harmonizing the terms of office so that the next officers elected as State officers, excepting the Governor and Lieutenant-Governor, shall be elected for three years. Then they start upon the uniform term and will be elected upon the same ticket with the Governor and Lieutenant-Governor, and at the same time.

I withdraw my motion to strike out line 3.

Mr. Lincoln — Mr. Chairman, I move to strike out the first section.

This motion is made, not for the purpose of an argument, to be withdrawn afterward, but in all seriousness. I am opposed to the change of the length of term of the Governor and Lieutenant-Governor; and it is not necessary, so far as this so-called cities scheme is concerned, that these terms should be changed. I still adhere to the position which I assumed a long time ago in this Convention, perhaps two months ago, that the cities were asking too much at the hands of this Convention, and that they ought not to ask that the entire scheme of our governmental system should be overturned and revolutionized or reorganized, for the purpose of accommodating the cities in their attempt at separation of municipal and State elections. Now, I am willing to concede the moving of the elections of the State Senators into the even years. That was done by a substitute in the apportionment bill offered by myself on the day that the bill was ordered to a third reading. I am willing that the election of State officers, so-called, that is, the Secretary of State and the other two-year officers, should be changed to the even years; but I do object to a change of the term of Governor and Lieutenant-Governor. That was changed deliberately from two years to three years. It was changed, I suppose, because the people wanted it changed, or else they would not have ordered it done by a constitutional amendment; and it is not necessary to go back again for the purpose of carrying out the cities scheme. I am unwilling to believe, Mr. Chairman, that the people of our cities are

not capable of electing a Governor and a mayor in the same year, as seems to be inferred from this desire to separate the election of the Governor entirely from the city election. The election of the Governor and Lieutenant-Governor, as the officers now stand, will not occur together with the election of a mayor but once in six years, and it seems to me that once in six years, at least, the people of the cities would be able to conduct themselves in accordance with the ordinary proprieties of an election to such a degree that they can vote for a Governor upon one ticket, and a mayor upon another, or a Governor and a mayor upon the same ticket. Now, I do not believe we ought to change the terms of any of these officers, but, as I suggested, and as I stated, at a conference of five or six committees in the Assembly parlor, in June, my position is that I am willing to concede the changing of the date of the election of these officers to correspond with the election of a mayor, but that we ought not to change these terms. I think three years is a fair term for Governor and Lieutenant-Governor. It has proved satisfactory since that term was established, and it is not necessary for the purposes of the cities article, or the carrying out of the cities scheme of home rule reform, or any other reform that they have in mind, that we make this entire change. For that reason I insist upon my motion, that section 1 be stricken out. Then section 1 of the article of the Constitution as it now stands will remain. That is all the amendment I desire to make.

Mr. McMillan — Will the gentleman permit a question?

Mr. Lincoln — Certainly.

Mr. McMillan — I would like to ask the gentleman what he proposes to do with the action of the Convention already taken in the adoption of the cities article, section 1, in which it provides that the State elections shall take place in even years, and the municipal elections in odd years. Does he propose to go back ——

Mr. Lincoln — I was not aware that that language was in that article. It was not as it came into the committee, but it was adopted finally by the Convention in my absence. If that language is now in the article as finally adopted by the Committee of the Whole, and sent to third reading, then it ought to be changed upon third reading.

Mr. McMillan — That has been in the article all the times it appeared upon the printed report. It was on the files of all the delegates.

Mr. Lincoln — I have taken no part in the debate upon the city amendment.

Mr. Dickey — Mr. Chairman, I desire to offer an amendment.

Mr. Moore — Are amendments in order, Mr. Chairman? I desire to send up one.

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

Strike out "six," in the eighth line, and insert "eight," so that it would read, "Thirty-first day of December, 1898."

Mr. Dickey — Mr. Chairman, as I read this first section, it is meaningless, because the language is, "The Governor and Lieutenant-Governor elected next preceding"— well "preceding"— that makes it all right. But the purpose of my amendment is that the Governor to be elected this fall shall, instead of having his term reduced to a two-year term, have it extended so as to make it a four-year term; and then it comes in on the even years. I see no reason why the Governor to be elected this fall should serve only two years. Better make the term a four-year term, and after that make it a three-year term, reducing it by one year; and the purpose of my amendment is to permit that it be a term of four years instead one of two.

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

Strike out in line 4 of section 1, the word "two," and insert the word "four;" and in line eight strike out the word "six" and insert "eight."

Mr. McMillan — Mr. Chairman, the amendment offered by Mr. Moore is an analogous one to that offered by Mr. Dickey. I think the Chair should rule it out of order. It proposes to lengthen the term to four years, and to expire in 1898.

The Chairman — The Chair understands that the motion of Mr. Dickey was simply to make the term of the next succeeding Governor three years, whereas the gentleman from Plattsburg wishes to make it permanent for four years.

Mr. Holls — I sincerely hope that all the amendments to the article as reported by the committee will be voted down; but if any should prevail, it should be the amendment of the gentleman from Clinton, making the term four years instead of two. To leave the term of the Governor at three years would undoubtedly seriously interfere with the scheme of separate elections, and I wish to say in reply to the remarks of my friend from Cattaraugus (Mr. Lincoln), that the demand for separate elections was not a demand of the cities for relief for themselves, nearly as much as it was for relief for

the State, and for the entire people of the State; because there is just as much necessity and just as great importance to the people of the rural counties that their legislatures shall not sit here as higher boards of aldermen for the cities of the State, as it is for the citizens of the city of New York. It would interfere and in fact nullify the entire scheme of separate elections, such as this Convention has already approved by a most decisive vote, a vote in which both parties have united; and the best way to carry out the scheme is undoubtedly as the committee have reported, making the terms two years. In my opinion, that is a rather short term. I should rather see the term of the Governor fixed at four years than two, but if there is to be a choice between the two, do not let us interfere with that one chance which the citizens of the city of New York and the citizens of the State of New York have of separate municipal and State elections, to the great improvement of both.

Mr. Roche — I offer an amendment, Mr. Chairman.

The Chair — The amendment of the gentleman from Rensselaer will be received and disposed of in its order. There are two amendments pending now.

Mr. Roche — Mr. Chairman, as I understood, there was something of a disposition to consolidate the offices of the State Engineer and Surveyor and the Superintendent of Public Works. Now, the scheme presented here by the Committee on Governor and State Officers does not carry out that idea; and why, I do not know. I understood also that there was a disposition upon the part of many of the delegates to provide that the Superintendent of Public Works should be elected by the people. Now, it is well known that this officer took the place of the old Canal Commissioners who were always elected by the people. As that office was abolished and the substitution of the system of having the public works, and particularly the canals of the State, placed in the hands of a Superintendent of Public Works, was to be tried, and was experimental, it was proposed in the beginning, and that is the provision of the present Constitution, that he should be appointed by the Governor. Now, this man, who probably exercises larger powers, has greater influence than any officer of the State outside of the Governor, who has the expenditure under his hands every year of upward of a million dollars, who has the control of immense patronage and of a large army of employes, who can be used not alone for the purposes of a political party, but of a faction of that party, and for the Governor who appoints him, in his political aspirations or ambitions, I sub-

mit that as to an officer with that tremendous power and patronage, the people at the polls should have something to say in regard to who should fill the place. Under the present Constitution he is appointed by the Governor; he is removable by the Governor; he may be suspended by the Governor. He is there, the representative, and if need be, the tool, of whoever may be put in the office of Governor of this State, to do his bidding. I submit, Mr. Chairman, that that is not Democracy; it is not good Republicanism.

Mr. McMillan — I desire to have the proposed amendment, to which the gentleman is addressing his remarks, read, that we may know whether it is at all applicable or not.

The Chairman — It is very long. The substance of it is a provision for electing the Superintendent of Public Works and it comes in at the end of the section.

Mr. Roche — Yes, sir; comes in at the end of the section. Now, Mr. Chairman, the Governor can select an improper man; he may select a person who, so far as the great public works which come under the control of the superintendent are concerned, namely, the canals of this State, may be unfriendly to the canals of this State; but if the people are allowed to select, then they have a chance to vote for the nominees of the great political parties of the State, not only to determine as to the fitness of the candidate, but to determine as to whether the man that they propose to put in charge of the canals of the State is really a friend of the canals, or whether he can paralyze their usefulness, the purposes for which they were constructed and maintained, and throw them into the hands of persons unfriendly to their maintenance. I submit, sir, in the interests of good government, in the interests of our elective system, as a recognition of the rights and capacities of the people of the State, that this highly important office, more important, I say, than almost any other office in the State, except that of the chief executive, that it shall be placed in the hands of the people at the polls to say who should fill it. Now, I maintain in my proposition all the present constitutional provisions on that subject, with this exception, that I add to it that the Superintendent of Public Works shall be a practical engineer, or a builder, which he ought to be; and the further provision that the first election shall be held in the year 1895, and the person elected shall hold his office for four years, which I think is none too long a term for so important an office; and that also keeps up this proposed scheme of having the general elections, or rather State elections, kept separate from municipal elections. Now, I submit, Mr. Chairman, that we can go with

good grace and with strength for this Constitution before the people of this State this fall, and return to them a power which was taken from them in 1874, and which under our elective system should be allowed to remain in the Constitution.

Mr. J. Johnson — Mr. Chairman, I think gentlemen of the Convention will bear me witness that in anything that affects the country, and the country districts, and their great and splendid constituencies, that the members from the cities have been always anxious and willing to learn the sentiment of the country districts; and, sir, I ask this. The representatives from the great cities by the lake think it is vitally essential, absolutely necessary, for better government in those cities, that there should be a separation of elections. Delegates, citizens, journals, all representatives of public opinion, seem to coincide in that, and we come before them with a heavy weight and a burden if that is not to be done; and if the amendment of the gentleman from Cattaraugus carries, what we have agreed to, what we supposed was the unanimous thought of this Convention, is grievously interfered with if not altogether destroyed. I beg of you, gentlemen, in the name of these great cities, to give us this separation of elections and make it that the Governor shall be elected for an even number of years, two or four as you may decide. Four will not interfere with the plan of the separation of elections. Three grievously wounds if not destroys it.

Mr. Osborn — Mr. Chairman, the gentleman from Erie has stated that the cities article already passed in this Convention provided that this election should be separate from other city elections. Now, I should like to have him read the portion of the cities article which provides that the elections in the State other than those held in cities, shall be held on any term, or any time, or anything about the elections of officers other than the city officers.

The Chairman — Does the gentleman from Erie respond?

Mr. Root — As the gentleman from Kings does not seem to be here, may I answer the question?

Mr. Osborn — The gentleman from Erie made the statement I referred to. If you can answer it, and he cannot, I would be very happy to have it explained.

Mr. Root — I think I can, if I understand what the gentleman from Putnam inquired about.

The Chairman — The interrogatory will be transferred then to Mr. Root, the gentleman from New York.

Mr. Root — The proposition before a number of committees,

including the Cities Committee, the Committee upon Legislative Organization, the Committee upon Legislative Powers, and the Committee upon Governor and State Officers, was to separate elections. To that end it was necessary that action should be taken by several different committees. The Cities Committee have reported, and this Convention has ordered to a third reading, a provision fixing municipal elections upon odd-numbered years. The Committee on Legislative Organization have reported, and the Convention has ordered to a third reading, a provision fixing the election of Senators upon even-numbered years. That separates those. The Committee on Governor and State Officers now reports, and the Convention has under consideration, a proposition fixing the election of Governor and State officers upon even-numbered years. That separates those from the municipal elections. The harmonious working of these different propositions, taken all together, completes the separation.

Mr. Osborn — I understood, Mr. Chairman, that that was in the air with regard to this, but that any action had been taken at the time of the consideration of the cities amendment, that fixed upon this Convention by that cities amendment a two-years term for the Governor, I was not able to understand. That question has not yet been answered; but, Mr. Chairman, one word upon the merits. This separation of city elections from State elections is to my mind, and we have all got past that point that we were at when we were discussing the cities amendment, where any man who opposed it, was desirous of defeating the cities amendment, this consideration is to my judgment, a great *ignis fatuus*. I have not the slightest idea that the separation of city from State elections is going to have anything like the importance which has been ascribed to it on this floor; nor at any rate, Mr. Chairman, that there is sufficient importance in the separation to justify this Convention in changing the fundamental basis of our State system. If it is important that city elections should be taken out of politics, why is it not important that State elections should be taken out of politics? Why have not the citizens of the State the right to choose our Governor independent of the considerations which are brought up in the choice of a President? Is it beyond the memory of any gentleman here that in the last gubernatorial election the greatest apprehensions were raised in the minds of our citizens as to whether the gubernatorial and the presidential elections were wholly separated? I do not mean to say that there was any foundation for those charges, but I do mean to say that the state of mind which was engendered in the

feelings of our citizens was one which should be respected by this Constitutional Convention; that this amendment proposes that every time we have a presidential election we shall have a gubernatorial election; that the issues of national politics and the issues of State politics shall be inexplicably confused. Now, Mr. Chairman, I consider that that is a matter of the very first moment. I consider further, that the gentlemen who have argued in favor of the cities motion have not shown sufficient cause why such a matter as that should be interjected into our State system. If, as Mr. Lincoln, of Cattaraugus, has well said, it is desirable that it should be done, we must, at any rate, show some sufficient reason why our State system should be confused for the benefit of the cities. And for these reasons, I believe that the present constitutional term of three years for Governor should be retained. If the cities cannot purify their politics in two elections out of three I have not the slightest idea that they are going to be able to purify them in the third election; and I believe we should leave our Constitution as it is.

Mr. A. H. Green — Mr. Chairman, I rise with great diffidence to discuss a question here which so nearly concerns the gentleman who permanently occupies the chair and one who adorns it at present. Cutting the term down from two years to three years, it seems to me, militates somewhat against his expectation, but a sense of duty leads me rather to subordinate personal ambitions to the public good. I believe, sir, in the article as it stands, retaining the term of the Governor at two years, and I think it would be much improved if it were possible to make it one year; and that is not without its precedent in Massachusetts and in Ohio, where the elections are for one year. One is very much reminded in this debate of the debate at the time of the formation of the Constitution. One set of gentlemen would have had the President hold office for six years, others for life, with all the paraphernalia that surrounded royalty and monarchical institutions at the time of George III. Now, sir, I think we have got down to something more of a democratic basis, a short term and a return to the people constantly for the election of these officers; and I hope the term will remain at two years and that there will be a provision instituted here that no Governor shall succeed himself.

Mr. Moore — Mr. Chairman, I only want to say a word in defense of my proposed amendment. I remember when the term of Governor was changed from two years to three years, and I am sure that the term of three years has worked well. My idea is that any man who is fit to be Governor of the State of New York at all should

hold it four years. After he has been there two years, he has just about learned what his duties are, and, therefore, it seems to me that, while the amendment does not interfere with the proposed cities article or the proposed biennial elections amendment, this amendment of mine to this article increasing the term of Governor to four years instead of limiting it to two years, should prevail. The argument that we may possibly get a "Bloody Bridles" Waite or an Altgeld for Governor of the State of New York, I think, is unworthy of the courage or the conscience or the convictions of any member of this Convention. I do not believe any such man will ever be nominated, or, if nominated, elected Governor of this State; and hence I do not regard that as a good argument against making the term of Governor four years. Therefore, I hope that my amendment will be adopted by the Convention.

Mr. McMillan — One word, Mr. Chairman, in regard to the proposed amendment of Mr. Roche. I desire to say for the information of the committee, that the Committee on State Officers having this matter in charge had before them the Superintendent of Public Works, also the State Engineer, and a representative from the Comptroller's office, and after a hearing of these parties and finding the check system that existed back and forth between the Superintendent of Public Works and the State Engineer's offices in checking up all the accounts that go to the Comptroller, we came to the conclusion that it was unwise to merge them and we left them as they are now. We have at present a Democratic Superintendent of Public Works, appointed by the Governor, and a Republican State Engineer; so that I think the people of the State will have the best service by keeping up that system of reciprocal checks existing between these officers, and for this reason, the committee came to the conclusion that they should not be merged, and that the Superintendent of Public Works should not be elected, but remain as he is now, appointed by the Governor.

The question was put on the amendment of Mr. Moore, to make the term of the Governor four years, and it was determined in the negative.

The Chairman — The next is the proposition of Mr. Dickey, to make the term of the next Governor, if elected this fall, four years.

The question being put on the amendment of Mr. Dickey, it was determined in the negative.

The Chairman — The question is now upon the amendment offered by Mr. Lincoln, to strike out section 1.

The question being put upon the proposition of Mr. Lincoln, it was determined in the negative.

The Secretary then read section 1, of article 5, as it is proposed to be amended, as follows:

"Section 1. The Secretary of State, Comptroller, Attorney-General, Treasurer and State Engineer and Surveyor shall be chosen at a general election at the times and places of electing the Governor and Lieutenant-Governor, and shall hold their offices for two years, except as provided in section two of this article. Each of the officers in this article named, excepting the Speaker of the Assembly, shall, at stated times, during his continuance, in office, receive for his services a compensation which shall not be increased or diminished during the term for which he shall have been elected, nor shall he receive to his use any fees or perquisites of office or other compensation. No person shall be elected to the office of State Engineer or Surveyor who is not a practical civil engineer."

The Chairman — The amendments now being under the head of amendments generally, the next will be that of Mr. Roche.

Mr. Roche — I desire to make that two years at the request of a number of delegates — substitute for the word "four" the word "two."

The Secretary then read the amendment of Mr. Roche as follows:

"Article 5 of the Constitution is hereby amended by repealing section three of article 5, and substituting the following in place thereof:

"Sec. 3. There shall be a Superintendent of Public Works who shall be chosen at a general election and who shall hold his office for the term of two years. No person shall be eligible to said office who is not a practical engineer or builder. He shall receive a compensation to be fixed by law, and which shall not be increased or diminished during his term of office. He shall be required by law to give security for the faithful execution of his office before entering upon the duties thereof. The Superintendent of Public Works shall be charged with the execution of all laws relating to the construction, improvement, repair and navigation of the canals of the State, except in so far as the same shall be confided to the State Engineer and Surveyor; and, subject to the control of the Legislature, who shall make the rules and regulations for the navigation or use of the canals. He shall cause the canals to be opened for navigation at the earliest day practicable, and to that end he shall take proper measures for the prompt execution of all contracts which may be made for putting the canals in repair; and he shall be vigorous in

supervising and bringing to completion all work authorized by law and which is necessary for securing the efficiency of the canals. He shall make an annual report to the Legislature. He may be suspended or removed from office by the Governor, or by the Senate, whenever the public interests shall so require, but only after he has been served with a copy of the charges against him, and he has had an opportunity to be heard in his defense. When a vacancy shall occur, otherwise than by expiration of term, in the office of Superintendent of Public Works, the same shall be filled for the full term at the next general election happening not less than sixty days after such vacancy occurs, and until the vacancy shall be so filled the Governor by and with the advice and consent of the Senate, if the Senate shall be in session, or if not the Governor alone may appoint to fill such vacancy. The Superintendent of Public Works shall appoint not more than three assistant superintendents, who shall hold their office for two years, and who shall possess the same qualifications as are required for the superintendent. They shall receive a compensation to be fixed by law, which shall not be increased nor diminished during their term of office. Their duties shall be prescribed by the superintendent, subject to modification by the Legislature. They shall be subject to suspension or removal by him, whenever in his judgment the public interests shall so require; and the cause of removal shall be at once reported to the Governor. Any vacancy in the office of assistant superintendent shall be filled, for the remainder of the term, by the Superintendent of Public Works by the appointment of a person qualified as aforesaid. All other persons employed in the care and management of the canals, except those in the department of the State Engineer and Surveyor, shall be appointed by the Superintendent of Public Works, and may be suspended or removed by him and their names, residence, general duties and rate and amount of compensation paid them shall be stated in the annual report of the superintendent. The first election under this section shall be held on the first Tuesday of November, eighteen hundred and ninety-five, and until a person shall be elected and shall qualify, the office of Superintendent of Public Works shall be filled in the manner provided in the Constitution which was in force on the 31st day of December, 1894."

The question being put on the amendment of Mr. Roche, it was decided in the negative.

Mr. Roche — Mr. Chairman, I ask for a rising vote.

Mr. Countryman — One moment, Mr. Chairman, I would like

to inquire whether the long-winded provision read by the clerk was substantially only a copy in that respect of the present Constitution.

Mr. Roche — Substantially a copy of the present provision, which of course ought to be re-enacted with the change that there shall be an election of the Superintendent of Public Works instead of appointment.

Mr. Countryman — Is there any change?

Mr. Roche — Substantially none.

Mr. McClure — Mr. Chairman, I would like to ask another question. Does the gentleman know any reason why the committee left out a provision that the head of this department of public works should be an elective officer?

Mr. Roche — I know of no reason.

The question being put on the proposition of Mr. Roche, by a rising vote, there being thirty in the affirmative and forty-three in the negative, the amendment was lost.

Mr. McMillan — I move, Mr. Chairman, the committee do now rise, report this amendment to the Convention and recommend its passage.

Mr. Hottenroth — A point of order. The first section has not been adopted yet.

The Chairman — It will have to be adopted.

Mr. Hottenroth — There was a motion to strike out and that motion was lost.

The Chairman put the motion of Mr. McMillan, and it was carried.

President Choate resumed the chair.

Mr. Vedder — Mr. President, the Committee of the Whole have had under consideration the proposed amendment (printed No. 457), entitled "An act 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, etc.," have gone through the same, have made no amendment and have instructed the Chairman to report that fact to the Convention and recommend its passage.

Mr. Roche — I move to disagree with the report of the Committee of the Whole, and that it be referred back to the Committee on the Governor and other State Officers with instructions that the following provision be incorporated therein, and that is the provision that the Superintendent of Public Works shall be elected by the people, and upon that I call for the yeas and nays.

The call for the yeas and nays being sustained, the Secretary proceeded to call the roll.

Mr. Cookinham — Mr. President, if the proposition were simply to provide that the Superintendent of Public Works should be elected by the people, I should vote in favor of Mr. Roche's amendment, but I am not sure that that is the sole proposition, and, therefore, I vote no.

Mr. Moore — Mr. President, I desire to explain my vote. The present Superintendent of Public Works is appointed by the Governor, by and with the advice and consent of the Senate, and holds his office until the end of the term for which he is nominated or until his successor is appointed, and as Mr. Roche amended his amendment from four years to two years, I am in favor of the people electing the Superintendent of Public Works, and I shall, therefore, vote aye.

Mr. T. A. Sullivan — Mr. President, as a member of the committee that reported this bill, my recollection is that in the committee the position I took was that this office of Superintendent of Public Works should be merged in that of the State Engineer and Surveyor, and that that officer be elected by the people; but inasmuch as we are to preserve not only the office of State Engineer and Surveyor, but that of Superintendent of Public Works, I think it is well that one be elected and the other appointed, and, therefore, I vote no.

Mr. Crosby — Mr. President, I desire to explain my vote. I have had no opportunity to examine the amendment, and not knowing its contents and what dangerous principle may be involved in it, I, therefore, vote no.

Mr. Barhite — Mr. President, I find that when I voted upon this question I did not correctly understand all the provisions of the proposed amendment. I desire to change my vote from the affirmative to the negative.

The roll call being concluded on the amendment of Mr. Roche, it was decided in the negative by the following vote:

Ayes — Messrs. Arnold, Bigelow, Bowers, Burr, Campbell, Chipp, Jr., Cochran, Countryman, Danforth, Davenport, Deady, Dean, Dickey, Emmet, Floyd, Forbes, Fuller, O. A., Green, A. H., Hottenroth, Johnson, I. Sam, Kerwin, Kimmey, Marks, Maybee, McClure, McDonough, McLaughlin, J. W., Mereness, Moore, Mulqueen, Ohmeis, Osborn, Platzek, Pratt, Roche, Rogers, Rowley, Schumaker, Smith, Towns, Truax, C. H., Tucker, Veeder — 43.

Noes — Messrs. Abbott, Acker, Ackerly, Baker, Barhite, Barnum, Becker, Brown, E. A., Brown, E. R., Cady, Carter, Cassidy, Church, Clark, G. W., Clark, H. A., Coleman, Cookinham, Crosby, Doty, Durfee, Foote, Francis, Frank, Augustus, Fraser, Fuller, C. A., Hamlin, Hawley, Hill, Holls, Johnson, J., Kellogg, Kurth, Lauterbach, Lester, Lewis, M. E., Lincoln, Lyon, Marshall, McCurdy, McMillan, Morton, Nichols, O'Brien, Parkhurst, Parmenter, Peck, Pool, Putnam, Redman, Root, Steele, A. B., Steele, W. H., Sullivan, T. A., Vedder, Wellington, Whitmyer, Wiggins, Woodward, President — 59.

The President — The question recurs now upon agreeing to the report of the committee recommending the passage of this amendment.

Mr. Cassidy — Mr. President, I call for the yeas and nays.

The call was sustained.

Mr. Mereness — I would like to inquire whether it would be in order now to require another amendment and report.

The President — No.

The Secretary then proceeded with the roll-call on the question of agreeing to the report of the committee recommending the passage of the amendment.

Mr. Cassidy — Mr. President, the great Webster once said that one of the greatest menaces to free institutions was the feeling on the part of newly-elected members that something had got to be done, and so they commenced pawing and bellowing like a bull in a china shop and, as a rule, they destroyed more than they built up. Of course, that great man was thinking of the Legislature. He did not have reference to a measure like this, to a Constitutional Convention. Had he lived in these days and been present at this Convention, I fear those words would not have been strong enough. Hardly a section of the Constitution, which we have learned to love and revere, has been saved from attack by members of this Convention from one source and another. I do not believe that the whole government of this State ought to be overturned for the sake of making it a little more convenient for the cities. I remember that the president of Union College, it is said, once sat before the fire until it became uncomfortably warm and sent for his servant to remove the stove, and when the servant suggested that he might move his chair he said he never had thought of that and immediately moved his chair instead of the stove. Now, Mr. President, here we are trying to change the whole plan of government of this State to satisfy the convenience of the cities, and we are not sure

that it is going to work well. Now, if the cities want to adopt it or to make it possible to hold separate elections, let them so adjust their matters that they will come into perfect harmony with the State and let us not turn over everything just merely for the sake of doing something and answering to requirements which many of us seem to feel are imposed upon us that we must be doing something or else we would not have been elected. I vote no.

Mr. Dickey — Mr. President, I desire to explain my vote. The Governor elected this fall will be elected under a Constitution giving him a three-years term. This amendment would shorten his term one year, so he could only serve two years. The only pretense for this is to give the cities once in three years a chance to have separate elections. I vote no.

Mr. Mereness — Mr. President, I desire to explain my vote on this proposition. The Committee on Governor and State Officers, of which I am a member, decided at one of its meetings to make the office of Superintendent of Public Works an elective office, and to accomplish that we thought that we ought not to increase the number of elective officers, but that the office of State Engineer and Surveyor might very well be consolidated with this office of Superintendent of Public Works. For some reason or other that matter does not seem to have assumed the proper shape before this Convention, and, I think, it is a very important matter, and as the matter now stands, I shall vote no.

Mr. Roche — Mr. President, I desire to explain my vote. One member of the Committee on Governor and State Officers says that the committee decided that the office of Superintendent of Public Works should be elected by the people; another member of the committee says that the committee did not so decide; two members of the committee have stated to me that the committee voted that the offices of Superintendent of Public Works and State Engineer and Surveyor should be consolidated into one office, which office should be filled by election by the people. Instead of all that, we have this provision changing the present system of our State government and in order to accommodate a provision which has already been adopted we propose to overthrow a system which was inaugurated, and wisely, I think, by the people some twenty years ago — more than twenty years ago. Because of the contradictory statements which I hear relative to this article and the fact that it contains no provision whatever for electing the Superintendent of Public Works by the people if that office is to be continued, I vote no upon this proposition.

The roll-call being concluded, the yea and nay vote to adopt the report of the committee and pass the bill was as follows:

Ayes — Messrs. Abbott, Acker, Ackerly, Baker, Barhite, Barnum, Becker, Brown, E. A., Brown, E. R., Cady, Carter, Church, Clark, G. W., Clark, H. A., Coleman, Cookinham, Crosby, Davenport, Durfee, Emmet, Floyd, Foote, Francis, Frank, Augustus, Fuller, C. A., Fuller, O. A., Galinger, Giegerich, Green, A. H., Hamlin, Hawley, Hecker, Hill, Holls, Johnson, J., Kurth, Lauterbach, Lester, Lewis, M. E., Lyon, Marshall, Maybee, McCurdy, McDonough, McMillan, Moore, Morton, Nichols, O'Brien, Parkhurst, Phipps, Pool, Porter, Root, Steele, A. B., Steele, W. H., Sullivan, T. A., Truax, C. H., Turner, Vedder, Wiggins, Woodward, President — 63.

Nays — Messrs. Arnold, Bigelow, Cassidy, Chipp, Jr., Cochran, Danforth, Deady, Dean, Dickey, Doty, Gibney, Holcomb, Hottenroth, Johnson, I. Sam, Kellogg, Kerwin, Kimmey, Marks, McClure, McLaughlin, J. W., Mereness, Mulqueen, Ohmeis, Osborn, Parker, Parmenter, Peck, Platzek, Pratt, Putnam, Roche, Rogers, Rowley, Schumaker, Smith, Speer, Springweiler, Towns, Tucker, Veeder — 40.

The President — The motion is adopted. This amendment goes to the order of third reading by way of the Committee on Revision and the printer. The next business in order is the canal amendment, general order No. 53.

Mr. Cady — I move that, Mr. President.

The President — Mr. Cady moves that the Convention go into Committee of the Whole on No. 53.

Mr. McClure — I rise to a question of information, whether the Committee on Rules has made any amendment to the amendment on the Niagara Falls matter?

Mr. Root — I desire to make the following report from the Committee on Rules: The Committee on Rules recommend that general order No. 63, relating to Niagara Falls, be considered immediately after the conclusion of the third readings, which are now a special order for Tuesday morning, that the time for consideration be limited for one hour in conjunction and speeches be limited to five minutes each.

Mr. Barhite — Mr. President, I would like to ask the acting chairman of the Committee on Rules how long in his judgment the third readings will continue?

Mr. Root — Mr. President, I am not able to form any judgment

upon that; I have not had sufficient experience in third readings to tell. Perhaps we can tell better after they have commenced and gone on a little ways.

Mr. Barhite — Well, Mr. President, it seems to me if we have no definite information upon that point that the effect of this report if adopted may be to put the matter over beyond the Convention, or certainly beyond this week. Now, there is no question but that nearly every delegate in this Convention is convinced that something ought to be done. Something ought to be adopted which will prevent the further diversion of the water of Niagara Falls. The only question seems to be as to just what shape the amendment should be in. There is more danger of this bill being killed in the house of its friends by too many amendments than there is of its being injured by its enemies. Now, it does seem to me that some definite time should be appointed for the consideration of this measure. I have no objection to limiting the time for discussion to one hour. It has been discussed already several hours. I can see no harm in that, and I would move, Mr. President, if in order, that the report be so amended that it shall be considered after the third readings which have now been made a special order, or made after those on Wednesday, not later than two o'clock Wednesday.

Mr. Hottenroth — I move to amend Mr. Barhite's amendment. I move that the amendment be amended so as to direct that the Niagara Falls matter be taken up Tuesday morning immediately after the reading of the Journal, unless the third readings made the special order for Tuesday morning shall continuously extend into Wednesday, when it shall be taken up Wednesday morning immediately after those third readings.

The President — Does Mr. Barhite accept that?

Mr. Barhite — I do, sir.

Mr. Root — Mr. President, when you hold anything very close to your eye it assumes undue proportions with the rest of the universe. I am inclined to think that my friends are in that position in regard to this amendment. They assume that if it is not taken up again until after the third readings it won't be considered at all, which means that they think that after this thing has been twice before this Convention, after the limit accorded to it has been exceeded, they are entitled to have it pressed in again and have it push out from consideration matters which have been already ordered to third readings in the Convention. I do not think so. It seems to me the report of the committee which puts things that this Conven-

tion has already agreed upon to the question of ordering them to third readings before this Convention that nobody can agree upon, which they have had two unsuccessful efforts to agree upon, the matter ought to be dropped.

Mr. McClure — It seems to me very plain and not to warrant the suggestion made by the acting chairman of the Committee on Rules. I think we mean the same thing. I take it that he means that if the third readings run over until Wednesday the third readings should be continued to the end. I only suggest by my amendment that the Niagara Falls matter be taken up on Wednesday after third readings have been completed.

Mr. Root — Well, that is the report.

Mr. McClure — Then, if they do not run into Wednesday, it shall be taken up immediately after the reading of the Journal.

Mr. Root — Mr. President, the gentleman need not trouble himself as to third readings not running until Wednesday morning.

Mr. McClure — You said you could not give the information as to how long they would run. You did not say that before.

Mr. Root — They will take all that time and more.

The President — Some one was asking for information. There are eighteen matters on the order of third readings. It depends upon the gentlemen themselves how orderly they will be. We can get through in one or two hours, or one or two weeks, according to the behavior of the Convention.

Mr. Bowers — I desire to say that I dissented from the report of the Committee on Rules, and I hold the same view that I expressed this morning, which is, if you intend to do anything in regard to the question it must be done to-morrow. From that position I have in no sense of the word receded. I believe it to be a subject we ought to deal with. I think we have nearly reached a conclusion, and I think the amendments that were offered this morning can easily be brought to a position in which we can all agree and pass one of them, and I hope this Convention will give us a chance to be heard to-morrow morning.

The President then put the question on agreeing to the report of the committee, and it was decided in the affirmative.

The President — The next matter in order is the canal amendment, upon which Mr. Cady, the chairman of that committee, has moved that we now go into Committee of the Whole. The time is limited to three hours for the three amendments. Gentlemen will understand that, because something was said about this the

other day. It will be understood that the time is limited to three hours for the three amendments together. Mr. Foote asks that the members of the Committee on Revision will meet at once in their usual room of meeting. Mr. Cady, do you move all three amendments?

Mr. Cady — Yes, I move all three.

The Convention then went into Committee of the Whole, Mr. Barhite in the chair.

The Chairman — The Convention is now in Committee of the Whole on general orders No. 53, No. 54 and No. 58, to amend introductory Nos. 386, 387 and 252. The Secretary will read the first of the proposed amendments.

The Secretary then read as follows:

"Section 3 of article 7 of the Constitution of the State of New York is hereby amended so as to read as follows:

"Sec. 3. No tolls shall hereafter be imposed on persons or property transported on the canals, except that the Legislature may, in its discretion, impose or remove tolls on products of the Dominion of Canada passing through any canal of this State, but all boats navigating the canals, and the owners and masters thereof, shall be subject to such laws and regulations as have been or may hereafter be enacted concerning the navigation of the canals. The Legislature shall, annually, by equitable taxes, make provision for the expenses of the superintendence and repairs of the canals."

The Chairman — The Secretary may read the other two proposed constitutional amendments.

Mr. Cady — Mr. Chairman, I move that all of these amendments be read — No. 54 and No. 58.

The Secretary then read general order No. 54, as follows:

"Section 6 of article 7 of the Constitution of the State of New York is hereby amended so as to read as follows:

"Sec. 6. The Legislature shall not sell, lease or otherwise dispose of the Erie canal, the Oswego canal, the Champlain canal, the Cayuga and Seneca canal, or the Black river canal, but they shall remain the property of the State and under its management forever.

"The prohibition of lease, sale or other disposition herein contained shall not apply to the canal known as the 'Main and Hamburg canal,' situated in the city of Buffalo, and which extends easterly from the westerly line of Main street to the westerly line of Hamburg street. All funds that may be derived from any lease, sale or

other disposition of any canal shall be applied to the superintendence and repairs of the canals."

Mr. Cady — Mr. Chairman, with respect to general order No. 58, I hardly think it is necessary to take the time of the Convention to have it read. That is the amendment introduced by Mr. Cassidy, and its sole object is to separate certain obsolete matters from the Constitution, which the sections here enumerate. It is to amend sections 1, 2, 3, 4 and 5 of article 7 of the Constitution, in relation to the canal debts and the maintenance of canals.

Now that proposition was referred to the Committee on Canals and the Committee on State Finance and Taxation, and reported favorably by both, with the exception that the report of section 3 as made by the Committee on Canals is somewhat different from that made by the Committee on State Finances and Taxation. The report made by the Committee on State Finances and Taxation, which appears on page 3 of No. 58, was to strike out a certain portion of that section, which, according to the opinion of the Committee on Canals, ought to remain in it, and as a matter of convenience I will now move the consideration of general order No. 58 first, in preference to No. 53 or No. 54, so that this matter of detail can be disposed of; and I move to amend No. 58 as reported, by substituting for section 3 of No. 58 general order No. 53 as reported by the Canal Committee. That will make section 3 of No. 58 coincide exactly with section 3 as reported in No. 53, and I move that amendment to No. 58.

The question being put on the motion to consider general order No. 58 first, it was determined in the affirmative.

The question then being put to amend No. 58 by substituting for section 3 of No. 58 general order No. 53 as reported by the Canal Committee, it was decided in the affirmative.

Mr. Cady — Now, Mr. Chairman, I offer the following amendment to general order No. 53, and move general order No. 53, which is to amend section 3 of article 7, as reported by the Canal Committee, by adding at the end of line 12, page 1, the following:

The Secretary then read the amendment as follows:

"The canals of the State shall be improved in such manner as the Legislature may provide by law and a debt may be authorized for that purpose in the mode prescribed by section 12 of this article."

Mr. Cassidy — Mr. Chairman, before we proceed with that, I want to know if general order No. 58 is to be reported favorably.

Mr. Cady — When the committee rise I understand they will

all be reported together. Mr. Chairman, the amendment which I have offered to general order No. 53 is as follows:

To amend section 3 of article 7, which is general order No. 53, by adding at the end of line 12, page 1, the following:

"The canals of the State may be improved in such manner as the Legislature shall provide by law and a debt may be authorized for that purpose in the mode prescribed by section 12 of this article."

That amendment as proposed to section 12 represents the view of dealing with the subject of canal improvement in this State which has, I think, commended itself to the most conservative and careful minds that have given the subject particular consideration. There seems to be little, if any doubt, after an examination of the subject, that the canals of the State do stand in need of some degree of improvement. I think the conclusion is inevitable that the present system of the Constitution which provides for the superintendence and repairs of the canals by an annual tax, does not serve to maintain the canals of the State in that degree of efficiency and usefulness which is necessary for the best interests of the State. They need more improvement than can possibly be afforded to them by the system of annual taxation for superintendence and repairs which now prevails. The Canal Committee of this Convention are unanimous upon that question. The questions which were presented to that committee naturally subdivided themselves into three sets of propositions. One set, represented by amendments introduced by Mr. McDonough and Mr. Alvord, contemplated the possible sale or transfer of the canals of the State, or some parts of them, under certain conditions, to the general government. It is sufficient to say in passing in relation to that class of amendments that they received no favor and no votes in the Canal Committee. No adverse report was made upon either one of them, because such a report was not requested by the introducer of either proposition, and consequently they are not before the Convention or the committee for immediate action. But it seems appropriate to say this much in respect to them, because the McDonough and the Alvord amendments were urged by a very large and a very respectable class of citizens in this State. I say that proposition met with no favor for many reasons. In the first place, attractive as the theory of a ship canal across the State of New York may be to many minds, and undoubtedly it is an attractive one, there is, humanly speaking, no reasonable prospect to believe that such an enterprise will ever be undertaken; at all events, if it is so under-

taken, it will not be within the limits of the probable life of the Constitution which we are enacting here.

This suggestion that the general government assume the charge and control of canals is older than the canals themselves. Before a spadeful of earth had been turned upon the line of the Erie, or any other canal, before the surveys for them had been completed, in 1811, an act of the Legislature of this State provided for the appointment of commissioners to confer with the general government and the other States of the Union for the purpose of receiving from the general government and from our sister States aid for the construction of a canal system across this State, and upon that commission were such men as Robert Fulton, De Witt Clinton, Gouverneur Morris, and many others whose names are familiar in the history of the State. They communicated with the general government; they communicated with our sister States. The result was that the proposition received no favor at Washington, and only three of the States of this Union — Massachusetts, Tennessee and Ohio — considered the proposition favorably, and after the rejection of that proposition, the commission, in stately and eloquent language, recommended to the Legislature of the State of New York that she alone undertake the construction of these great internal improvements. And so, single-handed and alone, New York entered upon that work, and, single-handed and alone, she has maintained it ever since. Proposition after proposition has been made to Congress after Congress calling for appropriations to make surveys for a ship canal across the State of New York, either by the line of the Erie, or by the line of the Oswego, and as often as these propositions have been submitted to Congress, as often have they been rejected. And so it seemed to us that it was idle for New York to go down unbidden into the open market and proffer to those, who had never proposed to buy it, that great and unique canal property which she owns, property such as no other State of the Union, and very few nations in the world, are possessed of — somewhat undignified and not befitting the imperial character of this State, that she should thus offer to those who did not care to purchase, something which is peculiarly her own and which is identified with every step of her material progress.

Another class of propositions before the committee called for the improvement of the canals. One, introduced by Mr. Forbes, provided for the creation of a canal debt of not more than twelve millions, without providing any detailed plan of canal improvement. Another introduced by myself at the request of the canal conference of the State, as it is called, provided for the deepening of the Erie

canal to nine feet, and the deepening of the Champlain canal to seven feet, except over mitre-sills in the Erie, where the depth should not be greater than eight feet. Now, those propositions — that of Mr. Forbes and that introduced by myself — were both rejected by the committee. I think that of Mr. Forbes was rejected by a unanimous vote and that introduced by myself by a large majority. That proposition was introduced by me, as I say, at the request of the canal conference, and in no sense represented my individual view of the question. Now, those have been disposed of, they are not before this Committee of the Whole upon any majority or minority report of the Canal Committee. It has practically been decided by that committee that it would be unwise to undertake to outline in the Constitution of the State any detailed plan of canal improvement, unwise to say in the Constitution of the State that any canal should be deepened to any particular depth or that any particular amount of money should be expended upon the improvement of any canal. So there is nothing of that sort before this committee.

Now, upon another proposition the Canal Committee stands as a unit; that is, that there ought to be provided in the Constitution some reasonable plan, some reasonable method by which the canals of the State may, under certain circumstances, be improved. And it is with the purpose of carrying that view of the committee into effect that I have offered the amendment which has been read from the Secretary's desk and which I have myself read to the committee, which provides that the canals of the State may be improved in such manner as the Legislature shall provide by law, and a debt may be authorized for that purpose in the mode prescribed by section 12 of this article — that is, of article 7 of the Constitution.

Now, let me call your attention to section 12 of article 7. It provides that except the debts specified in the tenth and eleventh sections of this article; that is, causal debts, not exceeding one million dollars, as provided in the tenth section, and debts to repel invasion, as provided in eleventh section — except the debts specified in the tenth and eleventh sections of this article, no debts shall hereafter be contracted by or on behalf of this State unless such debt shall be authorized by a law for some single work or object to be distinctly specified therein, and such law shall impose and provide for the collection of a tax annually to pay the interest on such debt as it falls due and also to pay and discharge the principal of such debt within eighteen years from the time of the contract therefor. No such law shall take effect until it shall at a general election have been submitted to the people and received a

majority of all the votes cast for and against it at such election. On the final passage of such bill in either House of the Legislature, the question shall be taken by yeas and nays, to be duly entered on the journals thereof, and the question shall be, "shall this bill pass and the same receive the sanction of the people?"

There is in the Constitution as at present existing no specific provision for canal improvement. All that is provided for is, by section 3 of article 7, that the Legislature shall annually by equitable taxes make provision for the expenses of the superintendence and repairs of the canal. Improvement, development of them, beyond the mere needs of annual superintendence and annual repair, is nowhere provided for, and because the necessity for some degree of improvement does confessedly exist, because it is nowhere provided for in the Constitution, and because there should be no possible doubt upon that question, this distinct proposition to embody the element of canal improvement in the Constitution beyond the peradventure of the shadow of a doubt is offered. At the same time, it seems essential that proper safeguards should be thrown around any system of canal improvement. The people of this State are the owners in fee of their canals. They are the principals in respect of them and the Legislature and all the officers of the State having anything to do with them are only the servants and the agents of the people in dealing with that great property, and so it has seemed unwise to throw down the bars and give to the Legislature absolute and unqualified power to create a debt for the improvement of the canals, without having first submitted to the people of this State the question of the amount and the measure and the quality of that indebtedness and the character of improvement which the Legislature may undertake to provide for. There is no doubt that the method of canal improvement, the scheme of it, the details of it, should be submitted to the Legislature for investigation and inquiry. I am satisfied from my experience in this Convention, and especially from my experience upon the Canal Committee, that it is impossible for any body constituted as this body is constituted, or for the Legislature in a single session to so inform itself in relation to this great subject as to be able to definitely and wisely decide upon the specific plan of canal improvement that should be adopted. That can only be done, as it seems to me, by the appointment of a committee or a commission of investigation which would have ample time to pursue the subject through all of its ramifications, probe it in all its details, and then submit to the Legislature of the State its matured and ripened work. No committee of a Constitutional Convention and no committee of the Senate or Assembly, or

both, can in a single session, in my judgment, wisely determine that question.

A single reference to the estimates made upon the subject and submitted to the Convention will, it seems to me, suffice to prove the truth of what I say. Under the resolution of Mr. Hottenroth, application was made to the Superintendent of Public Works and also to the State Engineer and Surveyor to furnish estimates of the cost of the plan proposed by the canal conference of deepening the Erie to nine feet and the Champlain to seven feet. In Document No. 34 the Superintendent of Public Works replied to that resolution of inquiry, and he said as follows:

"First. Of the probable cost of deepening the canals to a depth of nine feet, with or without raising the banks, or raising or lowering the reservoirs, or conduits thereof; also, the probable extent of land damages that might result therefrom.

In reply to this inquiry I beg to say that no reliable data exists, either in this department or that of the State Engineer and Surveyor, from which anything like a close approximation may be had; but from estimates made by this department from the best available data, a fair approximate cost would be as follows:"

And he proceeds to say on the second page it will be $7,673,000. I call your attention to the Bradley bill, as it is termed, which was introduced in the Senate March 1, 1894, by Mr. Bradley, read twice and referred to the committee on canals. That provided for a scheme of canal improvement, and that there should be submitted to the people of the State at the general election to be held in November, 1894, a proposition to be voted upon by the electors of this State to issue bonds of the State to the amount of twelve millions of dollars, which bonds shall be sold by the State, and the proceeds received therefrom shall be expended for the purpose of enlarging and extending the Erie canal, the Champlain canal and the Oswego canal. The Bradley bill called for twelve millions of dollars for that purpose. The report of the State Engineer and Surveyor estimated as a fair approximated cost of the work something over seven millions, a difference of between four and five millions upon that question, and strange to say the Bradley bill was, as I understand it, prepared by or upon estimates furnished by the canal statistician employed in the office of the Superintendent of Public Works, this same office which in its next breath, when next called upon to deal with the subject, reported that the expense of the improvement would be only something over seven millions, instead of twelve millions.

Then we come to the office of the State Engineer and Surveyor.

He says on the matter of deepening the canals to nine feet, "there is no data bearing on this subject in this office except for the Erie and Oswego canals, hence an estimate for the other canals must be treated only as a rough approximation," and he reported that the proper cost of the work would be something over ten millions of dollars. We are dealing with large figures, and it is a very strange and significant fact to me that the Bradley bill, prepared in the office of the Superintendent of Public Works, the report of the Superintendent of Public Works and report of the State Engineer and Surveyor upon this question of the cost of canal improvement all differ from one another, although the Bradley bill and the report of the Superintendent of Public Works were prepared in the same office, in the same year, and within a few months of one another.

I do not criticise the officers or the individuals who have made these estimates. They have probably done the best they could in arriving at some fair approximation of what the cost of the work would be, and I only mention the matter to show that in the great offices of the State having especial and detailed charge of the work of the canals there is no reliable information whatever upon which this Convention can safely or wisely predicate any detailed plan of canal improvement. My own judgment is, gathered from the history of the past of all our great public works in this State and elsewhere, that the cost of improving the canal as suggested by the canal conference, would come nearer fifteen or eighteen millions of dollars than twelve millions of dollars.

So much for the cost of the improvement. We come to the manner and the method of the improvement. The canal conference says: "Deepen the Erie canal to nine feet and the Champlain to seven." I am satisfied, after the best investigation I have been able to make in books and among practical men engaged to-day in transportation upon the canals — I do not mean men who have been before the Canal Committee or before this Convention, but men of whom I have made inquiry privately — I say I am satisfied from all those sources of inspection and investigation that it is not absolutely necessary that the Erie canal should be deepened to the extent of nine feet. It is not used to its full capacity now. It transported last year between three and four million tons of freight. It carried to the port of New York more than forty million bushels of grain. It carried there thirty-nine per cent of all the wheat that came to the port of New York, and still it is not used to one-half of its capacity. Three or four million tons of freight pass over it yearly, and yet the State Engineer, in several reports, has said that there is a lockage

capacity for twelve million tons of freight, and probably there is more than that capacity.

One of the wisest canal men who ever lived in this State, wise in the interests of the canals, and wise in the interests of the people, was Mr. Tilden. He probably gave as much intelligent attention to the subject as any one of the great group of statesmen who have devoted their energies to its consideration, and the view of Mr. Tilden is very well set forth in his annual message of January 5, 1875, when the question of canals was quite as burning a question as it is to-day. He says:

"The movement of the boat through water confined in an artificial channel — narrow and shallow — is, at best, very slow. The engineers, in 1835, planned the Erie canal and the boat with such relations to each other as to give the greatest economy of power and facility of transit. The boat has inclined to grow rather large and too square. The waterway was practically never excavated in every part to its proper dimensions. Time, the action of the elements, and neglect of administration, all tend to fill it by deposits. I may be excused for repeating here what I said in the Constitutional Convention eight years ago."

And then he quotes from himself:

"What the Erie canal wants is more water in the prism — more water in the waterway. A great deal of it is not much more than six feet, and boats drag along over a little skim of water, whereas it ought to have a body of water larger and deeper even than was intended in the original project. Bring it up to seven feet — honest seven feet — and on all the levels, wherever you can bottom it out; throw the excavation upon the banks; increase that seven feet toward eight feet, as you can do so, progressively and economically. You may also take out the bench walls."

Then, again, in 1876, in another message, he called attention to the same subject, and he made certain comments which we can well apply to the present situation. He said:

"In my judgment, a far more important improvement of the Erie canal would be effected by a thorough system of ordinary repairs, which should give the waterway its proper and lawful dimensions; and by progressively deepening it, wherever reasonably practicable, from seven to eight feet. As the object would be merely to enable the submerged section of the boat to move in a larger area of water, so that the displaced fluid could pass the boat in a larger space, it would not be necessary to alter the culverts or other structures, or to carry the walls of the canal below the present bottom; and the benefit would be realized in each portion of the canal improved,

without reference to any other part of the channel which should remain unchanged. In facilitating the movement of the boat, and quickening its speed, it would increase the amount of service rendered in a given time, and would thereby diminish every element of the cost of transportation. It would benefit the boatmen and carriers more, even, than one cent a bushel remission of tolls. It would be of more real utility to navigation than five or ten times its cost expended in the average manner of so-called improvements on the public works. But it is too simple, too practically useful, to enlist the imagination of projectors who seek the fame of magnificent constructions and of engineers who build monuments for exhibition to their rivals, or to awaken the rapacity of cormorants who fatten on jobs."

Every word uttered by him in those two messages of 1875 and 1876, and in the Constitutional Convention of 1867, I regard as practically true to-day, and as reasonably applicable to the situation which confronts us in this State. France, the nation which, perhaps, of all on the face of the earth to-day is giving most attention to canals, has practically adopted the Erie canal and the size of the boats on the Erie canal, using a boat carrying about fifty tons more than our boats do, as a model for her construction of waterways and of boats, such a boat as would float upon the Erie canal when reasonably cleaned out and constructed to its original depth, and such a canal as the Erie canal would be if reasonably cleaned out and restored to its original depth. The New York Produce Exchange says that after investigation it has reached the conclusion that the size of the canal boat used on the Erie canal to-day is best adapted to the purpose of canal navigation. That view is substantially concurred in by Mr. Horatio Seymour, Jr., who is perhaps the greatest living authority on canals in this country to-day. And so we have this consensus of opinion; the views of Mr. Tilden iterated and reiterated; the views of Mr. Seymour; the views expressed by the Produce Exchange, and the practical work of the government of France.

Now, if that government and that commercial body, and those two statesmen are correct in their views, it cannot be necessary for New York to enter upon any extensive and extravagant scheme of canal improvement. A fair development of our canal property as it exists to-day by a reasonable and limited amount of expenditure would restore the canals to their pristine usefulness, in my judgment. In fact, we are carrying on the canals now every year nearly as much as we have carried on the average since 1872, when the canals reached their highest freight-carrying point, and the

ordinary needs of commerce are met by the canals as they exist to-day. But, as I say, the truth remains that they do need improvement, they do need repairs.

Let the Legislature investigate this subject; let it by its committee or by its commission, acting through an ample and reasonable space of time, determine just what shall be done for the purpose of improving the canals, just what the amount of that expenditure will reasonably be, and then let that question, whether that amount of indebtedness shall be incurred or not, be submitted to the people of this State to be voted upon by them as they have voted upon every similar question since the Constitutional Convention of 1846. This debt provision of section 12 which I have called to your attention has existed ever since 1846. It has been strenuously attacked in many places; in the courts, in the Constitutional Convention of 1867; and it has usually been assailed by those who were in favor of unlimited extravagance and unrestrained expenditures upon the canals of this State. It first came up, this section 12 of article 7 of the Constitution, in Newell against the People, reported in Seventh New York, in 1852, only a short time after its adoption. The Legislature had attempted to evade it by the issue of so-called canal certificates for the enlargement of the Erie and the benefit of the Black river and the Genesee canals. That was the first attack made upon it. It was a vigorous and ingenious attack. Yet it was futile. The section of the Constitution was enforced and sustained, and although public attention was sharply directed to it, and great animosity toward it among the friends of the canals was excited, still it has stood there ever since, and there it stands to-day, and I, for one, am not bold enough to recommend to the committee or to this Convention, or to the people of the State, that this great provision of section 12, establishing a limitation of the creation of debts, shall be stripped away and broken down.

Mr. McMillan — I desire to make an inquiry. The hour has about arrived when we should adjourn, and for the purpose of conference during the intermission, I wish to ask Mr. Cady, as chairman of the Canal Committee, two questions which will facilitate the conference at that time.

The Chairman — Will the gentleman yield?

Mr. Cady — Very cheerfully.

Mr. McMillan — And I wish to say I am in favor of the amendment reported by the committee, and to ask if Mr. Cady would be willing to modify the eighteen years of limit of bonding by extending it so that the burden would not be so great upon the

people in the event the State was bonded, say to an extension of the period to thirty years?

Mr. Cady — I have no particular objection to that plan.

Mr. McMillan — I assume not. And, also, I would like to know whether or not, in his judgment, it would not be wise to have this question once passed on by the Legislature and once passed on by the people without going back to the Legislature a second time?

Mr. Cady — I do not know that I fully grasp the question.

Mr. McMillan — The Constitution as it now stands provides that the Legislature shall submit the question to the people; then, if the people vote in favor of bonding, the Legislature had the matter a second time before it.

Mr. Cady — I am willing to have it disposed of by one submission to the people and one Legislature.

Mr. Bigelow — Mr. Chairman, I would like to ask the gentleman another question: if he and his friends would be content with a power given to the Legislature to deepen the canal, as originally intended, to seven feet and restrict the expenditures to that depth?

Mr. Cady — Mr. Chairman, I must say in answer to the question submitted by the distinguished delegate from New York that I believe it would be unwise to specify in the Constitution any depth. It would be as unwise on one side of the question as upon the other. I believe the Legislature and the people should be left free to deal with it as they may jointly determine would be wise.

Mr. Roche — Mr. Chairman, I desire to offer an amendment. As the hour of adjournment has come, it would perhaps be better to have it read upon our reassembling.

The Chairman — The general debate on this amendment will be continued at three o'clock, until which time the Convention will take a recess.

AFTERNOON SESSION.

Monday Afternoon, September 10, 1894.

The Constitutional Convention met, pursuant to recess, September 10, 1894, at 3 P. M.

President Choate called the Convention to order.

Mr. Morton — Mr. President, I have received a telegram from one of my colleagues, Mr. Powell, saying that he is detained in New York by illness. He says he will be here to-morrow. I ask that he be excused for to-day.

Excused.

The President — The Chair has received word that Mr. Mantanye also desires to be excused from attendance to-day.

Excused.

Mr. Kurth — Mr. President, I have received a telegram from Mr. Pashley, saying that he is detained at home by reason of illness in his family, and asking to be excused for to-day.

Excused.

Mr. Hill — Mr. President, Mr. Gilbert was not well the latter part of the week and went home on account of illness. I ask that he be excused from attendance to-day.

Excused.

Mr. Barhite resumed the chair in Committee of the Whole, upon the canal amendments.

The Chairman — The Convention is again in Committee of the Whole in consideration of general order No. 58, and Mr. Roche has the floor.

Mr. Roche — Mr. Chairman, when the Canal Committee made its report to this Convention, I confess that I was surprised and disappointed. Several propositions looking toward canal improvement had been submitted to that committee, and there was a general feeling that something practical and liberal would be the outcome. The sentiment that the canals should be made effective agents in promoting the prosperity and securing the commercial supremacy of the State, that the grand designs of their far-sighted builders should be recognized in the most important statute of this commonwealth, was so pronounced that no person entertained a doubt but that the Convention would follow in the paths marked out by the statesmen of the past, and would give ample and cheerful support to these great and valuable waterways of the State. Imagine, then, the surprise both in and out of this Convention, when the result was simply two propositions, one looking toward the abandonment of a piece of the canal in the city of Buffalo, and the other of doubtful wisdom and constitutionality to authorize the Legislature to impose tolls on the products of the Dominion of Canada, transported over the canals.

What the cause of this is I do not know; nor do I know whether it is correctly stated in the following dispatch which was printed in the New York Tribune in these words: "The unfavorable action on the canal amendments by the Canal Committee of the Constitutional Convention was one of the greatest surprises thus far in the Convention. The majority of the members of the committee have, until recently, declared that they were in favor of the amendments.

It now seems that they threw the amendments overboard because they had been induced to do so by some of the more conservative delegates who fear that the judiciary and cities articles, and perhaps the apportionment plan, would not be carried by the people if the canal amendments were allowed to be voted on. In other words, they thought the canal amendments would lead to the defeat of the whole of the Convention's work."

Mr. Chairman, if the surmise of the correspondent be true, then I say to these gentlemen who are called "conservatives," that they are greatly mistaken. They fail to understand and appreciate the will of the people, with reference to the canals. I say to them, that nothing that will be placed in this Constitution will receive more cheerful assent at the polls than a liberal proposition which will not only preserve the canals from hostile influences, but which will effectually secure their betterment and efficiency. Sir, the canals of this State are bound up with the history of the State. They are a part and a most glorious part of the records of the State and of its great men. They have ever been dear to its people, who have decreed that no unfriendly hand shall impair their usefulness or reverse the history or policy of the past. The people of this State had the courage to undertake and build these works, when our population was less than one million and a half, when the inhabitants of New York city and county numbered only about one hundred and twenty-five thousand, those of Onondaga county less than forty-five thousand, those of Albany county less than forty thousand, and when our wealth and resources were infinitesimal compared with those of this day. Twice afterward they cheerfully undertook their enlargement, because they had more than met the expectations of their founders, and had been the direct agency through which this State is justly known throughout the land as the Empire State. In 1882 the people were appealed to to say whether the canals should be free to commerce, and that the people themselves should thereafter undertake their support. That question was answered in the affirmative by upward of three hundred thousand majority. And gentlemen, who may be fearful that the people are unwilling to tax themselves for the canals, will permit me to call their attention to this latest pronouncement of the electors of the State and to say to them that to-day the people are not only better able, but they are willing to tax themselves still further, not only to secure the fruits and expenditures of the past, but to make secure the supremacy and glory of the future.

What are the canals doing to-day for the commerce and business of the State? Figures may be dry, but in this case they are

very instructive and interesting, and I shall ask the patience of the committee while I call their attention to a few figures upon this subject. The total tonnage of the canals in 1893 was 4,331,963 tons. Now, to gentlemen who may be under the impression that all these canals do is to transport the products of the west, the grain of the west, on the way to the seaboard, and that the people of this State alone are called upon to pay for the expense of that transportation, I wish to say that of this tonnage there was, other than the products of the forest and products of agriculture, 1,757,213 tons of freight. Now, gentlemen, what was the value of this property? Its value was $154,831,094. Gentlemen, you cannot take that amount of property, commencing at the city of Buffalo, and transport it along the Erie canal and by the Hudson river to the seaboard, or to intermediate points, without a large portion of it remaining in the State of New York, going to enrich the people of the State of New York, and to vitalize the channels of business and trade and commerce through this great State. What was it transported on? On several thousand boats, nearly every one of which is owned by citizens of this State of New York, every one of which was built in the State of New York, giving employment to its laboring people and its artisans. The money that was paid for their construction was spent in this State. These boats are manned and equipped by citizens of the State. They represent several thousand individual owners, who represent tens of thousands in the aggregate of the men, women and children of the State, who are supported from the first of January to the thirty-first day of December within the borders of this State; who buy the products of the forests, who consume the products of the agricultural lands of the State, who send their money into the shops and the warehouses of the merchants of the State. And I want to say right here that there is no body of people within the State of New York who should be more deeply interested in the success of this investment, of this great enterprise, and of securing its supremacy and its increase, than the agriculturists of the State of New York themselves.

There are gentlemen who are under the impression that the canals simply carry the wheat, the corn, the grain of the west. Let me disabuse their minds of that idea. I propose to show them that a great deal of this tonnage either originated in this State, or, what is most profitable of all, came from abroad, was handled by the longshoremen of the city of New York, was handled by laborers on the way from New York to Buffalo, and that during that year,

of those goods, there was sent north and west, of barley, 49,651 tons; 24,000 and odd tons of oats; 10,000 bushels of potatoes; 11,000 tons of pig iron; 3,200 tons of bloom iron, castings and ironware; 51,000 tons of domestic salt; 12,000 tons of iron and steel; 572,000 tons of stone, lime and clay; 102,000 tons of iron ore, and 662,000 tons of anthracite coal.

What did we receive from the west, and what are these canals doing with the products of the west? There was received at the port of New York during that year from all sources, 108,962,706 bushels of grain. Of that large quantity, there was shipped from Buffalo 48,121,586 bushels for transportation on the canal. And to gentlemen who may be under the impression that all that goes right through, I wish to say that upward of 5,000,000 bushels of that grain remained in the State of New York and was used up in the mills of this State, creating business and giving employment at home. Forty-three million bushels of it was received in the city of New York by way of canal and river — more than was received or sent there by the New York Central, the Erie and the West Shore railroads combined. What is done with it in New York? It is sent abroad. It is handled by the vessels that come to the city of New York, because that is the chief market for grain; by the immense vessels of our modern commerce that every week they are in port spend thousands of dollars in that city. It was there transported, handled, sent abroad and employment thereby given to a large number of persons who earn their living within our own borders.

Now, gentlemen, is it necessary that we should do anything to encourage this commerce? Are there any of the great cities of the nation that are reaching out with a view to deprive the city of New York of the advantages it now enjoys as the chief seaport of this country? Are there not statesmen, public officers and wide-awake seaports who are doing what they can through various sources and in many ways to build up competitors of the city of New York in regard to this transportation? Does their action point out to us in what way we should act and how we should seek to guard the advantages we now enjoy? Let me call your attention to a few facts on this point. In 1892, of the shipments of domestic grain and flour from the United States, Baltimore sent out in corn nearly 19,000,000 bushels, New York less than 19,000,000, New Orleans over 7,000,000 bushels; of oats, Newport News had upward of 1,600,000; New York, 2,600,000 bushels; Philadelphia, nearly half a million bushels; of oatmeal, Baltimore, 2,400,000; Boston and Charleston, 7,300,000; New York, 2,300,000; Philadel-

phia, 1,500,000; of wheat, Baltimore, 16,600,000 bushels; Boston, 6,300,000; Newport News, 2,300,000; New York, 45,000,000. The last is the only case in which our supremacy is acknowledged, and it is the one, too, in which that supremacy is being constantly attacked by the other seaport cities of the country. Philadelphia sent out 10,000,000 and New Orleans 15,000,000 bushels; of rye, New York, 6,000,000; Philadelphia, 1,800,000; Newport News, 900,000.

Mr. Chairman, these figures speak to us in pretty significant and eloquent tones; but, if anything more was needed to accentuate their importance, we have it in this communication from the New York Produce Exchange, a copy of which has, undoubtedly, been placed in the hands of all the members of the Convention. Coming from a body of men who know something of the needs of the commerce of the State of New York and the importance of preserving and maintaining in their highest efficiency all the channels which now make that commerce of so much consequence to this imperial State, this communication is worthy of attention. Referring to the Erie canal, it says: "It is to-day of ten times more value to the commerce of the nation than when it was first constructed. It directly dominates freight rates in a dozen or more States, and indirectly over half the northern continent of America. Valued for past achievements, its autonomy has been hedged about by restrictions and conditions which practically deny its future usefulness. We regard the action of the present Convention as vital to the commercial interests of the State, feeling that the canals represent the spinal column of its prosperity. Already schemes are afloat to cause the wholesale diversion of trade to other channels. The occasion is opportune and we hope that something will be done that the canals may be made a proper supplement to the traffic of the Great Lakes in reaching the seaboard."

Mr. Chairman, I further find that the traffic upon those canals, particularly going west, is very large, and I call the attention of gentlemen who, as I say, may be under the impression that all the canals do is to bring grain from the west, to the importance of the trade going west. In 1888 there went west from West Troy alone 465,000 tons of freight, and north from the little village of Waterford, right above Troy, 116,000 tons. In that year there went west on the Erie canal 94,000,000 pounds of merchandise, including sugar, molasses, coffee, crockery and furniture.

Now, gentlemen, in asking for appropriations of money for the support and maintenance of our canals, or for their improvement, are the friends of the canals demanding anything from the State

that they are not entitled to? According to the figures in the Comptroller's office, I find that the total cost of construction, maintenance and operation — and, mind you, we have collected no tolls on the canals since 1882, we have appropriated each year the money for their maintenance; including that, and all the items of construction, maintenance and operation to September 31, 1892, of all of them, both the main and the lateral canals, the cost was $117,000,000, and that the moneys received while those tolls were being collected, from the time of the commencement of canal operation up to 1882, were $133,000,000. So that the treasury of the State is to-day the gainer by about $15,000,000 upon its investment for the canals; and in asking for a fair return, for a fair allowance for the improvement of these highways, we simply ask that there shall be paid out of the treasury of the State some of the money that the treasury owes to the canal system of the State.

Gentlemen, are we going to be behind the rest of the world? Civilization and progress move on with commerce. The most highly developed countries, in this or any other age, are the commercial and manufacturing nations. What are the nations of the world doing to-day for their canals? Three times, within recent years, Canada, at an expense of millions of dollars, has enlarged the Welland canal, simply and solely to divert western trade from its passage through the State of New York to her own waterways. Within a year the Manchester Canal Company has concluded an expenditure of $75,000,000, practically making Manchester a seaport, by the construction of a canal thirty-five and one-third miles in length, the effect of which is to make Manchester a great competitor of other manufacturing centers of England, because of the cheapened rates of transportation, at which products will be received at the mills. Within a year, or in 1896, the city of Chicago alone will have completed a canal connecting the Desplaines and the Illinois rivers at an expense to that city of $26,000,000. And yet, with these and other examples before us, we are pottering and thinking about whether this great imperial commonwealth, which has been built up by these highways that the founders of our State had the foresight and wisdom to inaugurate when we were but in our infancy, shall allow them to be mere ditches with obstructions of all kinds placed in the way of their being effective agents of securing the commercial supremacy of the State. Why, sir, it has been said that the Erie canal meets all the demands upon it. Perhaps it is true, and why is it true? Why, it is true simply because you have permitted it to fall into such a condition that it no longer invites capital, that men no longer receive an adequate return for

their investments and for the risks they undertake. But make it what it ought to be, and some of the enormous and constantly increasing wealth of the great body of the people of the State of New York will find its investment in canal enterprises and in canal boats and in transportation, as well as in other enterprises throughout this State. Do a little something for what we own, for what the State owns; only a modicum of what the great railroad systems of the State do for the betterment and efficiency of their systems every year, and the canals of the State will not only be successful competitors of the railroads, as they are now, and as they have been in the past, but still larger transporters of grain and of other products, giving to the people of the State the benefit of lower rates of transportation upon these railroads as well. (Applause.)

Now, gentlemen, why do I say this? Will you permit me to call attention to some of the words of the men of the past whom we glory in, whom, as New Yorkers, we all take pride in? But first of all, let me read just a short extract from Hammond's political history of the State of New York, and I read it for the purpose of calling attention to the fact of whether we, in the year 1894, with thirteen hundred millions of dollars of savings of the common people of the State of New York in the savings banks of the State alone, with no State debt, with sources of income now from taxation upon corporations, and their organization, upon collateral and direct inheritances and other sources of income that were unknown to the men of the past, whether we should hesitate for a moment in spending, not a paltry ten or twelve million dollars, but twenty-five million dollars, if necessary, in order that this Empire State may stand where it has stood up to the present, at the pinnacle of the States of this Union.

Mr. Hammond says in his political history that in the year 1838, the year that followed almost universal bankruptcy in this State and nation: "Mr. Ruggles, of the Assembly, made a report to that House on the subject of internal improvement, and on the financial condition of the State and its capacity to furnish funds, in which he presented its resources as exceedingly great and competent for almost any emergency. The report recommended very large appropriations for the speedy completion of the Erie canal, and for various other objects of internal improvements. A bill, somewhat in conformity to the views of the committee, was passed in the Assembly, but was amended in the Senate, so as to appropriate four millions of dollars to be expended during the current year, for the enlargement of the Erie canal. It is remarkable that the internal improvement bill, committing the State for the expenditure of an

immense amount of money, passed the Assembly almost unanimously." There were but three dissenting votes, and there was not a dissenting voice in the Senate of the State of New York.

How different to-day are the conditions from those that existed in 1838. Now the equalized valuation of the real and personal property of the State is four thousand millions of dollars; its actual value is a great deal more. Beginning at and including Albany and Rensselaer counties and going west through the counties which are touched by the Erie canal alone, we find about $800,000,000 worth of taxable property. An expenditure of $12,000,000 by a people possessed of this vast wealth would be a mere bagatelle. We have ceased to be a great agricultural State and have become pre-eminently a manufacturing and commercial State. Splendid cities constantly increasing in population and wealth dot our State from the Greater New York, through the valley of the Hudson and along the line of the Erie canal through the valleys of the Mohawk and Genesee. The farmers of the State are interested in the prosperity and growth of these cities, for they make a certain market for all the farms will raise. These communities are vitally concerned in the improvement of the canals and in the cheapening of the prices of transportation of food and all other products.

As a little bit of history, it is worth our while to learn why these canals were built, and to get an idea, not only of the enthusiasm of their founders, but of their courage and their far-sightedness. It was expressed in the first act, passed in 1817, and it is just as true to-day as it was then, and we will be false to our day and our generation, to our children and to our State, if we do not carry out the ideas that are so beautifully and truly expressed in this preamble:

"Whereas, navigable communication between Lakes Erie and Champlain and the Atlantic ocean, by means of canals connected with the Hudson river, will promote agriculture, manufactures and commerce, mitigate the calamities of war, enhance the blessings of peace, consolidate the Union and advance the prosperity and elevate the character of the United States; and, whereas, it is the incumbent duty of the people of this State to avail themselves of the means which the Almighty has placed in their hands for the production of such signal, extensive and lasting benefits to the human race."

These were the words of foresight and courage of the men who made this State of New York, made it the pioneer in the grand work in this country, of the construction of artificial waterways. And I want right here to call attention to something that was said in the Convention of 1867, from a well-known authority, that will

be recognized as valuable in the city of Syracuse, and that is the late Judge Comstock. He said: "But I have a sober sense of the advantages and future greatness of the commonwealth, whose honor and interests are in our hands. I cannot think of any spot on the habitable globe so favored in all the circumstances of natural situation. In one direction we look out upon the broad Atlantic, over which is borne to us the commerce of the old world. That commerce naturally seeks our great commercial metropolis, resting, as it does, upon a harbor in a genial climate, where the navies of the world might ride at anchor. Behind us, in the other direction, lies the almost illimitable West, whose rich and fertile plains stretch from the inland seas on our border, toward the base of the Rocky Mountains. The productions of that vast and fruitful region find their natural outlet to the ocean through the lakes and across our soil. The hand of nature has sketched our territory, and to our commercial city a channel surpassing in its advantages any other on the continent, and which may defy all competition, if we remain true to ourselves and continue to improve these advantages."

There was something read to-day by the distinguished chairman of the committee, from the message of Governor Tilden, in 1875, and this Convention will certainly recognize the courage and the great work that was then performed by that statesman, in the breaking up of what was known as the canal ring, a ring injurious, not only to the welfare of the canals, but demoralizing to the politics and the political parties of the State. In the Convention of 1867 that venerable statesman made use of these words: "I ventured on closing my speech on the question relating to the canals, in the Convention of 1846, to say that we would make New York the carrier, the merchant and the banker of the new world."

Let us hear what Horatio Seymour had to say upon the proposition; after referring to certain rules and certain authorities upon the subject of transportation, he continued: "They lay down the proposition that there are certain articles which, to be advantageously transported, must be transported by railroads; that there are other articles, those of the heavier kind, which, to be advantageously transported, must be carried by canal. It has turned out in practice, as they reported some thirty years ago, that each mode of transportation has its appropriate field. Railroads have theirs, and we rejoice in their prosperity; canals have theirs, and canals would show a much larger increase of business if their operations had been watched with the same diligence and the same care with which private capital has administered the railroads. No improvement of science has appeared, but the owners of railroads have

pressed it into their service. But the canals, sir, have remained with little or no improvement."

Another extract from the remarks of Judge Comstock: "I say to all such, your lateral canals could not have been built but for the revenues derived from the Erie canal, which is, therefore, in all circumstances, entitled to our most favorable regard. The present question, I repeat, is mainly one of improving further the grand Erie canal, which connects us with the immense and fertile regions of the west, of improving a great artery of trade, which is pouring riches into the lap of the State. It has no relevancy whatever to that question, to allege and prove that the State has other costly works which have been unprofitable."

Now, Mr. Chairman, I do not want to delay this matter unnecessarily. I ask this question: do the canals need improvement? Let me give you a few facts from many that could be cited. Upwards of thirty locks on the Erie canal still need to be lengthened in order to meet the requirements of commerce and of rapid locomotion. Within three weeks, four loaded boats have run aground at West Troy, because of the accumulations of mud in the canal. The Champlain canal is of varying depth; a portion of the distance it is only four feet in depth, and another portion it is six feet, thus making it necessary either to transfer cargoes, or else to load the boats to a capacity to accommodate four feet depth of water, instead of six feet depth of water. It was originally intended that this canal should be of a uniform depth of six feet, but that work has never been completed. It was likewise intended that the Erie canal should have a uniform depth of seven feet; but in many places now it is not six feet in depth, and boats are frequently dragged over the bottom, because of the accumulation of silt in the canal. Thus the capacity of the boats is reduced, their trips are made less frequent, commerce is seriously interfered with, and trade is diverted into other channels.

Now, just a word as to the proposition that we should transfer these canals to the national government. I am glad to hear what the chairman of the Canal Committee so well expressed on that point, that there was substantially no sentiment in the committee in favor of it. Gentlemen, it is a delusion. If we postpone the improvement of our canals until the national government will take hold of them and improve them, the Erie canal will have been filled up before that day arrives. What with New England, with Boston, and the Maine coast all competitors of New York, will any portion of the New England representatives in Congress vote to increase the advantages of the city of New York as the chief commercial port of this country? Will the men from Pennsylvania do so when

Philadelphia men are doing all in their power to increase the advantages of that port? Will Baltimore do so? Will any portion of the South or of the southwest, which is favoring Newport News and improving the Mississippi? Down there they all go in for a strict construction of the Constitution, but also for an appropriation every year for the Mississippi. Galveston, Texas, got two or three million dollars within two years, for the improvement of that harbor alone. We have no friends except our own State and the immediate northwest, and it is utterly chimerical to think that competitors from other sections, would take hold and vote a single dollar for the purchase or maintenance of these waterways. Year after year an appropriation of from fifty to a hundred thousand dollars has been asked for a mere survey for a ship canal through this State, and you have been utterly unable to get it up to the present time from the Congress.

Now, just a word on my amendment. I propose to leave the Constitution substantially as it is, repealing sections one to six, both inclusive, and throw them all into one section. Of course I retain the present requirement that this work must be done by contract, a provision that was put in after the Tilden investigation and exposures of 1875; and to gentlemen who may be fearful that if we authorize a large expenditure for the improvement of these canals now, it may cause a re-establishment of the canal ring and the people may be cheated out of millions, I want to say that since that investigation we have adopted a most wise and effectual constitutional safeguard against the repetition of any such thing. I propose that the State Engineer and Surveyor, the Superintendent of Public Works, and three citizens to be selected by the Governor from among the commercial bodies of the State, to be appointed before the first of March, shall constitute a commission to go over these canals and to determine as to the most feasible methods of improving them and give an estimate of the cost of that work; that they shall file their report in the office of the Secretary of State by the first of September, and that at the general election in 1895, the question shall be submitted to the people whether they will approve the deepening and improving of the canals. If they do, that a sum not exceeding twelve million dollars — it may be as much less as will be sufficient — shall be expended from time to time for that purpose, and the bonds of the State may be issued to run not exceeding thirty years, and that a sinking fund may be created for their payment; and I believe that in having this commission appointed beforehand, of responsible public officers and respectable citizens, we will secure for the people information upon

which they will be enabled to act intelligently when they come to vote upon the proposition at the polls.

The reason I am opposed to Mr. Cady's amendment is this: he refers it all to the present constitutional provision, section 12 of article 7. But under that provision, if the people should, by a decided majority, vote in favor of the improvement of the canals, the Legislature could stop the improvement. I am opposed to this work being buffeted around between the Senate and Assembly and the Executive Chamber, and being allowed in the end, between them all, to fall to the ground, and my proposition is that when the people speak at the polls it shall be mandatory upon the Legislature at the next session to devise the plan of improvement, and put it into execution. It will be an unmistakable constitutional mandate. I am also opposed to Mr. Cady's amendment as it was introduced — I don't know whether he will consent to modify it or not — for the present Constitution requires that these bonds could not run for more than eighteen years, and perhaps the people would not want to be compelled to pay that debt within so short a time; and to obviate that objection, I make it a period of not more than thirty years.

Mr. Chairman, it seems to me that this amendment will commend itself to the friends of the canals and to the good judgment of those who desire that this work shall be proceeded with, but that it shall be proceeded with in an intelligent manner and upon some scientific basis. Gentlemen, every consideration of State pride, as well as of selfish interest, imperatively demands that we should now inaugurate a liberal movement for the maintenance and improvement of these highways. God has blessed us with the means to do so. Nature has contributed her share in abundance. The topography of our country invited the construction of these works, and permits their maintenance for all time to come. The vast inland seas of the West, and the noble rivers and lakes of our own State furnish an inexhaustible supply for these highways. Fellow-delegates, let us not ignore the means of prosperity and happiness which have thus been plentifully placed at our disposal. To you men of the metropolis, whose glory is our glory, whose beauty and growth are our boast as well as yours, whose future, if we look into the future, "far as human eye can see," pictures a city nobler and grander than that of any queen city of the past or of the present, I say to you, rise to the importance of this occasion, and make secure the supremacy of the little isle which is bursting its bounds and which is to-day the political, financial and commercial heart of these United States. Back of you, stretching to the snows of the

Rockies, lies a continent teeming with men and riches. The wealth and products of that continent, richer by far than the famed argosies of Spain, or the spice-laden ships of the Netherlands, are brought to your door for distribution the world round. The railroad and the canal bring them to you, the one regulating the vital question of the price of transportation upon the other. As you are permitted to receive and handle them to advantage, depends your growth and prosperity. In your success lies our success. Let us, therefore, move on together with this grand work, standing shoulder to shoulder, and assuring for all time to come the maintenance of the great agent which has served us so well in the past, and which, under friendly hands, will minister so bountifully in the future. (Applause.)

Mr. Nichols — Mr. Chairman, I know of no subject presented or about to be presented for the consideration of this Convention of more importance than that of the canal system of the State of New York.

The question of cheap and rapid transportation of our products between the place of production and the place of consumption is coming to be a great factor in the problem of profit and loss, and must continue to be one of increasing importance, as our country develops and the price of commodities declines. The reduction of a half cent in the cost of carrying a bushel of wheat between Buffalo and New York means a great saving to the shipper on the one hand and a marvelous advantage to the producer on the other. The relation that the canals of the State bears to this question is well known and needs no elucidation from me.

Now, how these great waterways can best be preserved and under whose control and ownership they can be most safely and judiciously left or placed, are questions of greatest moment, and in the near future will command the best thought of our citizens and the most careful consideration of our legislative representatives.

In view of the notable development in the last quarter of a century of the western and northwestern States, and their ever-increasing demand for eastern and foreign markets, the Erie canal has become an integral part of a great interstate, indeed, international commercial waterway — beginning at the city of Duluth and terminating in the ports of Liverpool. Starting at Duluth it traverses its way through Lake Superior, a distance of four hundred miles into St. Mary's river, and through that river a distance of sixty miles to Lake Huron, thence through Lake Huron, a distance of two hundred and sixty miles, into St. Claire river, through St. Claire river and lake to the Detroit river, thence through that river to Lake Erie, and

thence two hundred and sixty-five miles over Lake Erie to the city of Buffalo; thence over the artificial waterway of the State of New York a distance of three hundred and fifty-two miles to the deep waters of the Hudson river, and thence to the markets of New York, and thence by ocean travel to foreign ports. Thus is constituted a great international waterway, supplying means of transportation for the vast products of field, forest, mine and factory, to the greatest markets of the world. Without the Erie canal, the chain is broken and the system incomplete. And be it said to the lasting credit of the State of New York that she has hitherto maintained that part of this great system without aid from foreign State or from the federal government, and for more than a decade past has granted to commerce without toll or charge, the free, uninterrupted use of this great artery of trade, and is it too much to indulge the hope that this most satisfactory policy may be continued for years to come?

Bills have been introduced in this body looking to the sale of our canals to the general government, but they have found little favor here and nothing like approval by your committee having in charge this important subject.

Indeed, I do not know that the question is directly involved in any proposition now before this body for consideration, and is only important, if important at all, in its relation to the general question of what modification, if any, shall be made in the canal article of the existing Constitution.

Three distinct propositions are before this committee for consideration:

First. Shall the canals be enlarged?

Second. Shall a system of extraordinary repairs of the canals be adopted?

Third. Shall the present policy of canal management and maintenance be continued?

Gentlemen advocating each of these several propositions have been before your committee, all of them representing a public sentiment and demand largely local in character, until it appeared to your committee, that the domicile of the speaker had much to do with his convictions on this important subject. The representatives of the canal interests of Buffalo, Troy and New York, advocated canal enlargement, while representatives from other portions of the State were content with the adoption of a judicious system of repairs or a continuance of the State policy now in operation.

A majority of your committee, after many hearings and careful consideration, reached the conclusion that the provisions of the

State Constitution were sufficient to meet the present demands upon the system, and of any that may reasonably be anticipated.

The Constitution by its express terms confers upon the Legislature the power to keep the canals in repair. It contains no prohibition against improvement or, indeed, enlargement. It leaves to the Legislature the power to make such annual appropriations for care and maintenance as it may deem necessary or advisable, and to adopt such a policy of improvement as shall subserve the best interests of the State. Under this power during the last ten years it has done much; it has annually appropriated and expended $750,000 for care and maintenance. It has reconstructed twenty-nine miles of the Champlain canal, making it so far quite equal to any and all demands that may be placed upon it; it has lengthened thirty-five locks of the Erie canal, at a cost of $33,000 each, and undertaken other improvements, which, if carried to completion, will give great efficiency to the entire system.

With full belief in the power of the Legislature to improve the canals, parties especially interested in canal development introduced in the last State Senate a bill embodying a plan for canal enlargement on a most extensive scale. All this under the powers conferred by the present Constitution — can this body reasonably and safely go farther? Should it be asked to so amend the Constitution as to declare in a mandatory manner the legislative policy to be pursued for years to come, respecting these public works, and no matter what the changes in form or substance, no matter what the will or wishes of the people respecting it, no matter whether estimated cost be correct or incorrect, fasten by constitutional mandate upon the vitals of the State, a plan of enlargement that may greatly harass and burden our people, prove a hindrance to governmental aid, and an impairment to the highest good of all our citizens? I am unalterably opposed to such legislative invasion. It cannot be justified by precedent or policy. I believe it to be one of the tendencies of Constitutional Conventions, and this is no notable exception, to undertake by constitutional provision, that which should be left to the people to control through the Legislature, as their interests may from time to time require. Our duty is not to enthrall the people, or to dictate legislative policy. For what purpose is the Legislature organized but to govern, to regulate, to modify the business policy of the State? From whence does it come? First, from the people, imbued with their wishes, reflecting their opinions, interested in their interests, sharing their burdens, fostering the good and condemning the bad. Undoubtedly Legislatures fall into error and at times lose sight of the public

good in their desire for private or partisan gain; but I have no fear of the Legislature in this regard. I have little sympathy indeed with that class of men who ever and anon arise in their places and pharisaically thank God that they are not as other men are. Since 1846, the Legislature has proceeded orderly under the Constitution we are now considering and, when, I ask, and in what respect has it failed to relieve the people when the people called upon it? In what respect has it failed to answer the renewed demands of a wonderful commercial growth; wherein has it fallen behind in the great march of human progress or refused to crystallize into law the highest aspirations of our people? What it has done in the past without constitutional command, it may be trusted to perform in the future. It is my conscientious belief, that if a time shall come when public opinion shall demand the enlargement of the canals of the State, and it be apparent that by so doing the best interests of the State will be subserved, canal enlargement through legislative enactment and constitutional procedure will be readily secured. Until that time comes, let no Constitutional Convention interfere to define or direct the policy. Leave the Legislature unfettered to devise its plans and free to modify them as occasion may require.

It is with this in view that the very able chairman of the Canal Committee, not as a member thereof, but individually, has offered his amendment conferring upon the Legislature, by express terms, the power to improve the canals of the State.

With this proposition I am in full accord, to the end that if the time shall come in the near or remote future, when canal improvement shall be desired and become the policy of the State, there shall be no constitutional hindrance or obstacle in the path. It confers the power coupled with wholesome restrictions regarding the plans to be adopted and the expense to be incurred, and I trust it may meet the approval of this body.

It seems to be generally conceded that repairs to some extent upon all the canals are needed, and upon the Champlain canal notably so. In passing over portions of the latter I was somewhat amazed that State authorities had apparently neglected what appeared to be, and what undoubtedly is, a valuable State property, and I wondered just what disposition had been made of its share of the $750,000 annually appropriated for canal maintenance, and yet I doubt not in the near future, the canal authorities will carry to completion the excellent work undertaken thereon, and I am assured when this is completed this canal will be fully equal to all demands upon it. But surely no constitutional amendment is

needed for this. It all comes back then to a question of State policy.

Of the other canals of the State I think it may be safely stated that they are quite equal to the present demands of commerce; notably the Erie and the Oswego are not over-burdened. It is reliably stated that the former is not taxed to exceed one-tenth of its capacity, and the latter is not carrying to exceed one-tenth of what it did twenty-five years ago.

Attention is called to the marked falling off in these latter years of canal tonnage, and it is affirmed that that is due to their bad condition. Is this the fact, and does a fair analysis of the case establish it? The carrying trade upon the canals attained high water mark, or nearly so, in 1868, when their tonnage reached 6,442,225 tons, as against 4,331,963 in 1893. But since that date four of the State canals have been abandoned.

	Tons.
The Chemung, which carried in 1868	112,455
Genesee Valley, which carried in 1868	138,364
Chemung canal	165,875
Crooked Lake	4,457
Total loss by abandonment	421,145
Of the existing canals the Erie canal carried in 1868	3,346,986
In 1893	3,235,726
	111,260

Loss of about three per cent.

The Champlain in 1868	1,120,585
The Champlain in 1893	848,965
	271,620

Loss of about twenty-four per cent.

Oswego canal in 1868	958,444
Oswego canal in 1893	92,634
	865,810

Loss of about ninety per cent.

Of the total loss of 1,869,445 tons, but 111,000 only was on the Erie, and 271,000 on the Champlain. The greatest loss is upon the Oswego canal, and this is readily accounted for; to American markets by the opening of the new Canadian lines of transportation and the unjust discrimination by the Canadian government against consignments of freight to American ports, which is sought to be met by a proposed amendment now under consideration.

But, again, it is urged that the carrying trade by water is unprofitable and that such are the modern railway appliances that the canals are no longer competitors for freight. Upon this subject, however, I beg to call the committee's attention to the report of Mr. Hannan, Superintendent of Public Works, for the year 1893, pages 24 and 25. He says: "Comparing the season of 1893 with that of 1892, there is shown to be a gain of 49,968 tons; while there is a loss of 172,174 tons upon the Champlain canal, there has been a gain of 256,894 tons upon the Erie. The chief reason for this increase has been that the price paid for carrying freight has been remunerative; and notably by reduced shipments of grain the business of the canal boatmen has been profitable. The season of 1892 was made unprofitable to the boatmen for the reason that the rate established by the trunk lines composing the pool was 'so low' that boatmen could not compete with the rate made, and the result was that the business of carrying goods was unremunerative alike to the boatmen and railroads as well. Realizing the fact that this business was unremunerative on account of the low rate established and that the railways were losing money, the rate was increased this year to such a figure that boatmen could compete for a portion of this carrying trade at prices that were reasonable. The result has been that the season's business has been profitable to the carrier and the tonnage of the canals has been largely increased."

In view of this statement, can it be fairly asserted that the canals have ceased to be a regulator of freight and that the time has come when they should be abandoned altogether or improved by the expenditure of millions of the people's money? The report of the superintendent answers this question. It is also to be remembered in connection with this branch of the subject, that the average shipper much prefers railway to canal transportation, and that the wonder is that the decrease in canal shipments has not been even greater than is here indicated. The growth of railways in the last quarter of a century has been a succession of surprises, and their achievements the marvel of the age; to-day four trunk lines traverse the State from New York to Buffalo, competitors for passengers and freight. They furnish wonderful advantages over water

transportation. They have already monopolized and must forever monopolize the carriage of valuable and light merchandise. They have already superseded the smaller canals of the State, and one after the other has by common consent been abandoned. The toil of the railways is ceaseless and its energies exhaustless. In winter and summer alike, they furnish uninterrupted facilities of communication. The rapid transmission of freight is to-day as essential to business success as rapid transit is to the comfort of railway passengers. The two go hand in hand. Reaching to every hamlet, traversing every country, forever bringing nearer and nearer together the producer and the consumer, cheapening rates and shortening time, opening new markets for new products, and joining the busy life of the city with the daily toil of country, they furnish to much the greater part of the State their only avenue to the markets of the world, and to all a more complete agency than any and all of the great water communications we possess.

These considerations may well prompt us to due caution in our modification of the existing article on this subject; but however that may be, they furnish another and most satisfactory reason why shipments by water communication have decreased somewhat in the last twenty-five years.

I have observed, Mr. Chairman, that demand usually precedes supply and regulates it. I have not learned that of late the question of canal improvement has assumed general or unusual interest. I have not learned that it has been the special subject of executive message or legislative discussion. I do know, however, that a very elaborate bill was prepared by canal men and introduced in the State Senate in March, 1894, contemplating the expenditure in canal enlargements of twelve millions of dollars, and that it did not have life enough behind it to find its way out of the committee. In my immediate section this subject is hardly thought of, much less discussed. From that great line of counties, known as the southern tier, and from all the other counties of the State not bordering on the canals, not one pound of freight finds its way to markets over State waterways. Year after year their citizens pay their just proportion of large appropriations for canal purposes, without murmur or complaint. They are content to do this so long as the great cities at the termini of the Erie canal and the points intermediate, and those that border on the smaller canals of the State, derive a substantial benefit from canal maintenance. They are proud of the commercial supremacy of the State of New York and would detract nothing therefrom. They do ask, however, that you have a just

regard for the burdens of taxation which necessarily weigh upon them, and that you permit no new departures from settled State policies and the adoption of no system of extensive canal improvements until the Legislature shall have first consulted the source of its power and given the people ample opportunity to be heard.

Two years ago General Curtis, Member of Congress from the St. Lawrence district, introduced in Congress a bill which, while it did not attempt to take from the State the ownership and management of the canals, provided that the Secretary of the United States Treasury should pay to the Treasurer of the State of New York such proportion of the cost of maintaining our canals as the interstate or foreign commerce bore to the entire commerce carried by the canals. It is well known that much the larger part of the commerce carried over canals is not local, but interstate or foreign in its character, being in the ratio of about four to one.

A ship canal constructed by the general government, from Buffalo to New York, may never be realized. There may be insuperable barriers, natural and otherwise, in the way of the accomplishment of such a project. Its cost would be enormous and its practicability doubtful. But why may not the general government, which represents the great States of the west and northwest, and whose products are transported free of charge over the canals of New York, and in which the State of New York stands first in proportional representation and is first in commercial importance, why may not the general government, which holds the purse strings of the nation and legislates for all the States and all the people, contribute its just proportion to the maintenance of interstate waterways within the borders of New York? If it shall transpire in the future that our canals are insufficient for the needs of western commerce seeking their use, and extensive improvements are needed and increased expenditures demanded, is it chimerical to suppose, or unreasonable to ask, that the hard-pressed agricultural interests of the State be in a measure relieved in this regard by the general government? If the time shall come when the people of the west shall demand increased facilities and means of transporting their freight to the seaboard, they will join in the demand for the enactment of General Curtis's measure or one more beneficial, and canal improvement will speedily be accomplished. Inaugurate a new policy of extensive canal improvement and no aid of any kind can be secured from the general government. It will prove a hindrance rather than a help.

I do not argue, however, that the canals should not be kept in as good repair as may be, or that it should be suffered that their efficiency be impaired. But all this and even more may be accom-

plished for the canals under existing constitutional provisions. Why, then, is change demanded?

The proposition of the gentleman from Columbia seeks to confer upon the Legislature by express terms the power to improve the canals, and I favor the proposition. But of what avail is it? From this proposition canal enthusiasts indeed may attempt to draw the inference that this Convention by its passage has declared in favor of canal improvement and that the approval of the proposition by the people at the polls would be tantamount to a direction to the Legislature to forthwith enter upon the work. But the phraseology is permissive, not mandatory, and it must and does leave the Legislature free to adopt such course and policy as it may deem most wise.

The minority report, however, submitted by the Canal Committee, goes much further. It recommends that the constitutional restraint upon the Legislature contained in article 7, sections 10 and 12, be removed. It provides, as you are aware, that no debt in excess of one million dollars shall be incurred by the State, except the same shall be authorized, and the undertaking approved by a majority vote of the electors of the State.

It is proposed to strike this limitation from the Constitution and give the Legislature full and unrestricted power to enter upon and complete such a scheme of canal improvement as it shall deem advisable. This proposition should not prevail. For forty-five years this wholesome provision has remained inviolate — a part of the Constitution of the State. It has withstood the test of time and the ever-varying condition of a progressive people. Against it no shafts have been hurled or complaints aimed. It has received unqualified judicial sanction and was repeatedly approved by the Convention of 1867. Without friction, political and State politics have been conformed to it. Under it great public enterprises have been undertaken and carried to successful completion. The credit of the State has been kept intact. Under it the State has grown in wealth, expanded in power, prospered in its industries, and within its borders dwell a harmonious and contented people. To remove it would be a vote of lack of confidence in the people whom we represent, to ask for its removal is a declaration of a lack of confidence in the scheme proposed. If the expenditure should be made, you must trust the people to authorize it. If the people do not approve of it, it would be a great wrong to thrust the burden upon them. The danger that threatens this Convention is not that we shall do too little, but too much. No Constitution will ever be approved by the people which abrogates this provision, which

removes this safeguard. Nothing proposed here is so sweeping, nothing proposed so dangerous; to pass it is to discredit our work and invite defeat at the hands of the people.

There is another and quite as business-like objection to this proposition contained in the minority report. It recommends canal improvement, but what is canal improvement? Is it lengthening the locks alone, and cleaning the bottoms? Is it deepening the Erie canal to the depth of eight or nine feet, and the Champlain canal to five or six feet? Does it extend to all the canals of the State, the Erie, Champlain, Oswego, Black River, Cayuga and Seneca, or to which of these? We have a variety of suggestions submitted in answer to the resolution of inquiry addressed to the Superintendent of Public Works, to which I beg to refer the committee. Then there is the question of electrical navigation of the canals, a new subject, but one very seriously discussed, and, if I read the Superintendent's report correctly, likely to result in substantially good means of transportation. Now, which of these methods shall be adopted, and who shall say? Is it too much to leave that question to the people who pay the taxes; who suffer if it is a failure, and who reap the benefit if it be a success? Under existing provisions, the Legislature shall devise and submit to the people the plan; the people shall adopt or reject, and if they adopt, they shall determine the amount to be expended. Herein is safety. The other course will remove the only constitutional safeguard between the people and reckless extravagance on the one hand and venal legislation on the other. We come back then to the proposition of the gentleman from Columbia; give the Legislature constitutional power to suggest the character and extent of such improvement, if any, and the amount of money to be expended; reserve to the people the power to accept or reject the project. Thus these public works of the State may be preserved and if need be perfected for the use of commerce and the needs of our citizens, and the management and control thereof shall be forever vested and remain in the hands of the people, and this Convention will have done full justice to both.

Mr. Moore — Mr. Chairman, two hundred and eighty-five years ago, there occurred in the same month and year, two hundred miles apart, two apparently insignificant events; the one the presentation of a cup of fire-water to a savage by Hendrick Hudson on the banks of the Hudson; the other the firing of a French arquebuse by Samuel de Champlain, in aid of his Indian allies, heard for the first time by Indians, on the shores of Lake Champlain, near Crown Point.

Strange to say, these two explorers, unknown to each other, had connectedly, though apart, on the shores of these two great waterways of a mighty continent, with the cup of fire-water on the Hudson and the crack of the firearm on Lake Champlain, literally tolled the knell of the great Indian nations who then peopled their banks, and opened the way for the people who dwell there to-day. Like as in that historical event, has the commercial progress of these two waterways been connected; whatever was disaster to the one, was the same for the other; what has been prosperity for the one has been alike so for the other. You cannot separate Lake Champlain from the Hudson river. Stratagetically and commercially they are one. Very early in the history of the State did some of its patriotic citizens see that as Lake Champlain and the Hudson river were the natural military highways north and south, between Montreal and New York, so were they the true commercial highways; and the project of uniting them was vigorously agitated, until in 1817, authority was given to build the Champlain canal, sixty-six miles long, fifty feet wide at the surface, thirty-five feet at the bottom, five feet depth of water. This was finished in 1822, and in the same year the Glens Falls feeder and the Champlain canal pond above Troy dam, were authorized in addition, and completed in 1837, adding fifteen miles in length (twelve for the feeder and three for the pond), with the same surface and base width, and depth of water as in the main canal. Thus the two waterways were connected for commercial purposes.

The canals and their fund are under the charge of the following officers:

COMMISSIONERS OF THE CANAL FUND.

The commissioners have the superintendence of the canal fund and of the canal debt.

William F. Sheehan, Lieutenant-Governor.
John Palmer, Secretary of State.
James A. Roberts, Comptroller.
Addison B. Colvin, Treasurer.
Theodore E. Hancock, Attorney-General.

SUPERINTENDENT OF PUBLIC WORKS.

Edward Hannan.

The Superintendent of Public Works has the general charge of the construction of new canals, and the repairs of completed canals, viz.: Erie, Champlain, Oswego, Cayuga and Seneca, Black River, Oneida River improvement, Seneca River towing path and Cayuga Inlet.

STATE ENGINEER AND SURVEYOR.

Campbell W. Adams.

Prescribes duties of, and assigns divisions of canals to, engineers and appoints the same; visits and inspects canals; prescribes surveys, maps, estimates, etc., in the construction or improvement of a canal.

CANAL BOARD.

The Canal Board is composed of the commissioners of the canal fund, the Superintendent of Public Works, and the State Engineer and Surveyor. Meets at the canal department, from time to time during the year, for the transaction of such business as may properly come before it.

The following table and points show the distance covered by the

CHAMPLAIN CANAL.

Names of Places.	Distance from Place to place.	Albany.	Whitehall.
Albany	0	0	73
West Troy	7	7	66
Junction	0	7	66
Waterford	3	12	61
Mechanicville	8	20	53
Stillwater village	4	24	49
Bleecker's Basin	2	26	47
Wilbur's Basin	2	28	45
Vanduzen's Landing	5	33	40
Schuylerville	3	36	37
Saratoga Bridge	2	38	35
Fort Miller	3	41	32
Moses Kill	3	44	29
Fort Edward	5	49	24
Glens Falls feeder	2	51	22
Smith's Basin	5	57	16
Fort Ann	4	61	12
Comstock's Landing	4	65	8
Whitehall	8	73	0

GLENS FALLS FEEDER—(Champlain Canal).

Names of places.	Distance from place to place.
Champlain canal	0
Sandy Hill	2
Glens Falls	3
Head of the feeder	2
Head of the pond	5
From Junction to Whitehall	66
Length of Glens Falls feeder	12
Length of pond above Troy dam	3
Total	81

The value of the work has been demonstrated over and over again since its completion in 1837. This small canal has carried 44,472,457 tons of freight, with fifteen years of freight carried from 1822 to 1837, not reported separately from the Champlain canal, but averaging it, at the lowest amount given in one year, 261,000 tons more, making the enormous tonnage of over 48,000,000 carried by this canal along its little length of eighty-one miles, thus cheapening not only freights, but the cost of the products to the people just that much more in proportion.

If there are any public works and needs which the people have favored, it is their canals and their schools. A comparison of the situation of the two in the minds of the people shows an astonishing similarity. Literally they run "neck and neck," as the saying is. In November, 1882, section 3, of article 7, was submitted to the people for ratification, commonly called the "no canal toll" amendment and for maintaining the canals by equitable direct taxation. The whole number of votes cast in favor of the amendment was 495,714, and the number against it 183,212, making a majority of 312,502 votes for the amendments. The largest tax-paying counties favored it. Those thirty-five counties gave a majority of 398,165 votes in favor of the amendment and twenty-five counties gave a majority of 85,663 votes against it. The thirty-five counties which gave a majority of votes in favor of the amendment paid into the State treasury in 1891 (exclusive of school tax) the sum of $4,785,553.79 out of the total tax of $5,429,034.76, and the twenty-five counties which voted against the amendment paying the balance, $643,480.97. Thus the counties in favor of the canal amendment paid more than seven-eighths of this tax, while the

counties which opposed it paid less than one-eighth of it. That same year the total amount of the school tax paid into the State treasury was $3,779,393.75; of this amount, the counties which voted for the amendment contributed $3,277,265.05, while the counties which gave majorities against the amendment only contributed $502,178.70, the former paying six-sevenths and the latter less than one-seventh of the whole amount. In other words, the counties which had the majority of the taxes loved the canals and *vice versa*. It is also a fact that some counties paid more in school tax than was expended by them, and these were New York, Kings, Westchester and Erie. So while fifty-four counties in the State pay less for the support of their schools than the amount contributed by them for their schools, the balance is drawn from the remaining four counties, and these four counties are the canal termini.

Mr. Chairman, the people want their canals themselves for their State. They do not want them sold to the United States nor to anybody else. They do not want them to become dilapidated or disused. They want them kept up. Neither do they want New York State made a way station by an enormous ship canal for the freights of the whole country, but they want these canals to be what the founders intended them to be, the great commercial highways enriching the State along every mile of their tow paths, by controlling the carrying trade through the State.

The Champlain canal, in which I am especially interested, by reason of my residence at Plattsburg, Mr. Chairman, although not by any means the longest, is the great artificial artery which carries a large portion of the Canadian trade to New York city through the Chambly canal, which, although it is literally the tail end of the Canadian canal and artificial navigation system, is kept in splendid repair and at a uniform depth of seven feet of water. From this into the Sorrel river (sometimes called the St. Johns) and so into Lake Champlain, that great historic waterway, one hundred and twenty miles long and from five to six hundred feet deep, the trade of the north from Ottawa, Sault St. Marie and Montreal pours until it reaches Whitehall, the head of navigation on Wood creek, one of the feeders of the Champlain canal. Here, what happens? A great Canadian barge or a large American schooner is compelled to tie up, unload its cargo, tranship to smaller boats drawing the original five feet of water? Not a bit of it; but to one that can barely draw four feet. Investigation has shown that this canal is dilapidated and neglected. Yet in spite of this condition the Champlain canal carried 848,965 tons of freight during the season

of 1893. All the canals carried 4,331,963 tons of freight, consisting of products of the forest, 1,420,604 tons; agriculture, 544,145; manufactures, 661,892; merchandise, 216,013; other articles, 1,474,308; total, 4,331,963 tons, embracing nearly all articles consumed by the people in their every-day life, and of the 108,972,706 tons of grain received at the port of New York, 43,076,900 tons, or 39.53 per cent were carried by the canals. If the canals could do that enormous work with one hundred and twenty ton boats, what could they not do for the people with canals fitted for the commerce of to-day, with modern equipment as to the canals and their boats? But it is said that owing to the improvement in railroad transportation the canals can no longer compete with the railroads. Possibly this is just what the railroads want. I do not know this; but this I do know, that none know so well as the railroads that the canals make cheap transportation and products possible to the people. I do not wish to be understood, Mr. Chairman, as not appreciating what the railroads have done for the good and welfare of our people; on the contrary, I believe that they have done and still are doing a great work as factors in our present civilization. The people have paid them and paid them well for all they ever did or are doing, but the railroads do not belong to the people and the canals do. The people want them fully equipped, built and run with the most modern appliances and commensurate with the commercial demands of to-day and the necessities of our great Empire State of 6,000,000 of people. In my judgment, most positively a favorable amendment to the canals should be incorporated in our proposed Constitution. If there is any public work which the people have favored and do still favor, it is their canals; and if there is any public work which is now neglected, it is the canals. Let the delegates in this Convention speak in no uncertain tones in favor of these canals, and the people will respond in like tones in favor of your Constitution. If, however, by your vote, you show that you are in favor of, and interested in everything else — except the people's special property — they will rise in their wrath at the polls and bury this Constitution so deep that it will never be resurrected.

That the canals are really the controller of freight rates — I quote from an "Extract from Hepburn Committee Report on Canal Improvement — Document No. 17 — Assembly Document 38 of 1880:

"'New York possesses the key to the situation in the Erie canal. While the committee made no attempt to investigate the relation of the railroads to the canal, and sought to lessen their labors by

avoiding this question, the canal, like Banquo's ghost, would not down; we were compelled to meet it at every point and turn of the investigation. The cost of water transportation from Chicago to New York is the base line upon which railroad rates are determined and fixed throughout the country. The rates, by agreement of the principal railroads of the country, from all points from the West to the seaboard, are made a certain percentage of the Chicago rate.' (Testimony, pp. 3001-2-3-4.)

Mr. Blanchard (testimony, p. 240) says:

"'The State holds within its grasp the great controller of the freight rate within its borders, to wit, the canal; there is not a town that is not affected more or less within this whole State, from the extreme northeast to the extreme southwest corner of it, by the canal policy and rates of this State. Every rate we make to or from Buffalo in competition with the Erie canal has more or less influence to every point this side of Buffalo.' * * *

"'I might use an illustration upon the west end of our line; for instance, Salamanca, upon the Dunkirk division, the rate to that point is limited by the canal rates and the rates upon Lake Erie to Dunkirk, plus the railroad rate back to Salamanca, which is not upon the line of the canal; it is remote from it; it is upon the southern border, but we are limited to the lower of the rates I have cited. Still further, if the canal makes a rate to Buffalo and we make a rate to Buffalo, to compete with the canal, the rate being only three cents per hundred pounds more to stations on our western divisions, by the tariff I have submitted, than to Buffalo, the rate immediately falls down to within three cents of the Buffalo rate which is made by the canal, and in this way the canal influences our rates where it does not limit them.'"

Mr. Fink, a recognized authority on railroad matters, testifies (testimony, p. 530) that whenever a reduction is made in the rail rate from Chicago to New York, occasioned by lake and canal competition, that that reduction extends to Louisville, Nashville and Savannah. "'It extends to every point of the country I might say; to-day, when they charge ten cents or twelve cents a hundred from Chicago to New York, the steamship lines from here to Savannah take up that freight and carry it from here to Savannah, making a rate from Chicago to Savannah of twenty-five cents; the regular rate from Chicago to Savannah by railroads may be at the same time fifty, sixty, seventy or eighty cents; they have to come down and conform to the water rate; the rate in Savannah determines again the rate in Atlanta; Atlanta is perhaps the most interior of all towns in the country, and generally gets the highest rates on that account;

they carry their freight for nothing, from Chicago to New York almost, and then from here by water to Savannah and then carry the short distance from Savannah up to Atlanta themselves — that is 200 miles — and the other rail lines that work from Chicago to Nashville, Louisville, Chattanooga and Atlanta, have simply to conform to the rates that steamship lines and the rail lines from Chicago and New York make; thus the lake navigation and canal navigation regulate the rates of the whole country, you may say, from Canada down to the Gulf.'"

Mr. Vanderbilt, in his testimony, attached equal importance to the canal and regarded it as an important factor in the commerce of the State and country. "The maintenance of our trunk canals should engage the earnest solicitude of the State. Nothing could be more prejudicial to the interests of the city of New York, or to the State as a whole, than to permit their efficiency to be impaired or their usefulness compromised."

This State is now out of debt. Thousands of men are out of employment. Never before in our history as a State has been a more opportune time to show our true interest in commerce, trade and property of the people. I hope gentlemen will vote for the people on this amendment and that the Erie and Oswego canals may be deepened to nine feet, widened as required, and the Champlain canal deepened to seven feet, and put on a par, at least, with its northern feeder, the Champly canal, as a result of the work of this Convention.

The New York Produce Exchange says in part:

"This canal question is a consuming one. It is bristling with points of the greatest importance to the material interests of the State. It is a pity that the Convention is not able to see it as we, who are conversant with all its features, see it. The way to accomplish the work ought to come out on a critical examination of the case; but, somehow, the merits of the canal question do not seem to have fairly come before the Convention, or else is overshadowed by other things not so intimately connected with the business interests of the State. The canals of the State represent the spinal column of our prosperity."

Will not this Convention heed these words and take such favorable action for the canals as the exigencies of the case demand? While we are sleeping and neglecting our great canal property, our enterprising neighbors, the great northland of the Dominion of Canada, are putting and preparing to place their magnificent land (the counties of which literally have no northern boundary,

but go on and on to the North Pole) at the very head of canal navigation on this continent. Already the question is debated in the Dominion of Canada House of Commons, and her prominent men advocate the building of a great canal twenty feet deep, from Collingwood on Georgian Bay to Toronto on Lake Ontario, and improving the St. Lawrence river where needed, in like manner establishing a great ship canal from Duluth and Chicago and cutting off the bulk of the carrying trade now conveyed by the Erie canal and the Champlain canal. Already a call has been issued for a canal improvement convention in Canada. Our canals have paid millions more than they have ever cost, both directly and indirectly, and have turned into the treasury of the State millions of income.

I will not go into the details and figures of canal equipment, tonnage and freights as the time for discussion is so limited, but I appeal to you in behalf of my constituents, whose forge fires gleam on every hillside of the Champlain Valley, in behalf of the business interests of the homes of as brave and loyal a people as ever dwelt upon the hills and in the valleys of our noble State, to come to the rescue of these canals, the people's arteries of commerce within the borders of our State, and so preserve to our Empire State the metropolitan city that commercial supremacy which has for more than half a century been justly due, the queen city of this continent, mistress of commerce on land and sea, New York. (Applause.)

Mr. Hill — Mr. Chairman, waterways are the highways of commerce. Whether they be natural or artificial, they are equally well adapted to float the commerce of the world. The great historic nations were for the most part maritime nations. Their commercial supremacy was largely due to the sea.

Ovid declares that

> "Jupiter, surveying earth from high,
> Beheld it in a lake of water lie."

The commerce of the Mediterranean States has ever been such as to justify that declaration. But the great nations of the past were not confined exclusively to natural waterways. Many of them constructed extensive systems of artificial waterways, and among such may be mentioned China, India, Assyria, Egypt and Rome. Hydraulic engineering was carried to great perfection among the Romans, and their pro-consuls were required to submit plans "for changing the course of rivers for the purpose of facilitating the approaches from the sea to the centers of the various provinces," and we read that "Lucius Verus undertook to construct a canal

from the Mediterranean sea to the German ocean." All the States of modern Europe have constructed extensive systems of inland waterways. Addison says:

"Whole rivers here forsake the fields belo,
And wondering at their height, through airy channels flow."

Great Britain, France, Germany, Belgium, Holland, Italy, Sweden, Russia and Austria-Hungary transport much of their products by means of such inland waterways. It has been said that "much importance is there attached to having the command of cheap and adequate water transport, and it seems to have been allowed that it is the function of railways to convey passengers and traffic that must be transported speedily, and they will bear a high rate of freight, while it is the function of waterways to convey heavy luggage or traffic that will not bear a high-rate freight, from point to point, at a low rate of speed. The sea-girt British Isles have upward of 2,500 miles of canal, in addition to the Manchester ship canal, which is thirty-five and one-half miles long, and is said to be one of the most remarkable undertakings of modern times."

The commercial prosperity of England is said to date from the period of her canal development. In 1878, Germany had in operation 1,289 miles of canals, and had ordered the construction of 1,045 miles of new canals. Belgium has forty-five miles. France has expended a larger amount of money than any other European nation to provide for canal navigation, and in 1887 the total length of its canals was 2,998 miles. About forty-eight per cent of the tonnage of that republic was transported on its waterways. The average capacity of boats used therefor was 300 tons.

Italy has a complete network of artificial waterways, which have contributed more to her urban prosperity than has the Mediterranean. Holland, Sweden, Spain, Russia, Hungary and other European States have their respective systems of artificial waterways, whereby it is made possible to maintain an extensive inland continental commerce. In 1890 the United States had in operation 2,926 miles of artificial waterways, in addition to her thousands of miles of navigable rivers.

Canada, South and Central America have their respective systems of well-constructed inland waterways of vast importance to their commercial prosperity. Several mammoth canals have been projected, such as that of Hungary to connect the Danube with the North sea, the German ship canal now being constructed between the North and Baltic seas, the Italian ship canal to connect the Tyrrhenian and the Adriatic seas, the Russian canal to connect the

Baltic and White seas, the Corinthian ship canal now being constructed, the French ship canal to supersede the present Languedoc canal to connect the Mediterranean and Bay of Biscay, the Panama and Nicaraguan ship canals to connect the Atlantic and Pacific oceans, the Florida, the Delaware and Chesapeake and the Hennepin canals, the latter of which is in the process of construction, and the recently proposed canal to connect Georgian bay with Lake Ontario. Such vast internal improvements as these, and many others that might be mentioned, conclusively demonstrate that the era of canal construction has not passed, but that the construction and extension of inland waterways is still going on the world over.

> "By which remotest regions are allied,
> Which makes one city of the universe,
> Where some may gain, and all may be supplied."

The Suez canal, the "great highway to the east," connecting the Mediterranean and Red seas, the waterways of India, China, Europe and America, and other systems of the artificial water communication in the Eastern and Western hemispheres, have made it possible in the great marts of trade to make an interchange of the products of the Orient and Occident. Ocean, river, lake and canal communication form an unbroken highway for the transportation of the products of the world to every nation.

Remotest regions may thus contribute their products to supply the wants of the great commercial nations of the earth. Waterways facilitate the interchange of commodities and bring the products of all nations within easy access of the people of the earth. Ever since the Homeric age, natural and artificial waterways have been the highways of commerce and a very potent agency in promoting the development of high civilization.

Inland water transportation has been favored in America by Washington, in Russia by Peter the Great, and in France by Louis XIV. The wise policy, which has led modern States to provide for such transportation, is likely to continue, and New York can ill afford to be governed by a different policy. What Gibbon has said of the servitude of rivers, we may say of canals, that they are "the noblest and most important victory which man has obtained over the licentiousness of nature." Thus conserved, the bounteous waters of nature become a vehicle to transport for man the products of field and factory. Freely do they serve his purposes.

As New York was the first to push forward her vast system of internal waterways, "which," it is said, "have contributed more to the advancement of commerce and civilization than any similar work

recorded in history," so New York should be the last to suffer her internal waterways to lapse into a condition of neglect and disuse. Many good citizens fear that such a condition is likely to occur and think that this Convention ought to recommend the adoption of some amendment which will result in the improvement of the principal canals of the State.

Undoubtedly it would be unwise to undertake the construction of a ship canal between Lake Erie and the Hudson, as contemplated by some of the proposed amendments which have been offered in this Convention. The cost of such a canal precludes its construction by the State, and the State ought not to relinquish to the federal government its vast system of internal waterways, which, as we shall hereafter show, are of great value to the State and which have hitherto and now are contributing millions of dollars, received from freights, annually to its wealth.

The State should ever maintain control of its artificial waterways, and such was the opinion of the joint legislative committee of 1817. Then, again, engineers have expressed grave doubts as to the adequacy of the canal feeders of the State to supply a ship canal, if constructed, with sufficient water to float large lake vessels across the State to the Hudson. Inadequacy of water supply might prove an insuperable obstacle to such a system of water transport. There is still another objection to such an undertaking, and that is that lake freight rates are so low that capital does not find profitable investment, except in vessels of large tonnage, drawing from fifteen to twenty feet of water and capable of maintaining a speed of not less than twelve knots an hour. Slower and smaller crafts are being superseded in lake transportation by larger and swifter vessels. With the existing sharp railway competition, vessels that may be profitably engaged in lake transportation would prove unprofitable investments were they subjected to the restrictions and delays incident to the navigation of a canal connecting our Great Lakes with the Hudson.

For these reasons, as well as others that might be mentioned, it must be apparent to all that a ship canal might not be a feasible waterway and that it is wiser to adopt some such plan as that suggested by State Engineer Horatio Seymour, Jr., which has the approval at least of the friends of the canals. But it is seriously contended that this Convention should do nothing at this time for canal improvement, but suffer the present constitutional provision to remain unchanged; that the canals are now large enough to supply all the demands made upon their carrying capacity, and that the people are opposed to further taxation for canal improve-

ment; that the canals are a source of expense and without profit to the State, and many other reasons have been assigned why no affirmative action should now be taken providing for canal improvement. History thus repeats itself and the friends of the canals are required to

"Fight all their battles o'er again."

The whole matter must be argued *de novo*, as though proposed canal construction were for the first time coming up as an original proposition. Living actually, or almost in touch with canal transportation, its beneficient effects upon our commercial and industrial life are so continuous that we are as unmindful of them as we are of those of the air we breathe. At this late day, after so much has been said and written by the great statesmen whose names adorn the history of New York, in favor of the efficiency and perpetuity of the canals, but little more can be said in relation to this matter. The canals have been so inseparably connected with the commercial supremacy of the Empire State, they have come to be regarded as indispensable. At the beginning of the present century the wealth of this State was exceeded by that of Massachusetts, Pennsylvania and Vermont and equaled by that of Connecticut and North Carolina. Much of our fair domain was then a wilderness, peopled only by Redmen. Western New York and the territory bordering on the Great Lakes were on the outskirts of civilization. Utica, Rochester and Buffalo were still villages.

The completion of the Erie canal changed this condition, and our State soon took her place at the head of the list of States, and has ever since maintained that proud position. Whether or not she retain that position, in my judgment, depends upon her attitude toward her great waterways. We are satisfied that this is capable of absolute demonstration, but before entering upon the consideration of that matter, permit me to refer briefly to the genesis of the Erie canal. The Historian of the Five Indian Nations speaks of a "water communication between the Onondaga river and the country of the Iroquois, and the facility of transportation between the lakes and Schenectady," and says, "there were three portages in the whole route, two of which were very short."

In 1784 Christopher Colles, of New York city, proposed to the State Legislature that it undertake the improvement of the Mohawk river to render it suitable for navigation. During the following year he received $125 from the State Legislature and published an essay, in which he set forth the suggestion of inland navigation between Albany and Oswego, and in which he says, "the Allegany

mountains, which pass through all the States, seem to die away as they approach the Mohawk river, and the ground between the upper part of this river and Wood creek is perfectly level."

In 1791 Governor George Clinton called attention to the fact of the importance of such internal improvements as would tend "to facilitate the means of communication with our frontier settlements, as well as to strengthen the bonds of society, as to prevent the products of those fertile districts from being diverted to other markets;" and the Legislature thereupon passed "an act concerning roads and inland navigation."

In 1792 the Western Inland Lock Navigation Company was incorporated to open communication in natural waterways, and by canals to Seneca lake and Lake Ontario, and the State was to give $12,500 to this company when it had expended $25,000. This company constructed a canal at Little Falls, two and three-quarter miles in length, with five locks, and also a canal a mile in length at the German Flats, and a little later one between the Mohawk and Wood creek. These were used but little. The purpose of this navigation company was "principally to improve the natural water courses between the mouth of the Onondaga and the Mohawk, and to connect them by the short cuts, which were necessary for that purpose."

The Western Company had no conception of the formation of "a canal from Lake Erie to the Hudson." The names of Cadwallader Colden, Sir Henry Moore, George Washington, George Clinton, General Philip Schuyler, Gouverneur Morris, Jesse Hawley and others have been credited with being the first to suggest a great artificial waterway between Lake Erie and the Hudson. As early as 1787 Joel Barlow, in his "Vision of Columbus," prophesied that:

> "From fair Albania, toward the setting sun,
> Back through the midland length'ning channels run;
> And the fair lakes, their beauteous towns that lave,
> And Hudson's joined to fair Ohio's wave."

Mr. Joshua Forman, in 1808, was first to introduce a concurrent resolution in the State Legislature providing for a survey for such a canal. The commissioners appointed under this resolution, in 1810, were Gouverneur Morris, Stephen Van Rensselaer, William North, Thomas Eddy, Peter B. Porter, and they were empowered to explore the whole route for inland navigation from the Hudson river to Lake Ontario and to Lake Erie. Their report was laid before the Legislature in 1811, and Robert Livingston and Robert

Fulton were added to the other commissioners. By an act of the Legislature, passed in 1811, these commissioners were authorized to apply to Congress for co-operation and financial aid; but the federal government and the sister States declined to assist the State of New York in her great undertaking to connect the waters of the Great Lakes with those of the Hudson river. By an act of the Legislature, passed in 1816, to provide for the internal navigation of the State and "to effect communication by canals between the Hudson and Lake Erie and Lake Champlain," Mr. Stephen Van Rensselaer, Mr. De Witt Clinton, Mr. Samuel Young, Mr. Joseph Ellicott and Mr. Myron Holley were appointed commissioners with power to appoint engineers, and $20,000 were appropriated for defraying the expenses of the work to be so commenced.

These commissioners caused surveys to be made and made an elaborate report, prepared by De Witt Clinton, to the Legislature of 1817, in which they divided the proposed Erie canal into the western section, extending from Lake Erie to the Seneca river, the middle section, extending from the Seneca river to Rome, and the eastern section, extending from Rome to Albany.

In 1817 De Witt Clinton, to whom more than to any other man are we indebted for the Erie canal, prepared a bill to authorize the Canal Commissioners to begin canal construction and to provide for the payment of interest on "loans, which might be made, and the debts that would be created," in prosecuting the work of such canal construction. Hon. Elisha Williams supported with much ability the bill in the Assembly, and in reply to the members from the city of New York, nearly all of whom were opposed to the construction of the proposed canals, said: "If the canal is to be a shower of gold, it will fall upon New York; if it be a river of gold, it will flow into her lap."

In the Council of Revision, Thompson and Tayler were outnumbered by Platt, Yates and Chancellor Kent, who declared himself "in favor of the canal," and cast the decisive vote that ushered in the canal policy of the State. The construction of the Erie canal was commenced at Rome on July 4, 1817, and completed in 1825, at a cost of $9,143,789.86. It was 363 miles long.

It has been even said that, "for a single State to achieve such a victory — not only over the doubts and fears of the wary, but over the obstacles of nature — causing miles of massive rocks at the mountain ridge to yield to its power, 'turning the tide of error as well as that of the Tonnewanta, piling up the waters of the mighty Niagara, as well as those of the beautiful Hudson, in short, causing a navigable river to flow with gentle current toward the steep

mount at Lockport, to leap the River of Genesee, to encircle the brow of Irondequoit, as with the laurel wreath; to march through the rich fields of Palmyra and of Lyons, to wend its way through the quicksands of the morass at the Cayuga, to pass unheeded the delicious licks of Onondaga, to smile through Oneida's verdant landscape, to hang upon the arms of ancient Mohawk, and with her, after gaily stepping down the cadence of the Little Falls and Cahoes, to rush to the embrace of the sparkling Hudson,' and all this in the space of eight short years, was a work of which the oldest and richest nations of Christendom might well be proud."

One historian says, "the opening of the grand Erie canal put courage into the hearts of the people. Joy and gladness were to be seen in the countenances of all." On October 26, 1825, public opinion voiced itself at Buffalo in the following celebrated ode:

"Strike the lyre! with joyous note,
Let the sound through azure float,
The task is o'er, the work complete,
And Erie's waves with Ocean meet;
Bearing afar the rich bequest,
While smiling commerce greets the west.
See where the peaceful waters glide,
Through the woodlands wild, as if in pride,
To mark that learning makes her home
Where solitude has set her throne.
Strike the lyre! 'tis envy's knell —
Pallid fear within her cell
Shrinks aghast — while truth and fame
On glory's scroll 'grave Clinton's name.

* * * *

Strike the lyre! 'tis freedom's song,
While th' red flash, the line along,
Tells to the world with echoing roar,
Matter and space are triumphed o'er!
Gigantic genius led the van
While sturdy toil fulfill'd the plan.
What boundless gratitude is due
To those, whose purpose, ever true,
Pursued their course with daring pride
Till Erie's waves caressed the tide.
Strike the lyre! should discord's brand
In vain be hurled by impious hand,
New York can proudly boast alone
She wove the band — the Union's zone."

The roar of artillery, which was repeated at stated intervals across the State on October 26, 1825, proclaimed the commencement of the voyage of Governor De Witt Clinton in the "Seneca Chief" from Lake Erie through the Erie canal and down the Hudson to Sandy Hook. It was a continuous ovation, unparalleled in the annals of the State. One of the badges worn in New York city had this motto: "Devised by Genius, Performed by Industry." Upon his arrival at Sandy Hook, on November 4, 1825, he poured the keg of water, which he had brought from Lake Erie, into the Atlantic ocean, and said: "The solemnity at this place, on the first arrival of vessels from Lake Erie, is intended to indicate and commemorate the navigable communication which has been accomplished between our Mediterranean seas and the Atlantic ocean, in about eight years, to the extent of more than 425 miles, by the wisdom, public spirit and energy of the people of the State of New York, and may the God of the heavens and earth smile most propitiously on this work and render it subservient to the best interests of the human race."

Bottles of water from the Elbe, the Thames, the Seine and Tagus rivers were mingled with the waters brought from Lake Erie and the Hudson to symbolize commercial intercourse with all nations. The preamble of the act of 1817, by virtue of which the Board of Canal Commissioners were empowered to commence the construction of the State's great artificial waterways, contained these words, "navigable communication between Lakes Erie and Champlain, by means of canals, connected with the Hudson, will promote agriculture and commerce, mitigate the calamities of war, and enhance the blessing of peace, consolidate the Union, advance the prosperity and elevate the character of the United States." That declaration has been verified.

In 1819 the Genesee county farmer sold his wheat for thirty cents per bushel; in 1825, in consequence of cheap canal transportation, he realized for his wheat one dollar per bushel. In 1817 it is said that it cost $100 to transport a ton of merchandise from New York city to Buffalo. The effect upon travel was also beneficial, and a traveler was enabled to make a journey from New York up the Hudson and by the way of the Erie canal to Buffalo, a distance of 513 miles, in six days, for the small sum of eighteen dollars.

Canal packets, with their clean and commodious quarters, gradually superseded the dusty, tedious, expensive and lumbering stage-coach. The ease and comfort afforded passengers of canal packets indicated a decided improvement over the discomforts of the stage-coach, which is said to have "tossed the traveler as if he were in a

fishing smack upon the sea in a storm." The canals of the State greatly facilitated transportation. By means of them it was made possible to establish and maintain commercial relations with distant parts of the State which theretofore were inaccessible. The agriculturist, the miner, the manufacturer and the merchant were brought into business communication with one another, and were enabled to make an interchange of their wares, products and commodities. Farms appreciated in value, the villages of central and western New York sprang into cities and the wealth and population of the State more than quadrupled. The prosperity of the State was assured. The lakes and rivers, discovered by Hudson, Champlain, La Salle and others, were thus connected by artificial waterways, and the interior of the continent was opened up and brought into touch with foreign commerce and the argosies from across the high seas. The confines of civilization were extended westward and "peace and plenty" began to reign where desolation had made its home.

The first canal boats navigating the Erie canal carried only forty tons and drew but two and one-half feet of water. The Erie canal was known as "Clinton's ditch," but later it was deepened to four feet, which enabled boats to carry seventy tons. In 1862 it was again enlarged so that it had a surface of seventy feet and a bottom of fifty-six feet, and seven feet of water, and permitted boats to carry 240 tons. Without its feeders and the Albany basin, the Erie canal is 350½ miles in length and has seventy-two locks, 110 by 18 feet in size. By chapter 497 of the Laws of 1851, tolls on railroads were abolished, and by constitutional amendment, adopted in 1882, tolls were also abolished on the canals. Since that time thirty-nine locks have been enlarged and one is now in the process of enlargement, to a uniform length of 220 feet each, at an average cost of about $35,000, and thirty locks remain yet to be enlarged. The other principal canals of the State are the Champlain, Oswego, Black River, Oneida and Cayuga and Seneca. In addition to the four lateral canals, constructed by the State and sold by virtue of the constitutional amendment of 1874, the State now owns 638 miles of canals, or nearly one-fourth of the entire canal mileage of the United States.

The taxpayers of the State have been required to pay toward this extensive and valuable system of artificial waterways, from their inception down to September 30, 1893, as shown by the State Comptroller's financial canal statement for the latter year, the sum of $60,283,693.14. Upwards of $12,000,000, however, have been turned back into the State treasury from canal revenues for governmental

purposes, so that the funds raised by taxation and invested in our canals do not exceed $48,000,000. All other moneys expended for canal purposes have come from canal revenues, including the sum of $51,156,936.72, interest paid on loans, which loans and interest have also been paid from canal revenues. It is apparent from the Comptroller's statement, which is the official record of the total receipts and total disbursements by the State on account of the canals from their inception down to September 30, 1893, that had the interest item of $51,156,936.72 been avoided, as it might have been, and had the four lateral canals, now abandoned, which were a net expense to the State of $18,648,619.69, not been constructed, the balance sheet of the Comptroller would show the State a debtor to the existing canals in the sum of several millions of dollars. It is only by charging up the loss on unproductive, abandoned canals, and also interest on loans, procured to avoid taxation, that it is made possible for the existence of the balance of $48,000,000 in favor the State. This, however, is the aggregate contribution made by the taxpayers toward the purchase, construction, equipment and operation of the 638 miles of canals now in use in this State. Where else have the taxpayers made so small an investment which has proven so profitable? The property alone, had it yielded no revenue whatever, is worth several times the amount of money which has been invested in it. In the further consideration of this subject, we may, therefore, very properly treat the question of the taxpayers' investment as a valuable one, and as readily convertible into cash should the people desire to dispose of their canal property. This fact seems to have been overlooked by some who are opposed to the further development of public improvements. We are no longer perplexed at the mathematical intricacies of the probable operation of sinking fund schemes to liquidate a canal debt as were the Conventions of 1846 and 1867-8, for we have no such debt, but on September 30, 1893, we had a surplus of $782,054.67, after having collected and disbursed for canal purposes $294,409,897.72.

Much credit is due to the men who were able to formulate and put in operation a financial policy, by which it was made possible to realize and expend for canal purposes so vast a sum of money, without resorting to direct taxation to the extent only of about $48,000,000, and to liquidate and extinguish entirely the canal debt existing in 1846 of $16,944,815, and that existing in 1866 of $21,407,682.22. The gigantic work of canal construction went on and was paid for without the people feeling the cost thereof. It may be of interest to note more in detail what some of our canals have accomplished.

The State Auditor's report disclosed the fact that the total cost of the construction, enlargement and operation of the Erie canal down to 1878 had been $76,238,938.22, and that down to the same date the Erie canal had paid into the State treasury for tolls and other revenues the sum of $118,142,837.81, being $41,903,899.59 in excess of the cost of its construction, enlargement and operation. It is probable that, from 1878 down to date, in consequence of the abolition of tolls in 1882, the cost of repairs and operating expenses of the Erie and Champlain canals together have exceeded the revenues derived therefrom by about $10,000,000, and if this latter sum be deducted from the $41,903,899.59 profits from the Erie canal prior to 1878, there still remains a surplus of over $31,000,000. The Champlain canal has been less productive. The revenue from the Erie and Champlain together, as stated in Document No. 23, from their inception down to September 30, 1892, has exceeded the cost of their construction, enlargement and operation for the same period to the extent of $28,919,633.16. The revenue derived from the other canals of the State now in operation, for the same period, has been exceeded by the cost of their construction, enlargement and operation by $13,209,768.38. If this latter sum be deducted from the profits of the Erie and Champlain canals there still remains a surplus of $15,712,141.13. The four abandoned canals cost the State $18,648,619.69. It will thus be seen that the Erie canal, over the cost of its construction, enlargement and operation, has yielded a surplus revenue of $31,000,000, which has been applied in support of unproductive canals in part and in part expended in liquidating the principal and interest of the canal debt and in defraying the expenses of the State government. All that the taxpayers have ever paid for the construction, enlargement and operation of the productive and unproductive canals together is the sum of $60,283,693.14, of which upwards of $12,000,000 have been paid back from canal revenues into the State treasury for governmental purposes.

Their investment has proven very remunerative. The State received from canal tolls and water privileges down to September 30, 1892, $133,555,049.03, of which sum the Erie canal down to 1878 had contributed $118,142,837.81, and since that time has contributed between $8,000,000 and $9,000,000. In addition to the sum of $133,555,049.03 received by the State as tolls and other canal revenues, the vast tonnage of merchandise passing from the seaboard to the interior and of agricultural and other products passing from the interior to the seaboard along our canals has contributed in money for freights to the boatmen upwards of $225,000,000. This

is shown by the official reports of the Auditor of the Canal Department, of the Superintendent of Public Works and of the State Comptroller. In excess of tolls received by the State, there were received by boatmen for canal freights: In 1837, the sum of $1,890,773; in 1840, the sum of $2,419,802; in 1845, the sum of $1,785,280; in 1850, the sum of $2,489,489; in 1855, the sum of $3,036,343; in 1860, the sum of $5,039,853; in 1865, the sum of $4,766,066; in 1870, the sum of $4,941,410; in 1875, the sum of $3,273,105; in 1880, the sum of $4,833,526; in 1882, the sum of $3,373,154. The total amount of canal freights so received, in excess of tolls, for forty-seven years, commencing with 1837 and ending with 1882, was $170,038,674, and the amount of tolls received by the State for the same period was $120,987,763. The total amount of tolls and freights for that period was $291,026,437. In the year 1871 canal freights were $7,679,049, and in the year 1872 were $7,576,300 in excess of tolls. Since that time the sediment and obstructions in the canals have seriously interfered with their carrying capacity and the tonnage thereon has been somewhat smaller and the freights have been lower. It is estimated that the receipts for canal freights since 1882 have averaged $4,000,000 annually, and that the receipts for canal freights and passenger rates from 1826 to 1837 averaged not less than $1,500,000 annually. If the receipts for canal freights and passenger rates prior to 1837 and the receipts for canal freights since 1883 be added to the $170,038,614 received for canal freights from 1837 to 1883, altogether they make a grand total of upwards of $225,000,000 received by the boatmen for canal transportation in excess of the $133,555,049.03 paid into the State treasury for canal tolls and water privileges. It is also estimated that there have been contributed by canals to merchants, warehousemen and forwarders in commissions and storage upwards of $110,000,000. By adding $133,555,049.03, received by the State for tolls and water privileges, to the sum of $225,000,0000, received by boatmen for freights, and to these the other sum of $110,000,000, received by merchants, warehousemen and forwarders, we get the grand total of more than $468,555,049.03, which has been contributed by the vast tonnage of commerce to the wealth of the State of New York, at an expense to the taxpayers of only $60,283,693.14, a part of which has been refunded.

The vast revenue so received has not found its way into the pockets of foreign bondholders, but has been expended by the State and boatmen and other persons identified with canal transportation wholly within the State. Commerce has thus paid tribute to

the enterprise of New York and yearly adds millions of dollars to its wealth.

The annual cash receipts from tolls and freights on the canals for many years exceeded the entire State taxes, levied for all purposes, as may be seen from the following statement: The State taxes for 1859 were $3,512,284; canal tolls and freights for 1859 were $3,665,806; the State taxes for 1860 were $5,440,640; canal tolls and freights for 1860 were $8,049,450; the State taxes for 1861 were $5,586,848; canal tolls and freights for 1861 were $9,369,378; the State taxes for 1862 were $6,884,193; canal taxes and freights for 1862 were $10,780,431; the State taxes for 1863 were $7,272,274; canal tolls and freights for 1863 were $9,065,005; the State taxes for 1864 were $7,880,249; canal tolls and freights for 1864 were $10,939,609. A similar condition existed for some time prior to 1859 and subsequent to 1864. It may be safely stated that for fully half the time since the completion of our canals the revenue in tolls and freights derived annually therefrom has exceeded the annual cost of the State government. Noiselessly have flowed on these rivers of gold, enriching near and far all parts of the State.

Among the evidences of this are the flourishing cities that have sprung up along with the development of this inland commerce. New York, Brooklyn, Albany, Troy, Utica, Syracuse, Rochester and Buffalo, in commercial affairs not inferior to the maritime cities of Southern Europe, and unrivalled by the cities of any other State in the Union, accentuate the wisdom of the policy which conceived and dominated the construction of the State's artificial waterways, and thus laid the foundation for her commercial supremacy. They speak in no uncertain language of prosperity attained as a result of canal transportation. They have become absorbing centers of the agricultural products of the State, and have made it possible for the rural counties to attain a degree of thrift and prosperity unsurpassed by those of any other State. Every village and hamlet in this great State feel the pulsation of industrial life that throbs in these great centers. Whatever tends to advance the interests of the latter promotes the welfare of the former, and no one thing is so likely to advance such interests as the increase of the commerce of our inland waterways.

These superb cities, with their humming factories, spacious warehouses, wealthy banks, large libraries, comfortable houses and palatial residences, are the pride of the people of the State and contribute much to its imperial greatness. They comprise more than one-half of our population and their vast industries furnish employment for thousands of persons who otherwise would be unable to

secure employment in this State. The larger and wealthier they become, the greater will be their demands upon the products of the rural counties and the greater will be the proportion of the State taxes which they will be required to pay. Erie, Kings and New York counties now pay sixty-two per cent of the State taxes. These three counties, together with Albany, Rensselaer, Oneida, Onondaga and Monroe counties, pay about three-fourths of the State taxes. The thirty-one counties touched by canal transportation pay about eighty-seven per cent of the State taxes, while the other twenty-nine rural counties pay but thirteen per cent thereof.

Several of these latter counties are receiving from the State more money, as school funds, than they are paying for all purposes into the State treasury. To illustrate, the county of St. Lawrence contributed toward the expenses of the State government for fifteen years, commencing with 1863 and ending with 1877, the sum of $268,968.97; and St. Lawrence county received from the State treasury for the same period for the maintenance of its public schools the gross sum of $807,670.68.

Delaware county for the same period contributed toward the expenses of the State government the sum of $143,837.14, and Delaware county for the same period received for the maintenance of its schools the gross sum of $461,904.63. Other similar instances might be given. For the same period of time New York city contributed to the State treasury $9,019,045.64 more than it received from the State treasury. It thus appears that some counties in times past have drawn out of the State treasury for school purposes alone three times as much as they contribute for all purposes into the State treasury.

The amount of money so received by twelve of such counties in excess of the total taxes paid by them to the State for all purposes in 1894, is $59,940.16. Thus it would appear that the rural counties can ill afford to oppose canal improvement, which is of such vast importance to the commercial interests of the State, and which is being advocated by the principal taxpaying counties of the State. It does not seem possible that our people can fail to comprehend the import of the movement, going on the world over, to bring all lands in touch with water transportation. After the canals have more than paid for themselves in tolls to the State, and after the people of the State have received upwards of $225,000,000 in freights in addition to the tolls received by the State, and in addition to the $110,000,000 received by forwarders, commission merchants and warehousemen and after our unparalleled industrial and commercial development, which has resulted largely from our inland

water transportation, it would seem as though every citizen in the State of New York now understood the inestimable benefits that have been received by all the people from our vast system of artificial waterways. No county is so distant from these great arteries of commerce but that it is benefited thereby. The merchandise it consumes is cheaper, and the products it sells are more valuable than they would be otherwise, were it not for the minimizing of rates of transportation between such county and the metropolis.

The canals are a further advantage to all the persons within the borders of the State by their regulation of railroad charges throughout its limits. This fact was very clearly stated by Mr. George R. Blanchard, vice-president of the Erie Railroad, in his testimony before the Hepburn railroad investigating committee, in 1879. He said: "The State holds within its grasp the great controller of the freight rates within its border, to wit, the canal. There is not a town that is not affected more or less within the whole State, from the extreme northwest to the extreme southwest corner of it, by the canal policy and rates of this State. Every rate we make to or from Buffalo in competition with the Erie canal has more or less influence to every point this side of Buffalo.

"I might use an illustration; upon the west end of our line, for instance, is Salamanca, upon the Dunkirk division. The rate to that point is limited by the canal rates and the rates upon Lake Erie to Dunkirk, plus the railroad rates back to Salamanca, which is not upon the line of the canal; it is remote from it; it is upon the southern border, but we are limited to the lower of the rates I have cited. Still further, if the canal makes a rate to Buffalo, and if we make a rate to Buffalo to compete with the canal, the rate only being three cents per one hundred pounds more to stations on our western division, by the tariff I have submitted, than to Buffalo, the rate immediately falls down to within three cents of the Buffalo rate which is made by the canal, and in this way the canal influences our rates where it does not limit them."

The State Railroad Commission, in its report of 1885, says that, "No better illustration is possible of the wisdom upon the part of the State of maintaining in efficient condition its waterways." The board has taken occasion in each of its annual reports to comment upon this subject, and again repeats what it said in its second annual report (page 12), the following language:

"Water competition is acknowledged by railroad managers to be the only competition that is uniform and effective in fixing rates of transportation for the commerce of the country. The canal system of this State regulates the carrying price over and through the

State. Therefore, whatever may be said for or against railroads competing with each other, there can be no doubt but that it is of vital interest to the people of the State to jealously guard our great waterways, which by a constitutional amendment have been made forever free."

The United States Senate committee, consisting of Senators Windom, Sherman, Conkling and Davis, appointed to examine into transportation, in the course of which they visited and inspected the Erie canal, say that, "the chief instrumentalities by means of which those (competitive) forces will exert their power are the Mississippi river on the one side, and the northern water routes (comprising Great Lakes and Erie canal) on the other. Both routes constitute indispensable parts of one grand system. Each is needed to regulate the other, and both are regulators of railway charges. Each has some advantages which the other lacks, and some impediment which the other has not; but on the whole their trade forces, commercial facilities and economic capacity for cheap transportation will be so evenly balanced as to insure a healthy, active and permanent competition. But the competitive power and influence of two great contestants (the water and railroad lines) will not be limited to any one locality, but will extend to nearly every State in the Union, and will hold in check and regulate the charges on every railroad from the interior to the seaboard. The wide sweep of competitive influences exerted by the Erie canal is not generally understood or appreciated. You would doubtless be surprised, Mr. President, if I told you the 'little ditch' which runs through your State holds in check and regulates nearly every leading railroad east of the Mississippi river, and that it exerts a marked influence on the cost of transportation over all the country, extending from the interior of the Gulf States to the St. Lawrence river, and from the great plains to the eastern foothills of the Rocky mountains to the Atlantic ocean. And yet such is the fact."

Ex-Governor Horatio Seymour, in a letter dated February 27, 1882, said: "So long as they (canals) are kept in good condition, we shall be saved from the evils of combinations or unjust discriminations against our State. If they did not carry a pound of freight it would be wise to keep them in order, so that they would be ready for use to defeat unjust and hurtful charges against the business of New York. The chief element in the prosperity of every State or nation is the economy of transportation of persons and property. It is the most marked fact in the difference between civilization and barbarism." In 1891, Mr. Depew said: "Canals compel lower rates of transportation than any railroad in the world." But it seems

unnecessary to add further authorities on this point. Water transportation always has and ever will lower railroad transportation and promote civilization. A comparison of canal rates with railroad rates, since the construction of railroads, proves that the canals have saved the people of the State many millions of dollars in freights. In the year 1893 the canals transported nearly one and three-fourths millions tons of freight, either produced or consumed in the State. If we estimate the saving of charges thereon at three cents per hundred pounds, due to the competitive influence of the canal upon freight rates, we find that there has been saved to the people of the State upwards of a million dollars. That is another direct gain to the State. In addition thereto the railroads have been forced, by reason of the competitive influence of the canals, to carry millions of tons of freight either produced or consumed in the State at a lower rate, which is an indirect gain to the State of several millions of dollars annually. The canals benefit all parts of the state, as appears from the clearances of canal boats and tons of freight carried, from the following principal towns along the line of the canals, for the year 1893:

Offices.	Total tons
From Albany	141,802
From West Troy	597,765
From Syracuse	391,703
From Rochester	136,744
From Tonawanda	550,864
From Buffalo	1,586,238
From Waterford	367,459
From Whitehall	319,767
From Oswego	92,634
From Geneva	38,761
From Boonville	80,336
From Rome	26,974
Total	4,331,047

Of the foregoing amount, 1,694,735 tons were way freight, either produced or consumed wholly within the State. The canals have always carried a vast amount of domestic freights. The way freight, either produced or consumed wholly within the State and transported by the canals,

In the year 1840 was	617,454 tons
In the year 1850 was	624,384 tons

In the year 1860 was	1,421,602 tons
In the year 1870 was	2,077,038 tons
In the year 1880 was	1,126,075 tons
In the year 1893 was	1,694,735 tons

The saving in freights on tonnage, either produced or consumed within the State, and transported by our canals, has repaid the people of the State many times over for the cost of their construction. All of the principal business houses in Utica, Rome, Syracuse, Oswego, Rochester, Lockport and Buffalo and intermediate places are receiving and shipping their merchandise this year by canal in greater quantities than has been done for the past twenty years. There are upwards of seventy-five such firms in Rochester alone. The amount thus saved to the consumers of such merchandise is shown by a statement recently made by Donald Dey, president of the Syracuse Business Men's Association, who stated that the cost of transportation by canal from New York to Syracuse was nine cents per hundred pounds, including all charges for handling such merchandise, whereas the railroads are charging thirty-five cents per hundred pounds from New York to Syracuse. This makes a saving of five dollars and twenty cents on each gross ton received by canal. It is said that there are now over thirty steamers plying between different points on the Erie, Oswego and Champlain canals, engaged wholly in transporting passengers and local freights. It thus appears that the canal commerce, carried on wholly within the State and for the benefit solely of the people of the State, is decidedly on the increase, notwithstanding the unimproved condition of our canals.

The Committee on Canals in the Convention of 1867, in their report, say that, "It will be an unfortunate day for the people of this State when they adopt and act upon the idea that the canals have fulfilled their mission and that we have outgrown their important use;" and they further say that, "they cannot so underrate the patriotism and intelligence of the people as to believe they will prefer a policy that will doom the canals to neglect and destruction in order to escape taxation." As well might the people of the State become indifferent to our republican institutions, under which they enjoy the blessings of civil and religious liberty, as to become indifferent to the preservation and efficiency of our inland waterways, by means of which, in part, the prosperity of the State has been achieved and its wealth acquired.

The public improvement of our artificial waterways involves the only important question of economics before this Convention. The production and distribution of wealth largely depend on the facility

and cheapness of transportation. As the cost of transportation decreases, both production and consumption increase and man's natural and acquired wants are more abundantly supplied. New industries spring up wherever the transportation problem is minimized by competitive effects of water communication with the marts of trade. It is a maxim of political ethics that trade enriches nations. So does it enrich a great State like New York that has such natural resources and such a variety of industrial and commercial interests. Its commerce is almost as extensive as that of some independent governments and it is as greatly concerned in the transportation problem as are they. Economy in the transportation of agricultural products to cities, and of merchandise to the country, enriches both urban and rural communities. In so far as the cost of transportation may be eliminated, that far at least may be increased the purchasing power of the consumer. When it costs $40, $60, $80 and $100, as is said was the case before the completion of the Erie canal, to transport a ton of merchandise from New York city to western New York, and thirty, forty, fifty and sixty cents to transport a bushel of wheat from the Genesee Valley to New York city, much of the selling price of such merchandise and wheat was made up of freights, and the demand therefor and supply thereof were kept within the smallest possible compass. Such high rates of transportation were serious obstructions to trade and to an interchange of commodities. That has been one of the most serious hindrances to the development of some of the New England States. The early development of our artificial waterways did away with such obstructions and hindrances in this State. Its system of inland and foreign commerce surpassed those of every other State.

Its natural waterways include Lake George and Cayuga, Oneida, Seneca, Crooked and Chautauqua lakes, the Hudson, Oswego, Black and East rivers, a part of Lake Erie and the St. Lawrence river, a portion of the Atlantic coast, one-half of Lake Ontario and Lake Champlain and the Niagara river and many other small inland lakes and rivers. The more important of these have been connected by artificial waterways. All the wealth of Homeric imagery might well be employed in describing these picturesque lakes, charming rivers and intervening artificial waterways that bring the distant portions of this great State in touch with the commerce of the world. It is said that in 1890 the total vessel tonnage entering and clearing at New York and at Buffalo gave them respectively the second and sixth positions in the list of the greatest commercial ports in the world.

The Erie, Oswego and Champlain canals have made such commanding positions possible by enabling the State to control the carrying trade of the northwestern States and territories. These important commercial ports afford unusual opportunities for the exchange of domestic and foreign commodities, and our inland system of water communication renders them accessible to producer and consumer alike in more than half of the counties of the State. But our canals ought to be enlarged and improved. Since their enlargement in 1862 little effort has been made to improve their condition. The federal government, which declined to assist in their construction, and has since repeatedly declined to aid in their maintenance, cannot be expected to render any substantial aid in their improvement.

Jefferson, Madison, Monroe and Van Buren have denied the power of Congress, under the federal Constitution, to grant such aid. Although, by an application of the principles laid down in the Genesee Chief (53 U. S., 443), The Eagle (75 U. S., 15), The Montello (87 U. S., 430), and *Ex Parte* Boyer (109 U. S., 629), the admiralty jurisdiction of the courts of the United States has been extended to the navigable waters of inland canals, the canals themselves still remain within the sovereign control of the States which own them. The grant of power to Congress "to regulate commerce with foreign nations and among the several States and with the Indian tribes," does not authorize the general government to usurp the functions of a State in the management and development of its internal affairs. Appropriations for post-roads and for the improvement of rivers and harbors and for coast defenses are the only expenditures which Congress has ever made to facilitate internal commerce.

Before the federal government could be persuaded to undertake the improvement of our waterways, Congress would require, as a condition precedent, that they be turned over to the federal government. Such was the deliberate judgment of the National Board of Trade, held in Buffalo, in December, 1870, which resolved, among other things, as follows: "that as a condition precedent to the undertaking of such work (enlargement of the waterways of New York) by the general government, they shall by proper legislation on the part of the State of New York be divested of all individual and State ownership and control, and their management be vested in trustees, one of whom shall be appointed by each of the States of Massachusetts, New York, Ohio, Michigan, Indiana, Illinois and Wisconsin, and one by the President of the United States." A similar proposition was considered by the National Board of Trade.

held in New York, in 1872. Before the general government entered upon the improvement of the Fox and Wisconsin rivers ship canal, it extinguished all corporate and State ownership and control thereof. Any scheme of improvement, involving on the part of the State a surrender of its exceedingly valuable and productive artificial waterways to the general government ought not to receive a moment's consideration in this Convention. Such a proposition ought to be discountenanced by every loyal citizen of the State. The venerable George S. Hazard, of Buffalo, once said, "such a proposition is not complimentary nor courteous to the proverbial sagacity and commercial reputation of the citizens of the State, and would not be entertained for a moment by the people." Governor Seymour, Hon. William M. Evarts, Hon. George Clinton, Captain Marcus M. Drake, Mr. William E. Cleary, Mr. E. M. Clarkson, Mr. Frank S. Witherbee and other prominent exponents of the State's canal policy, for well-founded reasons, have opposed the proposition of relinquishment of our waterways to the general government whenever that has been advocated. Samuel B. Ruggles, General Hiram Walbridge and other far-seeing and public-spirited citizens have in times past advocated canal improvement by the State, on account of the inestimable benefits of our canal system to the people of the State. The voices of the living, as well as respect for the opinions of the dead, should move us to perpetuate, and not make shipwreck of the State's commercial fortunes. If the canals were turned over to the general government, the cost of their improvement and the improvement of upwards of two thousand miles of other canals in the United States, which interested Congressmen would insist upon being done at the same time, would be a greater burden to the State than the cost of improving our canals by the State alone. Nothing is to be gained, but everything is to be lost, by the abandonment of our canals to the general government. The State ought to proceed with their enlargement and improvement at once, and this can be done without unduly burdening the taxpayers. The aggregate equalized valuation of the property of the State for the year 1893 was $4,038,058,949. To raise a fund of $1,000,000 for canal purposes it would be necessary to levy a tax of one fourth of one mill on each dollar's valuation of the aggregate property of the State. Such a tax rate, however, would yield something more than $1,000,000, so that in making estimates on the basis of a tax rate of one-fourth of one mill, we are providing for a fund a little in excess of $1,000,000.

Every thousand dollars of the assessed valuation of the prop-

erty of the State would be taxed but twenty-five cents in order to raise a fund of $1,000,000, or be taxed but a dollar to raise the sum of $4,000,000, or be taxed but two dollars to raise the sum of $8,000,0000, or be taxed but three dollars to raise the sum of $12,000,000. The farmer, whose property is assessed at $1,000, would contribute a pound of butter or a dozen of eggs, worth twenty-five cents, toward raising the canal fund of $1,000,000, or but four pounds of butter, or four dozen of eggs, worth one dollar, to raise a canal fund of $4,000,000. He would save more than the value of such a contribution in freights on a single cargo of agricultural products destined for the seaboard.

It has been authoritatively stated that, if there were no canals, or if canals were not in operation, the cost of transporting grain to market would be increased by at least two cents on the bushel. This statement seems to be warranted from the fact that at one time, in the summer of 1894, while the boatmen were carrying grain at three cents per bushel from Buffalo to New York, the railroads demanded five cents per bushel. It appears from the documents of the Constitutional Convention of 1867 that railway charges averaged $4.42 per ton, and canal charges averaged $1.88 per ton. In 1878, a paper, advocating the farming interests of the State, said, "the moment the water begins to freeze in our canals, up goes the local rate of freight on the railroads about 50 per cent. A farmer having 500 bushels of corn to sell is told that it will cost him twelve cents per bushel more to ship it now than it would cost him if the Erie canal was in running order. The loss to a farmer on 500 bushels of corn would be $60, while his additional annual tax on $3,000 worth of land to support the canals would be only thirty-three cents. Thus it appears that he would save $59.67 on every 500 bushels of corn that he raises on $3,000 worth of land." Thus agricultural interests demand that the canals be maintained and improved.

Mr. C. W. Adams, State Engineer and Surveyor, in response to a resolution of the Convention, calling for information, has estimated the cost of improving the principal canals of the State as follows: To obtain nine feet of water in the Erie canal, cost of work, $4,810,000; for land damages, $500,000; total, $5,310,000. To obtain nine feet of water in the Oswego canal, cost of work, $1,133,000; for land damages, $75,000; total, $1,208,000. To obtain seven feet of water in the Champlain canal, cost of work and land damages together, $2,300,000. The total amount required for such improvements is estimated at $8,810,000. Sixty-two per cent of this amount would be paid by three counties, namely, Erie, Kings

and New York, and eighty-seven per cent of this amount would be paid by the thirty-one counties directly in touch with canal transportation. These estimates are based upon the Seymour plan of improvement, which is generally favored throughout the State, and contemplates the deepening of the canals one foot and the elevation of the banks one foot, and thereby secure an additional depth of two feet of water. Boats then navigating the Erie and Oswego canals would be enabled to carry 300 tons, or about 10,000 bushels of wheat, where they now carry but 240 tons, or 8,000 bushels of wheat, and would also be enabled to make ten trips a year, where now they make but eight trips. A similar result would follow the proposed improvement of the Champlain canal. The Erie and Oswego canals have not been cleaned out since their enlargement in 1862, and it is said that there is an accumulation of mud, grass and debris a foot in thickness in the bottom of these canals.

The carrying capacity and speed of vessels are thus seriously obstructed, and in the meantime, the commerce of the west is being diverted to other channels, or to more speedy routes to the seaboard. Great railway corporations, outside of New York, are increasing their facilities for such transportation and are seeking to get control of the commerce between the interior and the seaboard. Canadian waterways are also being improved. In the year 1892 the surplus products exported from the Atlantic ports were as follows:

Flour — From New York, 6,034,260 barrels; from Boston, 2,090,720 barrels; from Philadelphia, 1,843,647 barrels; from Baltimore, 3,661,623 barrels; from Montreal, 601,243 barrels; from New Orleans, 227,432 barrels.

Wheat — From New York, 45,259,966 bushels; from Boston, 6,375,123 bushels; from Philadelphia, 9,994,024 bushels; from Baltimore, 16,661,559 bushels; from Montreal, 8,379,562 bushels; from New Orleans, 14,207,443 bushels.

Corn — From New York, 18,293,353 bushels; from Boston, 2,811,277 bushels; from Philadelphia, 19,454,590 bushels; from Baltimore, 18,995,907 bushels; from Montreal, 1,763,854 bushels; from New Orleans, 7,380,678 bushels, and from Newport News a large quantity of cereals. This statement clearly shows that we are not holding that commerce, but that it is slipping away and seeking other routes to the seaboard. Such a result is to be deplored and will be of incalculable loss to the State. A further loss is likely to occur from the divergence of commerce to the Hennepin canal, which Illinois is pushing forward from Lake Michigan to connect with navigable waters, flowing into the Gulf of

Mexico. The Canadian water routes are being enlarged and extended. The enterprise thus exhibited in this country, as well as that exhibited by foreign countries in perfecting inland canal commerce, should spur us on to overcome the *vis inertiae* of such of our people as would suffer our canals to be filled up and our commerce to be destroyed. Failure in this regard would be almost a dereliction of duty. The great commercial interests of the State, hitherto fostered by a policy of high statesmenship, demand at our hands deliberate consideration and wise action. Such consideration and wise action can be exhibited in no better manner than by continuing such wise policy and by making provision for the needed improvement of our canals, which are the State's principal highways of commerce. The Superintendent of Public Works states, in his report for the year of 1893, that of the total tonnage of 4,331,963 tons, carried on the canals that year, "the Erie canal carried 3,235,726 tons, the Champlain canal carried 848,965 tons, the Oswego carried 92,634 tons, the Cayuga and Seneca carried 38,761 tons, and the Black River canal carried 115,877 tons." In 1892, the canals carried 23.17 per cent of the entire amount of grain received at New York, and in 1893 the canals carried 39.53 per cent of the entire amount of grain received at New York.

Canal tonnage will continue to increase, if the canals be improved, as contemplated by the Seymour, or other equally meritorious plans. The canal prism should be enlarged, so that it will have a depth of nine feet of water and a width of fifty-six feet at the bottom and a width of seventy feet at the top. Possibly the bottom of the prism ought to be made as great as the top of the prism and the sloping banks converted into vertical banks. The details of the plan of enlargement, however, may properly be intrusted to competent engineers, under the supervision of the executive and legislative departments of the State government. These vast public improvements, if undertaken, will afford remunerative employment for thousands of worthy citizens, now unemployed, and tend to restore industrial enterprise throughout the State. The eight or nine millions of dollars, required for such improvements, will serve the double purpose of furnishing labor for the unemployed and of increasing the carrying capacity and productiveness of our canals.

And, in addition to this, when it is remembered, that the revenue from canal freights averages about $4,000,000 per annum, which enriches every village, town and city from Lake Erie, Lake Ontario and Lake Champlain, down the Hudson river to Long Island Sound, it would be a very short-sighted policy, to fail to appropriate an amount, equal to two years revenue, from the canals for their

permanent improvement, and especially so, when such improvement will tend to increase such revenue. In addition to all this, the State has but to pay back for the canals a small part of the money, which it has hitherto received from them. The light of experience should teach us, that our waterways have been the State's most remunerative investments.

With a history unparalleled by that of any other canal system in the world, and with the visible evidences of its usefulness, productiveness and importance to be seen in every town from Brooklyn to Buffalo, and from Troy to Rouse's Point, it would appear that the proposition, for which we are contending in this Convention, has been conclusively demonstrated. After three-quarters of a century of commercial growth and supremacy, we might expect that even the eyes of the blind would be opened and they be made to see the glory of the achievements of our inland water commerce.

We are now dealing with history, with demonstrated efficiency, with incontrovertible facts, and as intelligent beings, endowed with reasoning powers, we should cast off the mantle of prejudice against the canals and yield to the claims, which they are making upon our consideration.

We ought to remove the present constitutional limitations, prohibiting the creation of a debt for their improvement, and provide at once for such improvement. We should strive to perpetuate, rather than destroy, the commercial interests of the State. We should go forward with public improvements rather than adopt a retrogressive policy.

We should preserve and improve our canals, which were conceived, constructed and have been maintained by three generations of loyal, enterprising and patriotic citizens.

Our canals have challenged the admiration of the whole world. By opening up commerce between the interior and the seaboard, they have done more to make this a "mighty and puissant nation," than any other commercial agency, that has operated in its favor. President Woolsey in his "Law of Nations" remarks that "an interior nation has a servitude along nature's pathway, through the property of its neighbors, to reach the great highway of nations." This has been called "*jus transitus*," or "*jus passagii innoxii*." Grotius, Vattel, and other Publicists have not agreed, as to whether this was a perfect or an imperfect right. It is secured, however, over most European rivers by treaty.

It may yet be claimed by the seven interior States, bordering on the great lakes, that long continued user of our artificial waterways, as a highway of commerce to the open sea, though at first

an imperfect right, has ripened into a more perfect one, which this State is in honor bound to respect, as long as such States comply with the conditions imposed, and pay the freights exacted by our boatmen. Although our artificial waterways are not "public" in the sense in which that term is used by Bracton, in the statement that "*publica vero sunt omnia flumina et portus,*" yet they have come to be regarded as possessing a quasi-public charter, since they began to draw to themselves the commerce, passing between the East and the West and to be brought within the admiralty jurisdiction of the courts of the United States. The interior States may properly claim a servitude along our waterways, extending, as they do, on isothermal lines, from the great lakes to the ocean.

The gifted and eloquent Roscoe Conkling once said that "man shrinks from crossing isothermal lines, and the products of the earth will not endure different zones and climes; the breadstuffs of the West perish in the tropics, and the wheat and corn from northern prairies will not bear transportation through the delta of the Mississippi and the Gulf of Mexico. Tracks across the continent, on which travel and traffic may sweep from sea to sea, stayed by no obstacle which science can surmount, are as inevitable as the decrees of fate."

The Erie and Oswego canals comply with these natural laws for the transportation of agricultural products.

Shortly before his death, he also said, "I believe in the maintenance, enlargement and freedom of this great artery of commerce (Erie canal) for reasons too many to be stated. The day will be ill-starred, when the people, or Legislature, shall turn deaf ears, or blind eyes, to whatever honest demands it makes on the State, or its revenues." The history of the Erie canal is a history of progress. It is one of the great achievements, which has been deemed worthy of record in the progress of civilization. Let us accentuate the wisdom of that achievement, and liberally provide for its perpetuity.

More than a hundred years ago, Alexander Hamilton declared that "a prosperous commerce is now perceived and acknowledged by all enlightened statesmen, to be the most useful, as well as the most productive, source of national wealth, and has accordingly become a primary object of their political cares." To his creative genius are we indebted for this and many other political maxims in the building up of this Empire State.

In speaking of the populous East and the productive interior States, bordering the great lakes, and the commercial possibilities

that might be developed between them, Daniel Webster in 1837 said, "These great lakes, stretching away many thousands of miles, not in a straight line, but with turns and deflections, as if designed to reach, by water communication, the greatest possible number of points through a region of vast extent, cannot but arrest the attention of any one who looks on the map. They lie connected, but variously placed; and interspersed, as if with studied variety of form and direction, over that part of the country. They were made for man and admirably adapted for his use and convenience. Looking over our whole country, comprehending in our survey the Atlantic coast, with its thick population, advanced agriculture, extended commerce, its manufactures and mechanic arts, its varieties of communication, its wealth and its general improvements; and looking then, to the interior, to the immense tracts of fresh, fertile and cheap lands, bounded by so many lakes and watered by so many magnificent rivers, let me ask if such a map was ever presented to any statesman, as the theatre for the exercise of his wisdom and patriotism? And let me ask, too, if any man is fit to act a part, on such a theatre, who does not comprehend the whole of it within the scope of his policy, and embrace it all as his country?"

Hitherto this State has had a sufficient number of patriotic and public-spirited citizens, alive to all these possibilities, adverted to by Mr. Webster, to control its commercial policy and to enable it to convert these possibilities into actualities greatly to its own advantage, by the establishment and maintenance of an artificial waterway from the Great Lakes to the Hudson, whereby it has drawn to itself the vast commerce, passing between the interior and the seaboard.

If the map referred to by Mr. Webster in 1837, presented a theatre for the exercise of wisdom and patriotism on the part of the statesmen of that day, how much greater wisdom and loftier patriotism should be exercised to-day on the part of those who act a part on this same theatre, after half a century's development in all the ways, made possibly by a progressive civilization. Scores of enterprising villages, flourishing cities and immense grain-producing States have been developed out of the interior lakes region since 1837.

The commerce between this region and the Atlantic ocean will continue to increase as time goes on.

Self-interest, as well as State aggrandizement, require on our part that every reasonable effort be made to hold that commerce, rather than suffer it to be diverted to other States. Such has ever been the candid judgment of our most patriotic citizens.

The unique position occupied by New York enables her to control and exact tribute from this vast commerce passing between the Great Lakes and the ocean. The Hudson and the Mohawk rivers have cut their way through the Appalachian mountain range to central New York, so that there is a natural waterway nearly half the distance from the Atlantic ocean to Lake Erie. The remaining distance consists of a level tract of territory without barriers to canal construction. Nature has thus done everything for the State to enable her to connect by artificial waterways the Great Lakes with the ocean.

Clinton and others foresaw these natural advantages and fully appreciated the great revenue that would accrue to the people of the State from their utilization. Their unremitting advocacy of measures to utilize these natural advantages prevailed and has enabled the State to control the vast tonnage passing between these lakes and the ocean, and to exact heavy tribute therefrom. Hitherto such tribute has added millions of dollars to her wealth, built her towns and cities and enabled her to maintain her commercial supremacy. Let us not be among the first to whom the State, failing to receive aid for the improvement of her waterways and despairing of her commercial supremacy, may turn and exclaim, in the language of the expiring Caesar: "*Et tu Brute.*" Rather, let us pursue a more public-spirited and enlightened policy and now make such liberal provision for the improvement of the waterways of the State that the commercial supremacy of the State will be assured for generations yet to come. (Applause.)

The President resumed the chair.

Mr. Cady — Mr. President, I move that the time for consideration of the canal amendments in Committee of the Whole be extended until nine o'clock P. M., to-day.

Mr. McDonough — Mr. President, I hope that motion will prevail.

Mr. I. S. Johnson — Mr. President, I move to amend by the statement that the last fifteen minutes shall be given to amendments, so that, if the time is taken up entirely by talking, we shall have an opportunity to put in some amendments.

Mr. Cady — Mr. President, I am inclined to think that in justice to many, or to several, at all events, who desire to be heard further upon this subject, that the time of debate should be extended to nine o'clock.

The President — The gentlemen will be careful to get in their amendments before that time by handing them up to the desk.

The question is on the motion of Mr. Cady.

Mr. Hill — Mr. President, I move as an amendment that the time be extended to half-past nine.

Mr. Cookinham — Mr. President, I hear the rain out doors. Why would it not be better for the committee to proceed with this discussion until six o'clock and end it there? I move, as an amendment, that we remain in session until six o'clock and close the debate at six o'clock.

The President — It is in the power of the Convention to do so.

Mr. Roche — The only trouble is that quite a number of the members have gone out with the idea that the session will end at five o'clock.

Mr. Cookinham — We can vote later.

The President put the question on extending the session to six o'clock, and it was determined in the affirmative.

Whereupon Mr. Barhite resumed the chair in Committee of the Whole upon the matter pending.

Mr. Bigelow — Mr. Chairman, I have been rather disappointed to observe that in all of the amendments that have been presented here for enlarging the powers of the Legislature for the improvement of the canals, there has been no restriction of any description proposed upon the Legislature. In its wisdom the State has, at various times, felt it necessary to restrict the powers of the Legislature for spending money and incurring debts, but, as I understand it, none of these amendments propose to interpose any restriction upon either the amount of money to be spent or the depth, character or extent of the work that is to be done.

Mr. Roche — Mr. Chairman, may I make a statement to the gentleman, with his permission? I wish to state that my amendment, which was sent up but not read, does make a restriction as to the amount that is to be expended under the direction of the Legislature. It shall not exceed twelve million dollars.

Mr. Bigelow — The gentleman has anticipated what I was about to say in qualification of the remark which I had made. He did speak of a limitation of the amount of from ten to twelve million dollars. He did not speak of any specific sum, nor did he pretend that he had any estimates that warranted him in expecting that that amount of money would build more than half of what is contemplated in a nine-foot canal. When I say that there are no restrictions proposed, I mean this: that the restriction which is suggested by the honorable gentleman from Rensselaer, is practically a sort

of restriction with which we are all familiar, but which amounts to nothing. If we can get nine millions appropriated, and can get half of the canal or a quarter of the canal under operation, of course, there is no alternative then but to go on and finish. The time is long past when anybody proposes to raise from the Legislature or from Constitutional Conventions the whole amount of money which they expect to spend on any public work. I asked the gentleman who commenced this debate if he and his friends would be content with seven feet of water, in other words, a cleaning out of the canal to produce a clean, honest seven feet? He declined to admit that that would be sufficient or that he would accept any such condition. And yet he, as well as his successor from Rensselaer (Mr. Roche), both quote the opinions and authority of perhaps the highest authority in this country, if not in any other, on the subject of internal waterways with approbation. I refer to the late Governor Tilden, who probably understood this question better than any of us, and better than anybody else. They quoted from his message, but they did not quote the parts of his message most pertinent to the question under consideration. As those messages are all accessible, I will not venture to take the time of the Convention at this stage to repeat it here, and I do not wish to detain the Convention but a very few minutes with what I have to say. I happen to have later opinions of the late Governor Tilden upon this question of canal enlargement than those which have been cited here, and the value of these later opinions is that they confirm and insist upon the soundness and correctness of the views which he had previously maintained while he was an officer of the State, and I will, with the permission of the Convention, read some of these notes. They have never been printed, but they are notes which bear every evidence of having been prepared for some member of the Legislature during the session of the Legislature of 1884-5, one year before his decease. The question, 1. "Would not the expense of deepening the canal so as to add two feet to the depth of water, be very great? I understand that now for a great part of its course the bottom of the canal is composed of about a foot depth of clay and hydraulic cement, packed closely, so as to prevent breakage; and would not the expense of taking this up and replacing it after the bottom was dug up be more serious than any calculation has yet allowed?

"The idea of increasing the depth of the canal two feet is a gross exaggeration of what is possible or proper to do.

"To build up the banks two feet would necessitate building up the locks. To excavate the bottom two feet would be impracticable.

"At page 23 of my message for 1875, it was stated: the water-

way was practically never excavated in every part to its proper dimensions. Time, the action of the elements and neglect of administration, all tend to fill it by deposits.

"There is no doubt that the sides of the waterway have been changed and the slope filled in with silt, narrowing the bottom of the canal so that it is only in the middle that the proper depth is approached, and inconvenience is felt in one boat passing another.

"My suggestion was to bring up the canal to an honest seven feet. All the structures of the canal were adapted to that. Bring it up to seven feet — honest seven feet — and on all the levels wherever you can, bottom it out, throw the excavation upon the banks, increase that seven feet toward eight feet, as you can do so progressively and economically, you may also take out the bench walls. The suggestion looking to gaining, on the long levels when it was found practicable, some inches increasing seven feet toward eight feet. The suggestion was carefully limited, because in many places you cannot change the bottom without interfering with culverts or carrying the excavation below the mitre sills of the locks.

"As to the capacity of the Erie.

"The lockages at Frankfort during the season of 1884 were 20,800.

"The lockages in 1873 were stated on page 22 of my message of 1875 to have been 24,960.

"The theoretical capacity of the canal would be three or four times the largest tonnage it has reached. There is no doubt it can conveniently and easily do double the business which has ever existed, even though the locks be not manned and worked with the highest efficiency."

If that was true when the lockages were 25,000, how much more so is it when the lockages have fallen to 20,800 in 1884.

"2. How far does the fact that the lake transportation has almost entirely passed into the hands of railroad people affect the probability of increasing the business of the canal in case it should be deepened?

"3. Can the canal be maintained in the face of the increasing railroad competition?"

Then he gives products of the forest, agriculture, manufacture, merchandise, and other articles, total for 1874, 3,223,112; for 1884, 2,631,190.

Where and how this extraordinary increase from 2,600,000 to 4,000,000, which I hear cited on all sides of this chamber to-day, I am at a loss to conjecture. It has been a great surprise.

"Tonnage of the canal and of the Central and Erie railroads (from the annual report of the Superintendent of Public Works upon trade and tonnage of the canals for the year 1880, pages 94-95:" Total for the New York canals, the New York Central Railroad and the Erie Railway, 18,000,000 in 1874, and 31,000,000 in 1884; the railway freight being 6,000,000 to the canal 5,000,000.

"The railroads have competed successfully with the Erie canal, and have carried off all the increase in the tonnage. Notwithstanding the State has ceased to charge tolls, and has imposed an annual tax of $700,000 upon the taxpayers to maintain the canals, the Erie canal has failed to keep up its business. It holds on to a portion of the lumber and of the grain.

"There seems to be no probability that the Erie canal will regain any portion of the business it has lost. None of the grand schemes by which it is proposed to enlarge or improve it can, to any appreciable extent, cheapen the transportation. They will simply waste the money of the taxpayer, and revive the system of contracting, jobbery and fraud.

"The advantage of lengthening the locks so as to pass two boats at once when there is plenty of time to pass four times the boats which the tonnage requires, is doubtful, and is, at best, inconsiderable. It can only pretend to save five minutes in a lockage, if, in fact, it will save any time.

"Unless some effectual expedient be adopted to prevent the waste of water in locking through a single boat, it would consume three times as much water in the long lock as in the short lock. I understand that the superintendent thinks that ruinous mischief can be avoided, but I have had no means of testing how the thing would work in practice.

"In 1867 when I examined the subject I found that on the Delaware and Raritan they used boats of about the same dimensions as the boats in use on the Erie, notwithstanding the locks were capable of passing two boats at a time.

"On the whole, it must be observed, within the last ten years, the cost of transportation by railroads has been reduced one-half. All the improvements tending to cheapen transportation are made by the railroads.

"As to the clamor about diverting traffic to the Canadian lines, it is senseless. The great mass of grain brought from the west is for local consumption. Two millions and a half of people residing in the city of New York and its suburbs are not going to bring the grain for their own consumption by way of Montreal. A large share of the flour and grain carried by the New York Central is

for local consumption in New England. Formerly it came to New York city, and was distributed from that point. It is now carried direct. For instance — flour and grain for consumption at Springfield and Worcester are carried from the point of shipment in the west direct to those places without change of cars. They cannot be diverted.

"The Erie canal still has a certain utility. The taxpayer of this State will not always consent to pay a bonus of $700,000 per year in order to get tonnage for the Erie canal."

I have here a note which Mr. Tilden addressed to Senator — then Governor Hill, on the 16th of June, 1886, in which he says, speaking of a bill which is pending before the Legislature: "In respect to the bill, its immediate effect will be the waste of $200,000 of the public money, but its ultimate effect will be to enter upon an immense expenditure and the creation of new canal rings. You will have, sooner or later, to arrest the system or discredit your administration. I think a pitched battle on the subject would, in the long run, do you good instead of harm, but I admit that a considerable public opinion has been artificially created in its favor. I have twice destroyed a similar scheme. But, if you think it expedient to defer the contest until the public mind can be better educated (though, if it were my case, I should make it now), you can let this bill pass with less permanent harm than the first-mentioned bill would produce."

Now, Mr. Chairman, no more than Governor Tilden am I in any sense disposed to express anything in what I have said or am going to say detrimental to the improvement of canals. The difficulty is to know how to do it; to know how we, as a Constitutional Convention, can let down the bars in such a way that we shall not expose ourselves to troubles with which we have had a fearful fight. If it is necessary for this Convention to take the matter in hand, why is it not possible to say that the Legislature shall have power to clean out and deepen the canal to an honest seven feet, limit the repairs, place them in charge of your State superintendent, and let him attend to the work and direct the Legislature to make the appropriation? Why can't we put that limitation there? You cannot limit it as to the money. You are too experienced, all of you, in legislation to suppose that any limitation you would put upon your appropriation now is going to operate as a limitation in the long run; and, besides, it is quite impossible to estimate what the expense will be. But you can limit the amount of work that is to be done. I take Mr. Tilden's opinion against that of all the world in regard to the effect of attempting to deepen that canal by

tearing up the bottom. The expense there will be boundless. But, if you clean it and broaden out the bottom, raise your banks with the excavation, you get a good honest seven feet, as the canal originally was, and that, I am sure, will answer all the purpose which the Erie canal will ever answer, and that is simply to keep down the rates of railroad transportation. It has no other use. In all other respects, and in that respect, it is a great expense to the government.

I have been surprised to hear it four or five times repeated this afternoon that the Erie canal has been a great source of revenue to the State, that the State owes the Erie canal large sums, and that there is a large balance in favor of the canals. Well, I remember that in 1875 an engineer of considerable experience was employed by a committee charged with the investigation of certain frauds on the canal, and was asked particularly to make up the account, and let us see what was the state of the account between the State and the Erie canal, and, though I have not the figures by me, it was the last report made by the commissioners, and any of you can find it in the library; but, as nearly as I can remember, there was a large balance against the canals. That was in 1875, and I am quite sure that the balance has not been materially changed since then, and since the tolls were taken off.

Mr. Chairman, there is another difficulty about anything that we can do here contemplated by any of these men. They involve administration. They require a degree of machinery of which this body has not the command. Of course, it is properly the work of the Legislature. Now, if we can make some general provision and then let the Legislature go on, or, perhaps, better even than that, say nothing about it in this Constitution and stand on the report of the committee, the Legislature can introduce a plan, it can cause an investigation to be made, a plan to be developed, estimates and everything studied out as it should be before any action is taken upon the question, and, I think, I am not doing anybody an injustice in saying that that study and that investigation have not been made by this Convention. Let them ask for an amendment to the Constitution to give them power to carry that plan into execution, and let it be passed by the people and approved. That is one way in which this work can be done, and, therefore, I do not feel the same hesitation in reference to doing nothing about this amendment, because it can be remedied if the people want it. But the people have opposed it, the Legislature has opposed it for the last twenty years, and I think will continue to oppose it. I do not think there is any reason for letting down

the bars and inviting the organization of a great political body to run our Conventions for us, to select our assistant engineers and generally look after the politics of the State for their own benefit. (Applause.)

The Chairman — The Chairman desires to call the attention of the committee to the fact that there are some five or six gentlemen who have signified a desire to speak upon this subject. I hope the gentlemen will so arrange their remarks that all may have an opportunity to be heard in the time remaining.

Mr. Baker — Mr. Chairman, I ask the Secretary to read the amendment proposed by me in respect to tolls upon the Welland canal.

The Secretary read the amendment as follows:

To amend section 3, article 7, lines 4, 5 and 6, so as to read as follows: "Except that the Legislature may, in its discretion, impose tolls on products and property of the Dominion of Canada, passing through any canal of this State, and such tolls shall not be imposed nor collected after the Dominion of Canada shall have ceased to impose or collect tolls on American products passing through the Welland canal and other canals of the Dominion of Canada."

Mr. Baker — Mr. Chairman and gentlemen of the committee, something over a year ago, to compel the Dominion of Canada to deal justly by us, we asked Congress to impose tolls upon Canadian vessels passing through the Sault canal. A law was passed, and immediately the Dominion of Canada ceased to discriminate in the imposition of tolls upon American products. But immediately, as I understand, as they were about paralleling that canal with one of their own, they put an additional force upon their own canal, so that when the next spring's navigation opens they would be independent of us. They discriminated in this way, though they claim they do not discriminate, but they do it in this way: they impose the same tolls upon their own people as they do upon Americans that pass through the Welland canal, but they say that for all freight that goes down to Montreal a rebate will be given, and in that way they make it imperative that the tolls upon American produce coming to the southern ports on Lake Ontario shall be paid in full, while their own freight and all that they can induce to go to Montreal is subject to a rebate of tolls. In other words, they discriminate against us. For that reason we are receiving but little freight by way of the Welland canal at the ports on the southern shore of Lake Ontario. The general government has lost its power to checkmate. They have a Sault canal of their own.

Now, I want the people of the State of New York, my people want the State of New York, to be in a position to say to Canada: "Impose the same tolls upon products coming to our ports as you do upon products destined to ports of your own." This is an amendment, or substitute, which permits the Legislature to impose tolls upon products of Canada coming through the Welland and any other canals they may have, coming to American ports and passing over the canals of this State. It permits the Legislature to impose this as a retaliatory measure, and to say to Canada: if you discriminate in your tolls as against American products, you must pay tolls upon our canals when you use them. The State of New York has a right to say that, and that is all there is in respect to that amendment. I think it very doubtful, however, whether the Legislature will ever be called upon. If we incorporate it in our Constitution, I think that will be sufficient. There will be no further discrimination, in my judgment, and that is the judgment of many gentlemen with whom I have conversed and with whom I have corresponded. It does not require the Legislature to do it; it simply permits the Legislature to do it by way of protection to our commerce. That is enough in respect to that amendment, but there is another amendment that I offered concerning the canals and their improvement, which I would like to have the Secretary read.

The Secretary read the amendment as follows:

Section 6 of article 7 shall be amended by adding the following paragraph after the word "forever" in line 7: "The canals of this State may be improved in such manner as shall be provided by law, and the Legislature shall have the power to contract debts for the improvement of the canals, which shall be payable at such time and in such manner as the Legislature shall direct. The provisions of section 12 of this article shall not apply to the debts created pursuant to the provisions of this section."

Mr. Baker — Now, Mr. Chairman and gentlemen of the committee, I think that amendment throws the gate wide open. It may astonish some gentlemen of this Convention, but, after all, I believe it is the true theory upon which we should proceed. I have listened with great delight and with a great deal of attention to the oratorical canal literature to-day. It is interesting to me. I have been a canal man from my boyhood, but we have got to come down to practical business. In other words, "a condition confronts us." Our canals are falling off in freight, our tonnage is far less than it was years ago. Some gentlemen say, then why improve the

canals? But have gentlemen thought of the condition we would be in without these canals; what amount of freight we would have to pay to these railroads that run parallel with our canals? For one, I do not care whether the canals pay anything or not. We have removed the tolls. We are bound to maintain them, or else we are at the mercy of the railroads. If they do not return us a cent, it doesn't matter. Having struck off the tolls, of course, we incur debts yearly. We pay large sums yearly to keep the canals in the ordinary condition in which they have been kept for several years. There is one reason why there has been a falling off in freight. Our boats are unable to carry the amount they would, if the canals were kept at the original depth intended, seven feet. They have been allowed to fill up so that boats cannot load.

I was interested in the suggestion of the chairman of the Canal Committee when he drew a comparison between our canals and those of France, or suggested that France, in a measure, had patterned after the canals of New York State. He said they had patterned after our boats, too, but that their boats carried, I think he said, about a third more than ours. Now, what is the trouble with our boats? The present boats that we have upon the canal could carry one-third more than they do, if the canal were kept at the full depth of seven feet. Now, this amendment I have offered says nothing about the depth at which they shall be kept. If, in the wisdom of the Legislature, it shall be deemed the duty of the State to increase the depth, I am for it. I think most of the gentlemen are for it. Anything that will improve the canals of the State so that our boats of the present size can load one-third more than they do now answers and meets the problem. With a capacity to add one-third more to the tonnage, freight would be lessened and the competition between the railroads and the canals, in a measure, would cease, for the canals would carry the bulky portion of the freight without any question. For instance, two canal boats built at my place this spring came here laden with about 200,000 feet each of lumber. Now, sir, if they could carry one-third more, they could carry for a less price, and none of that would go upon the railroads. If they could carry the products of the west that seek a market in the east, or seek an European market, if they could carry one-third more, that would lessen transportation and be more profitable to the boatmen, too. Those boats would be propelled with the same horse or mule-power that they are now, and with the lengthened locks and the improved facilities for passing these structures when the locks are completed, when they are lengthened on the Oswego

canal and the Erie canal to the proposed dimension, then two boats could pass at once through a lock, and with even seven feet, we could increase the tonnage of the boats nearly, if not quite, one-third.

Now, I am not disposed to restrict the Legislature. Though that body is smaller than this, in the main, they combine about as much wisdom as this body does, and they are not our children. We are not to lay out all the legislative work, and do it. It is supposed that the Legislature has something to do with legislation. Now, for one, I am disposed to leave it to the Legislature. They are responsible to the people every year. They go home to their constituents, and, if they have done anything wrong in any suggestions or legislation, as to the improvements of the canals, it would come to their ears very soon. The nightmares that surrounded the declining days of Governor Tilden should not frighten us. We live in another age. The days of the canal cormorants, the canal thieves, as they used to be frequently called, have gone by. The Legislature of the State of New York will take care of that class of men. The Legislature of the State of New York for the next twenty years dare not place it in the hands of canal contractors to commit larceny upon the State of New York. They are too readily amenable to their constituents. The news will be sounded in their ears, and the legislator that, from corrupt motives, favored some extravagance would soon be left to private life. I am opposed to placing this restriction upon the Legislature. They know, as well as we do, what belongs to this State — aye, and a great deal better than some of us, for many of them have been canal men, many of them have owned boats upon the canal, and many of them live beside the canal.

Mr. Chairman, that is about all I desire to say in respect to the amendment. Let us leave the gate open, let the Legislature take care of the canals, and I venture to say that the object lessons we have had in the past concerning what were termed "canal thieves" will have their effect. The Legislature is the proper custodian of repairs and improvements on the canals. I do not believe we are capable for the next twenty years to provide against the wants of the canals of this State. I believe the gentlemen who come here as legislators from the various counties of the State are much better qualified, or will be ten years from now, to do justice to the canals and the people of this State and the taxpayers of the State than we are prepared now, in advance, for ten years, to provide what shall be done with the canals. For one, I am in favor of opening the

gates and letting the Legislature have something to do with the question of canal improvements in the future. (Applause.)

Mr. McMillan — Mr. Chairman, I offer the following amendment:

The Secretary read the amendment as follows:

Amend general order No. 53 by striking out all after the word "canals," in line 4, page 1, down to and including the word "State," in line 6 on the same page.

Mr. McMillan — Mr. Chairman, the words included within the proposed amendment are those that have been inserted as new matter in section 3. They are underscored and printed in italics, and read as follows: "Except that the Legislature may, in its discretion, impose or remove tolls on products of the Dominion of Canada passing through any canal of this State."

I am opposed to this amendment, Mr. Chairman, for the reason that it is really an international question and does not belong to the State of New York, nor is it one of the prerogatives of this Convention. It is a question between the federal government of the United States and the dominion government of Canada, and it is not our prerogative, it seems to me, to put a political chip of any kind upon the shoulder of this Convention and say in a menacing way to the Canadian government, unless you do so and so we will impose tolls upon you.

I am opposed to it for a second reason, that it is contrary to the policy that has always obtained in this State in reference to the canal business of the State. It has been the policy to secure as far as possible all freight to be carried through the canals of the State, and I desire to call the attention of the committee to one important fact — that we receive annually from the Dominion of Canada, at the port of Oswego and at the port of Buffalo, about 7,000,000 bushels of barley. That barley is malted at those two ports, and is mixed with American barley to the extent of about 25,000,000 bushels, making in that way something over 30,000,000 bushels of the very best malt that can be produced anywhere. This malting takes place at the ports of Buffalo and Oswego, and is for the markets of Boston and New York. It is malted at those ports for the reason that three bushels of malt can be transferred from these ports as cheaply as three bushels of barley.

I also desire to call the attention of the committee to the further fact that under the present amendment a large portion of the Manitoba wheat is brought down the lakes and is stored in the elevators at Buffalo, and is floured there during the winter season, and is sent down by the canal in the spring. The result of the adoption of

this amendment would be to exclude absolutely from the State of New York, not only the barley and malt business, but the wheat which comes down the lakes from Manitoba. It would decrease, very materially, the traffic on the canal, and the entire traffic throughout the State. I say it is unwise policy, it is inimical to the interests of the State, and is, in my judgment, entirely outside of the prerogative of this Convention.

Mr. McDonough — Mr. Chairman, I will occupy but a minute or two of the time of the committee. I think it may be conceded that the canals are a benefit to the State. I think it also may be conceded that they may need improvement. Now, the question with me is, who shall pay for these improvements. The discussion here shows clearly that the vast body of business done by these canals comes from west of Buffalo. I have been informed that fully ninety-five per cent of all the freight which comes east of the Erie canal, comes from west of Buffalo. The Erie canal has become a national highway. Now, why not turn it over to the national government? That is the sensible thing to do with the Erie canal, and if you don't do something of that kind you will find that the Erie canal will continue to deteriorate. The people of Chautauqua county are not benefited by the Erie canal, the people of Cattaraugus county are not benefited by it, the people of Steuben, nor the people of Wyoming. The people of the whole southern tier think they have been taxed about enough for it. They may be indirectly benefited by the reflex from New York but they are tired of paying for this canal. I do not care how small you figure down the amount of their taxes, their faces are against the canal. It is so with many of the counties in the interior, and it is so with some on the northern border. It is my opinion that this canal ought to be turned over to the general government upon such terms as may be agreed upon, but upon the express condition that it shall always be a free highway. It has been said that the general government will not accept of it. How do you know? The learned chairman of this committee says that in 1811, a commission was appointed by this State to induce the general government to accept this canal, and the general government refused.

Mr. McMillan — It was not made until 1825.

Mr. McDonough — No, but that was the proposition of the gentlemen. They wanted the general government to help them build, and the government declined. In 1811, there wasn't anything at Buffalo, and there was nothing beyond Buffalo but a wilderness. The conditions have changed completely since then. It is really

startling to see what has been done since that time, and since the building of the Erie canal.

Now, Mr. Chairman, the Great Lakes contain more than one-half the area of the fresh water of the globe. They embrace nearly one hundred thousand square miles of connected water. For one-half of the distance between the Atlantic and Pacific oceans, these Great Lakes divide the Dominion of Canada from the Republic. Eight States, with a population of 26,000,000 people, border on these waters, and more than six millions besides, in the west and northwest, largely depend upon them.

The traffic on these lakes is simply amazing. Through the Sault canal at the outlet of Lake Superior there pass annually over 10,500 vessels, having a tonnage of 8,500,000 tons. Through the Suez canal there pass annually only 3,400 vessels, with a tonnage of 6,900,000 tons, so that nearly three times as many vessels and over 1,500,000 tons more freight pass through the Sault canal than through the Suez; and the Suez is open all the year, and the Sault possibly seven months.

The entries and clearances in New York average about 11,000,000 tons annually, and in all the seaports in the United States about 27,000,000 tons. The entries and clearances on the Great Lakes average about 33,000,000 tons, exceeding by 6,000,000 tons the combined entries and clearances of all the seaports of the United States, Atlantic, Gulf and Pacific, and equal to the combined entries and clearances, both coastwise and foreign, of London and Liverpool, the great commercial centers of the world.

That is why I say that this canal should be taken up by the general government and made a waterway by the general government. This is the true solution of this canal question. Albany took up the question of deepening the river two or three years ago, and upon this question of getting federal aid I will say that inside of a year we had two million dollars from the federal government, and they are giving us twelve feet of water to Troy, and they say for three millions more they will give us twenty feet. Canada has twelve feet of water in the Welland canal, and they are diverting all the trade down the St. Lawrence, and unless something is speedily done this canal will suffer there in that location; the proper solution is to let our Senators and Members of Congress go down to Washington, and ask that the canals be taken by the general government. In the amendment I sent up I do not make it a condition that the ship canal shall be built around Buffalo. I know Buffalo wants every pound of grain transferred there so that they may collect the toll on it, and if the general government desires they should, I shall

interpose no objection. Hence, I did not make it a condition that the ship canal should leave Buffalo out in the cold. It is a most prosperous city, and is becoming more and more so. But I have no doubt that if the State of New York and the States bordering upon the Great Lakes, which are as much interested as we are, demand that the canal shall be taken by the general government it will be done. When we talked of deepening the river here we had a delegation from Duluth who came here and advocated it and we had no trouble in getting it. Now, it is for us to make advances. It is not for the United States to come and beg us to let them have it. It would be no harm for us to say here that if the government will accept these canals, they may take them upon such terms as the Legislature may make. I would advocate that amendment, and it is advocated also by the farmers of the State who are taxpayers, and who are honest in this matter; they belong to no ring or combination.

Mr. Durfee — Mr. Chairman, I desire to hand up an amendment now so that I may offer it when we get into the Convention.

Mr. Hottenroth — Mr. Chairman, I desire to have the Secretary read the report of the minority upon this question.

The Chairman — The Secretary will read it.

Mr. Hottenroth — If it may not be read this evening, I would as soon it should lie over. It might be read after the amendment.

In relation to the proposed transfer of the canals to the United States government, it seems to me that the only plain course for us to pursue is a refusal of any such proposition. We have maintained and I think rightfully, and the committee stood to a man in favor of the proposition, that the superiority, the commercial greatness of the State of New York, is largely due to the canals and to the canals most particularly. Certain gentlemen appeared before the committee and asserted, possibly with some degree of reason from their point of view, that the canals were a competing element to the railways, and that the railways were losing thereby. I think that is a narrow-sighted view. I believe that to-day the great railroads of New York State owe their original prosperity to the very existence of the canals. Before the canals were built, the channel of trade was not across the State of New York. It is true there was not a great trade from the west, but there was some. But when the canals were built, the natural course was through the lakes, across the State of New York, and down the lordly Hudson, to the city of New York. It was this that fixed the channel, it was this that fixed the course, and it was only a matter of time when rail-

roads were constructed which followed the natural channel that had been created by the grand foresight of De Witt Clinton and his associates in the early history of the State.

Yes, Mr. Chairman, that is the true situation. The railroads ought not to be opponents of the canals, they ought to be their friends. The canals of the State are much like the blood vessels, the great arteries in the human body; they supply life and vigor to the commerce of the State, and they supply also to many of the cities touched by the great railroads, traffic and trade which otherwise they would never have. No, gentlemen, it is a wrong idea, it is a wrong premise to base such a conclusion upon.

Again, it has been urged that the farmers of the State were opposed to the canals for the reason that they were being taxed. Well, Mr. Chairman, they are not taxed to one-half the extent of the cities of New York and Brooklyn; they are not taxed to one-third the extent of the cities of New York, Brooklyn and Buffalo, three of the largest centers of commerce.

Twenty-nine counties of the State are what we call country or rural counties. Thirty-one counties are touched by the canal in its intercourse between them. I read from a document prepared by the executive department of the Union for the improvement of canals of the State of New York: of the total State tax levied for the year 1887, amounting to $9,075,046.97, these counties pay $7,774,027.63, or 85 66-100 per cent, leaving only $1,301,019.34, or 14 4-100 per cent to be paid by the other twenty-nine counties. Compare this amount, paid by twenty-nine counties, with that paid by New York county alone, viz., $4,051,487.23, or, with Kings county added, $4,975,203.07, which is 54 82-100 per cent, of the whole State tax.

Of the twenty-nine counties alluded to, thirteen counties pay into the State treasury a total tax, for all State purposes, of $395,265, and are paid for school purposes alone $462,733.22, thus drawing from their sister counties $67,468.22 more than they contribute. The share of these thirteen counties of the tax to raise one million dollars for canal improvement would be $43,918.01.

The amount charged to each county (4th column) does not include the salaries of Assemblymen, State Senators, etc., nor does it include appropriations made by the Legislature for special purposes within the limits of any county. Had these amounts been charged, several of the counties now appearing to be small contributors would, also, be shown to be a tax upon their sister counties.

The ability of the canal counties to pay so large a share of State

taxes depends upon the canals, and it is, therefore, to the interest of all parts of the State to see that the canals are maintained and improved as the necessities of commerce may demand.

The figures for last year are even more demonstrative.

On the other hand, the city of New York, which is vastly interested in the improvement of these canals, pays to the State and to these rural districts the immense sum of $1,800,000 to maintain their schools, without receiving a cent in return.

Now, gentlemen of the rural districts, are you not willing to return this small percentage of the tax? Are you not willing to give this small contribution, less than three-tenths of a mill upon your assessed valuations, in return for this great benefit?

At this point the Convention took a recess until 8 P. M.

EVENING SESSION.

Monday Evening, September 10, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber of the Capitol at Albany, N. Y., Monday evening, September 10, 1894, at eight o'clock.

Second Vice-President W. H. Steele called the Convention to order.

Mr. Cady — Mr. President, in view of the fact that Mr. Hottenroth was engaged in his speech and had not concluded, and in view of the further fact that no opportunity has been presented thus far in the debate to explain another important amendment providing for the sale, or at least permitting the sale, of the Hamburg canal, I move that the limit of the debate upon this amendment be extended for one-half hour, until half-past eight.

The President *pro tempore* — If there are no objections the time will be so extended. There being no objections it is so extended. The Convention will resume in Committee of the Whole on the canal amendments. Mr. Barhite will take the chair.

The Convention resolved itself into a Committee of the Whole, with Mr. Barhite in the chair.

The Chairman — Mr. Hottenroth has the floor.

Mr. Hottenroth — Mr. Chairman, the complaint of the farmers of the State has been largely against the railroads — the excessive charges that have been made by them for traffic in the State itself and between its various commercial centers. Now, that is the great difficulty among the farming population. It is the

discrimination by the railroads in the State itself. Why, gentlemen, it is cheaper now to bring farm products from the West over our great railroad system in many instances than to carry it from one place to the other within the borders of our State, and, therefore, it is not proper, it is not reasonable to attribute to the canals the depression in the sale of products within the borders of the State. On the other hand they prevent a higher charge by the railroads between these centers in our State. They prevent an increase in the charges by the railroad companies within the borders of the State as well as from one State to the other.

Now, as to the improvements that have been made on the canals. The gentleman from New York, Mr. Bigelow, has stated that he deemed a deepening of the canals to their original depth, the depth by their original construction, that of seven feet of the Erie and six feet of the Champlain, would answer all purposes. Now the answer to that is given in the statements that he read, said to have been made by the late Governor Tilden. If you deepen the canals to nine feet you will prevent what exists to-day, the practical stoppage of the canals and particularly of the Champlain canal. The complaint is that while the canals were originally intended to be and were built at seven feet for the Erie and five feet for the Champlain, to-day their bottoms are covered with silt, so that they are only navigable to the extent of a depth of five or six feet. Now, is it not reasonable to suppose that within the next twenty years that same tendency will prevail, and that if to-day we have a canal that is but five feet deep, the neglect that has prevailed in the past will continue in the future, and that we will have a worse state of affairs than we have to-day.

The chairman of the Committee on Canals, Mr. Cady, has stated that the information we received from the Commissioner of Public Works and the State Engineer is unreliable, and he read a portion of those reports and documents in order to sustain that view. I rather disagree with him in his contention. In Document No. 34, the Superintendent of Public Works says: "Replying to this inquiry, I beg to say that no reliable data exists, either in this department or that of the State Engineer and Surveyor, from which anything like a close approximation may be had; but from estimates made by this department from the best available data, a fair approximate cost would be as follows:" and the State Engineer and Document No. 41 says:

"I. Deepening canals to nine feet. There is no data bearing on this subject in this office, except for the Erie and Oswego canals, hence the estimate for the other canals must be treated only as rough approximations."

Now, the desire on the part of the committee, or at least the majority of the committee, was not to improve the unused canals, but the great highways, the Erie, Oswego and Champlain canals. I believe it is safe to submit the question to the Legislature and allow them to determine which should be improved. The annual tax imposed from year to year for the improvement of the canals, or rather, and more correctly, for their maintenance and repairs, is not sufficient, I believe it has been demonstrated, to keep the canals in proper repair; to keep them satisfactory, even, for the uses to which they now should be applied. The accumulations of twenty years are now at their bottoms. They ought to be cleaned, they ought to be repaired, and they ought to be kept, at least, in the condition in which they were intended by their original construction. The Constitution has no provision for their improvement. Things have changed in the last twenty years. We are now living in an era of prosperity, in an era of greatness, and I believe we should apply, at least, a few millions of dollars to improving our great artificial waterways. It would result in great benefit to the State at large.

You ask how it improves the great commercial centers? Let me illustrate. The great city of New York, the greatest port of this nation, receives from the West the products that are sent over the Erie canal. They are sent down the great Hudson, and finally they reach the port of New York. But that is not all. For every four canal boats that reach the port of New York, one great ship comes over the ocean to our port, and brings to it or takes away that much commodity. It increases the intercourse between great nations in our ports. It is due to the Erie canal and the Hudson river that New York maintains her place as the metropolis of the new world. You might say that improvements have been made; that the improvements that have been made this year and last were made under the existing conditions, and that ought to be suitable. Well, we point to the past history of the canal. Is there any better argument. The small amounts and the beggardly sums that have from year to year been appropriated by the Legislature are not sufficient to keep them in proper shape for their intended use. As an illustration of this let us see whether the spending of the State's money has not, as a matter of fact, been a waste. We improved from year to year portions of the Champlain canal. It is at present improved to the extent of about two-thirds of its length. The anomaly we meet there is this: we have a canal five or six feet to the length of two-thirds. The balance is about two feet deep. Now, it is absurd to suppose that that improvement of two-thirds of the canal has been of any utility, because if we take a boat through two-thirds of

the canal that will be well floated in five or six feet of water, we have gained nothing, because when we reach the shallow depths we must unload the boat and put its contents into two boats, so that we can carry it over the shallow places in the canal.

The argument has been made that the expenditure of State money will create another canal ring. It seems that this will not be the case. The Constitution prescribes certain safeguards as to the letting of work on the canal. Provisions are made as to the giving out of contracts, and there is ample protection to-day for the State, while there was not at the time of the so-called canal ring.

I will not elaborate upon the proposed improvements or the cost. I think they are properly stated in Documents Nos. 34 and 41, which, no doubt, all the delegates have read.

In the early history of the State, in 1828, when there was a great depression financially in business and in the raising of the products of the earth, when we had a taxable property in the State of only $125,000,000, the people of this State, in their enterprise, rose up and produced $8,000,000 within a few years for the improvement and maintenance of these canals. Gentlemen, it is absurd to say to-day, with a taxable valuation of our State property of over four thousand millions which is ever increasing, that we cannot raise eight or ten thousand millions of dollars without having it felt by those who are taxed any more than it was in 1828. Will you look to them and emulate their example?

But it has been stated that the railroads are entitled to some consideration. I think I have answered that. But there is a greater consideration here than I believe has been mentioned on this floor, and that is that there never was and never can be a trust among the boatmen on the canal. They can never combine so as to raise the rates of freight; they can never join together so as to raise the rates of charges; but they stand as a menace, as a competing check against the railroads continually for the people of the State of New York.

Let us see what Governor Clinton said in his message to the Legislature during his administration. We find on page 29 of the book, entitled De Witt Clinton's Publications, the following:

"Experience has evinced the precarious and fluctuating nature of foreign markets for the disposal of our products. Even in the most prosperous times of our commerce, and in seasons of the greatest foreign demand, there was at least twice as much grain consumed in this State alone as was exported from all the United States. The principal surplus of agricultural productions, not required for the use of the agricultural interests, must be either

consumed at home or lost to the cultivator. Foreign commerce may co-operate in creating flourishing Atlantic cities; but internal trade must erect our towns on the lakes and rivers, and our inland villages; and internal trade must derive its principal aliment from the products of our agriculture and manufactures. As the protection of the foreign and of the carrying trade, two of the great branches of commerce, is exclusively intrusted to the national government, the State authorities cannot extend their power beyond the encouragement of the home trade, by cherishing the agricultural and manufacturing interests, and promoting the channels of communication, and the co-operation of the general administration, for the attainment of these invaluable ends, is, to a certain extent, all-important.

"The reciprocal dependence of the great departments of productive industry, is a wise dispensation of Providence to extend the sphere of human usefulness, to animate and multiply the motives for activity and to cement the fabric of human society. The successful progress of the important channels of communication now opening in the State, will have a benign influence, not only in producing facility and cheapness of transportation for the proceeds of labor, but also in creating markets for their consumption."

I believe the argument is just as applicable to-day in this State as it was then. With the improvement and deepening of the canal to nine feet, boats can make two trips more during the season, and can carry sixty tons more on every trip, in other words carry two hundred and forty pounds per trip, and make ten trips per season. Deepen the canals to nine feet and they will carry sixty more tons per trip and can make ten trips per season. Let us see what this means; two hundred and forty tons equal eight thousand bushels; at a rate of three cents per bushel boats now earn two hundred and forty dollars per trip, and for eight trips per season that would realize to the boatman one thousand nine hundred and twenty dollars. Carrying three hundred tons of ten thousand bushels at the rate of two cents per bushel (and it will be reduced no doubt), and the boat earns two hundred dollars per trip. If it makes ten trips per season it would earn two thousand dollars.

Now, you might say that this would not result as a benefit to the consumer, but I think it has been demonstrated that the boat will not take the full profit but that the consumer will receive much, if not all of it, for the reasons just given.

Gentlemen, we have raised monuments of bronze and marble to the memory of our great heroes and our great statesmen. We have built a great capitol edifice, as much for its beauty as for its useful-

ness. Is it too much to ask, even to preserve the memory of the creators of its commercial supremacy, for which it is most famed, to have preserved and rendered most serviceable its artificial waterways? To neglect them means to destroy them entirely.

To the minority it need but be said that the improvement of the canals means continued prosperity. To the majority let it be said that the interests of a large majority of the people of the State are centered in the canals. You design a remodeled Legislature. Are you already afraid to trust it? Have you lost all faith in it to-day? If so, why not abolish it altogether and govern and control the State by commissions as the great cities are ruled?

Now, this Convention is a trustee with the highest functions to perform. Its duty should be to care for the property of the State. Do not let its greatest property degenerate and be wasted by neglect. The eyes of your wards are upon you. Do not be guided, in this matter, at least, by the prosperity of the few. Do not be guided by the ancient philosopher's theory of "the greatest happiness of the greatest number." Let the grandest of American doctrines direct you, the welfare of the State; the greatest happiness of all. (Applause.)

Mr. Porter — Mr. Chairman, there is one amendment reported by the committee which has not been mentioned here to-day. It is No. 54. I desire to make a few remarks in explaining the object of this amendment. You will notice that there are certain portions of the canal which are designated and described in this amendment which is a prohibition of sale or lease, and the object of this amendment is to permit the abandonment of the Main and Hamburg street canal in the city of Buffalo. The emanations from that ditch can be detected and distinguished a thousand feet away. It is not a local matter entirely, as it contaminates the waters of the Erie canal. It carries the disease-breeding filth through the entire State. There are over six hundred acres of thickly populated city territory which drain into that portion of the canal. It has been the effort of the local board of health to abandon that portion of the canal or abate the nuisance in some manner for years. I think it was brought to the attention of the State Board of Health in 1892. It was as far back as that and probably earlier. They reported back that they had no authority, that the city was responsible for the condition of that canal. The city may be responsible for its condition, but the city has constructed no sewers emptying into this canal. The sewers that empty there are private sewers from factories, etc., situated along its borders. The trunk sewers that empty there are sewers constructed previous to the completion of this canal, and the

State permitted those to open there. Now, the principle diseases caused and carried by water are typhoid fever and different intestinal troubles and cholera. Now, if there were any means of collecting statistics along the canal where this water is used for various purposes, the statistics for typhoid fever alone, the deaths resulting therefrom would be alarming. The State spends large sums of money annually for sanitary purposes and especially to guard against certain epidemics which appear in violent form. It is not the epidemics which appear in the most violent forms which do the most damage. It is the disease which is constantly in our midst, that appears in the hamlets and the villages along the canal and is communicated through the water. For instance, I cite a case that happened in Buffalo last February. The inlet pier where it receives the water from the middle of the river became clogged with ice. It was necessary to open an unused pier which was situated near the bank, where the water flowing down along the bank contains a certain amount of this water from the harbor which had intermingled with the water from the canal. The result was after the usual period of incubation, three weeks, there were five hundred cases of typhoid fever in the month of March in the city of Buffalo, the result of pumping this water. Had it been a favorable season of the year for the disease there would have been ten thousand cases in the city of Buffalo within a month. Should this become contaminated with the cholera germ it would carry the disease all through the State to the villages and towns which would otherwise be considered practically safe.

I do not know as I desire to take up the time of the committee further, and I will give way to some other gentleman.

Mr. Durfee — Mr. Chairman, I sent a proposed amendment to the clerk's desk just before the recess this afternoon, which I would like to have read.

The Chairman — The Secretary will read Mr. Durfee's amendment.

The Secretary read Mr. Durfee's amendment as follows: Add to general order No. 54, as follows: "Nothing herein contained shall prevent the Legislature from authorizing the maintenance, improvement or enlargement of any of the canals by the government of the United States, upon sufficient guarantees of their being maintained in an efficient condition and free of tolls."

Mr. Durfee — The gentlemen will observe that this amendment is in line with the remarks of Mr. McDonough. He referred to an amendment which he had sent to the desk but which was not read,

and I do not know what it is. The point of it is to remove the restriction which now exists so that the Legislature shall, if opportunity offers, make an arrangement with the national government for the care of the canals. This is not an amendment which is hostile to the canals, but on the contrary it provides that an arrangement shall be made, if a guarantee is made by the United States government, for the efficient care and maintenance of the canals. I have not the time to go into a consideration of the question of what good the canals have done or what good they shall do, but I have some idea of the temper of the people in the central portion of the State. The people of my locality, the producers are not in favor of maintaining a free waterway for the products of the great northwest, so that such products can be brought here in direct competition with our own. They believe that the Erie canal is a link in what is really a national system of waterways, and ought to be supported by the people who are benefited by it, and the benefit being very largely derived by the farmers of the northwest, they should not ask the farmers of the State of New York to maintain a free waterway for the transportation of the products of the west and northwest to the markets of this State. That is the view that my constituents take of it. It seems to me that it is a sensible view, and I hope the committee will approve of the amendment which I have offered, which adds to general order No. 54 (which has not been very much considered separately in this debate), the provision which the clerk has read, permitting the Legislature, if the opportunity may offer, to make an arrangement with the general government, and removing the restriction which now prevents that being done.

Mr. Cornwell — Mr. Chairman, when the canals were built, and for many years theretofore, it was claimed for them that they were a benefit to the State, and it is only within a few years that it has been conceded that they are run for the benefit of our fellow-citizens. It will not be denied that the canals of the State are at present an expensive luxury, and are operated nearly against the agricultural interests of the State, absorbing about one-fifth the tax of the State, and acknowledged a burden and an absolute damage to a large class of the people. It seems to me that the McDonough amendment is a wise one, and ought to receive a careful consideration. It has not been disputed that more than four-fifths of the tonnage of the Erie canal comes from the western States, and the great benefits growing out of its operation to the great northwest. If this be true, it seems to me the operation of it under such circumstances is a matter of sentiment, and the interests of the people

are not considered. The McDonough amendment looks to me like a wise and sensible measure, and I sincerely hope it will prevail.

Mr. T. A. Sullivan — Mr. Chairman, I desire to offer an amendment to general order No. 54. The proper designation is the "Main and Hamburg Street Canal," and the amendment which I offer inserts the word "street" after the word "Hamburg" in line 10, so that it shall read "The Main and Hamburg Street Canal."

Mr. Hottenroth — Mr. Chairman, the amendment of Mr. Sullivan is really in conformity with what should have been reported by the Committee on Canals. Also in the last portion of general order No. 54, the word "improvements" should have been inserted.

Mr. Cochran — Mr. Chairman, I desire to ask the chairman of the Committee on Canals a question for information. In reading over the first amendment now under consideration (general order No. 53), I find that a toll may be imposed upon the products of the Dominion of Canada. On first reading, it struck me that that was in conflict with the Constitution of the United States, prohibiting any State from placing any toll upon the produce of any country. Upon making a closer examination of the decision of the United States court in such cases, those decisions left the question more in doubt in my mind than when I originally started out to examine it. I suppose the Canal Committee have examined into that question quite fully. I ask further whether this provision in reference to the products of the Dominion of Canada is in conflict with any of the treaties. I believe we have a treaty with Canada. I would like to ask the chairman of the committee if he has examined into any of those questions?

Mr. Cady — In answer to the gentleman, I would state that we did to a very considerable extent examine the Constitution of the United States and the decisions relating to this particular subject. When it was first suggested in committee, as it was by the delegate from Oswego, who urged it with very much earnestness, some question existed in my mind and in the minds of other delegates as to the constitutionality and propriety of such a provision. The investigations we made led us to believe that it was entirely in consonance with the power of the State of New York. In the treaty of 1871 between Great Britain and the United States, by the twenty-seventh article of that convention, provision was made that both the high contracting powers should exert their influence to the utmost and obtain for the inhabitants of each country equal use of the canals of the respective countries to the citizens of the

other. Now, the United States government has endeavored to carry that into effect, but has never been able to induce Canada to remit her tolls on the Welland canal, and it was for that reason and because under the Constitution of the United States, New York has entire control over her property, that this provision was inserted in general order No. 54.

Mr. McMillan — Mr. Chairman, may I make an inquiry of the chairman of the Committee on Canals before he takes his seat? I would like to inquire whether, so far as he knows, any one besides Judge Churchill appeared before the committee in favor of this particular amendment outside of the party who introduced it on the floor of the Convention?

Mr. Cady — Mr. Chairman, I desire to say that this amendment was pressed upon the committee by the delegate from Oswego, and he presented to the committee a somewhat elaborate opinion by Judge Churchill. Whether any one else appeared in favor of it I am unable to state.

The Chairman — The time for debate upon this matter having expired, the question now is on the substitute and the amendments offered in Committee of the Whole. The Chair will state for the information of the Committee of the Whole the present condition of this amendment. The committee have had under consideration general orders Nos. 53, 54 and 58. General orders Nos. 53 and 58 have been consolidated by substituting general order No. 53 for the third section of general order No. 58. General order No. 54 is unamended. The question will be on general order No. 58 as amended at the present time. The Secretary will read the general order.

Mr. Cassidy — Mr. Chairman, I introduced general order No. 58, and have not had an opportunity to speak upon it. I want to state that I have collected a large amount of data upon the question, and if any one desires to ask any questions I will be glad to answer them.

The Secretary read general order No. 58.

The Chairman — The first question is on the amendment offered by the gentleman from Columbia (Mr. Cady) to amend section 3 of article 7 as reported by the Canal Committee by adding at the end of line 12, page 3, the following: "The canals of the State may be improved in such manner as the Legislature shall provide by law, and a debt may be authorized for that purpose in the mode prescribed by section 12 of this section."

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

The Chairman — The next question is on the amendment offered by Mr. Floyd to amend the amendment of Mr. Baker by striking out the word "debt" and inserting the words "a debt not exceeding nine million dollars."

The Charman put the question on Mr. Floyd's amendment, and it was determined in the negative.

The Chairman — The next question is on the amendment of Mr. Baker, to amend section 3 of article 7, lines 4, 5 and 6, so as to read as follows: "Except that the Legislature may in its discretion impose tolls upon the products of the Dominion of Canada passing through any canal of this State, and such toll shall not be imposed nor collected after the Dominion of Canada shall have ceased to impose or collect tolls upon American products passing through the canals in the Dominion of Canada."

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

The Chairman — The next question is on the amendment of Mr. McMillan, to amend general order No. 53 by striking out all after the word "canals" in line 4, page 1, down to and including the word "State" in line 6 on same page.

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

The Chairman — The next question is upon the substitute offered by Mr. Roche, of Rensselaer, to general order No. 58.

Mr. Roche — I do not think the substitute comes up until all these amendments are disposed of, because the substitute embraces three sections.

Mr. Hottenroth — Mr. Chairman, there was another amendment introduced by Mr. Baker which has not been read by the Secretary, and which conforms to the opinion, at least the consensus of opinion of the majority of the committee on canals.

The Chairman — I have a record of but two amendments offered by Mr. Baker, and one to general order No. 54 and one to general order No. 58.

Mr. Hottenroth — It is general order No. 53, I think.

The Chairman — That is general order No. 54.

Mr. Hottenroth — That has not been reached yet, Mr. Chairman.

The Chairman — No.

The Secretary will read general order No. 54.

The Secretary read general order No. 54.

The Chairman — The question is upon the amendment offered by Mr. Floyd, to the amendment offered by Mr. Baker. The Secretary will read Mr. Floyd's amendment.

The Secretary read Mr. Floyd's amendment as follows: Strike out the word "debt" and insert the words "a debt not exceeding nine million dollars."

Mr. Hottenroth — Mr. Chairman, I would suggest that we have Mr. Baker's amendment read.

The Chairman — The Secretary will read Mr. Baker's amendment.

The Secretary read Mr. Baker's amendment as follows: Section 6 of article 7 shall be amended by adding the following paragraph after the word "forever" in line 7 as follows: "The canals of this State may be improved in such manner as may be provided by law and the Legislature shall have the power to contract debts for the improvement of the canals which shall be made payable at such times and in such manner as the Legislature shall direct. The provisions of section 12 of this article shall not apply to the debts created pursuant to this section."

The Chairman put the question on Mr. Floyd's amendment to Mr. Baker's amendment, and it was determined in the negative.

The Chairman then put the question on Mr. Baker's amendment, and it was determined in the negative.

The Chairman — The next question is on the amendment of Mr. McDonough, general order No. 54. The Secretary will read the amendment.

The Secretary read the amendment as follows: Amend general order No. 54 by adding at the end of line 7 the following: "Provided, however, that the Legislature may sell, transfer, convey or dispose of said canals, or one or more of them, to the United States, upon such terms as may be mutually agreed upon, and upon the express condition that the United States shall forever manage, maintain and operate the same, and shall not impose tolls, on persons or property transported on the same."

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

The Chairman — The next question is on the amendment offered by Mr. I. Sam Johnson, and the Secretary will read it.

The Secretary read the amendment as follows: Amend the first

section of general order No. 54 by inserting at the end: "No special or exclusive privilege shall be granted to furnish electric or other power for propelling boats on the canals of this State, or to use the land on either side of said canals, and all contracts, made in conflict with this section are hereby declared to be void."

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

The Chairman — The next question is Mr. Durfee's amendment. The Secretary will read the amendment.

The Secretary read the amendment as follows: Add to general order No. 54, as follows: "Nothing herein contained shall prevent the Legislature from authorizing the maintenance, improvement or enlargement of any of the canals by the government of the United States, upon sufficient guarantees of their being maintained in an efficient condition and free of tolls."

Mr. Roche — Mr. Chairman, is not that proposition equivalent to the proposition of Mr. McDonough's which was just defeated?

The Chairman — I think not.

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

The Chairman — The next question is on the amendment offered by the gentleman from Erie (Mr. Sullivan) to insert the word "street" after the word "Hamburg" so that it will read "Main and Hamburg Street Canal."

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

The Chairman — The next question is on the amendment offered by Mr. Hottenroth, to strike out line 14, and substitute in lieu thereof the following: "Improvements, superintendence or repairs of the remaining portions of the canals," and it was determined in the affirmative.

The Chairman — The question now arises on the substitute offered by the gentleman from Rensselaer (Mr. Roche) to general orders Nos. 54 and 58.

The Secretary read the proposed substitute.

The Chairman put the question on Mr. Roche's substitute, and it was determined in the negative by a rising vote — ayes 53, noes 68.

Mr. Blake — Mr. Chairman, is it in order now to insert any other sum for the amount of twelve million dollars?

The Chairman — No, I think not. The amendments and the substitute have all been disposed of.

Mr. Blake — I think the majority of the committee may be in favor of the general plan but not in favor of the amount. I think the question should have been divided.

Mr. Acker — Mr. Chairman, I move you that the committee do now rise and report general order No. 58, and recommend its passage.

Mr. Roche — Mr. Chairman, what became of Judge Cady's amendment?

Mr. Acker — It was lost.

Mr. Roche — When was that voted upon?

Mr. Acker — A good while ago.

Mr. Cady — I suggest that No. 54 also be included in the motion made by Mr. Acker.

The Chairman put the question that the committee now rise, report general orders Nos. 54 and 58 to the Convention and recommend their passage, and it was determined in the affirmative.

President Choate resumed the chair.

Chairman Barhite — Mr. President, the Committee of the Whole have under consideration proposed constitutional amendment, printed No. 430, general order No. 53, entitled, proposed constitutional amendment to amend section 3 of article 7, relating to the canals, have gone through with the same and substituted said amendment to section 3 of printed No. 437, and instructed the chairman to report their action to the Convention, and recommend its passage.

Also, the Committee of the Whole have had under consideration proposed constitutional amendment printed No. 431, general order No. 54, entitled to amend section 6, of article 7, relating to the canals, have gone through with the same, made some amendments thereto, and instructed the chairman to report the same to the Convention and recommend its passage.

Also, the Committee of the Whole have had under consideration proposed constitutional amendment printed No. 437, general order No. 58, entitled to amend sections 1, 2, 3, 4 and 5 of the Constitution relating to the canal debt and maintenance of the canals, have gone through therewith and made some amendments, and 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. Roche — Mr. President, we might as well find out to-night whether all propositions looking toward the improvement of our canals are to be effectually killed by this Convention. As matters now stand the members must know that the acceptance of the proposition before the Convention is nothing but a surrender to one of the great railroad corporations in this State of a mile of canal in the city of Buffalo, that railroad having its tracks running parallel with that canal. There is no proposition adopted by this Convention which so much as crosses a letter *t* or dots a letter *i* in the present provision of the Constitution in relation to our canals, with the exception of the provision in reference to the Hamburg canal. The canal men of this State and a large and considerable portion of the people of the State understand it to be nothing more or less.

The President — Mr. Roche is perhaps not aware that he has not made a motion. The question is on agreeing with a report of the Committee of the Whole.

Mr. Roche — Yes, sir, I will make a motion. I move to disagree with the report of the Committee of the Whole, and that the amendment be referred back to the Canal Committee with instructions to report forthwith as follows:

Repeal sections 1 to 6, both inclusive, of article 7, and substitute the following:

ARTICLE VII.

"SECTION 1. The canals of this State shall remain the property of and shall be forever managed by the State, and no sale, lease or other disposition thereof shall be valid. No tolls shall be imposed on persons or property transported on the canals; but all boats navigating the canals and the owners and masters thereof shall be subject to such laws and regulations as have been or may hereafter be enacted concerning navigation of the canals. The Legislature shall, annually, provide for meeting all the expenses of superintending and repairing the canals and the dams and feeders thereto, and of constructing necessary aqueducts and culverts, by imposing equitable taxes which shall be paid into the State treasury. The Legislature shall, in like manner, provide for improving the locks of the canals and securing any needed additional feeders. All contracts for work or materials on any canal shall be made with the person who shall offer to perform or furnish the same at the lowest price, giving adequate security therefor. No extra compensation

shall be made to any contractor; but if, from unforeseen cause the terms of any contract shall prove to be unjust and oppressive, the canal board may, upon the application of the contractor, cancel such contract.

Sec. 2. The State Engineer and Surveyor, the Superintendent of Public Works, and three citizens to be named and selected by the Governor from among the commercial bodies of the State on or before the first day of March, one thousand eight hundred and ninety-five, shall constitute a commission, whose duty it shall be to make an examination of the canals with a view to the improvement thereof, or of such of them as it may be desirable to improve. They shall report as to the most feasible methods for making such improvements, and shall also make an estimate of the cost thereof; and such report shall be filed by them in the office of the Secretary of State on or before the first day of September, one thousand eight hundred and ninety-five. The Legislature shall provide for paying the expenses incurred by said commission in the execution of their duties. The Legislature shall make provision at the first session after the adoption of this Constitution, for the submission to the voters at a general election to be held on the Tuesday after the first Monday of November, one thousand eight hundred and ninety-five, of this question: 'Shall the canals be deepened and otherwise improved?' If the majority of votes upon that question shall be in the affirmative, it shall be the duty of the Legislature, at its next session, to prescribe a general plan for the improvement of the canals, or of such of them as it is desirable to improve and to take measures for putting such plans into execution. The State may, from time to time, issue its bonds, in manner to be directed by the Legislature, to an amount not exceeding nine millions of dollars, which shall be used solely for the purpose of paying the cost of improving the said canals. The said bonds shall be payable at such time or times as shall be directed by the Legislature, not exceeding thirty years from the date of issue, and payment of the principal and interest thereof shall be provided for by taxes to be levied and imposed in each year in which such principal and interest shall become due, or partly by funds from other sources as the Legislature shall direct to be applied for that purpose; and the Legislature may provide for the creation of a sinking fund to secure payment of the principal and interest of the said bonded debt in whole or in part."

There is not a single word in the Constitution of the State to-day which in terms authorizes the improvement of the canals. The constitutional provision is that the Legislature shall provide by annual

taxes for their superintendence and repairs. There is not a word authorizing their improvement. In other words it is simply keeping that ditch open with just that amount of water in it, and saying: "Do not do anything to deepen it! No matter how much money Canada spends upon the great Welland canal to divert the trade from our seaports and from our great State, do not do anything to improve our canals! The State of New York is not authorized to spend any more money upon the improvement of its waterway!" If the gentlemen who are responsible — and I mean to talk plainly now — for the work of this Convention and the political party that goes before the people with that responsibility, want to stand in that attitude before the people, the people will meet them at the polls and they will see with what favor and what patience their provisions looking for an increase in the number of judges, looking for a partisan apportionment are received by the people, while a great measure which would secure to the people of the State the improvement of their own property is voted down in this Convention.

Mr. Nichols — Will the gentleman allow a question?

Mr. Roche — I prefer not to be interrupted now. My time is short and I do not wish to take up much more time in this Convention.

My amendment, Mr. President, was, first, the present provision in the Constitution. My second proposition was that before we called upon the people at the polls to say whether they would vote for canal improvements or not, and authorize the expenditure of a considerable sum of money, they would have before them the report made by the State Engineer and Surveyor, and the Superintendent of Public Works and a commission of three citizens, who should report upon the condition of the canals and the amount of money necessary for the improvement of them, and with this report before them the people could vote intelligently upon it at the next fall election. Are you afraid of the people? Are you afraid to trust them? Are you afraid to give them a chance to say whether they want these waterways improved or not? Can you not trust to the popular mind and the popular intelligence to determine that question?

Now, I propose that if the people vote in favor of that proposition, that then the Legislature shall have before it the popular and constitutional mandate and that it shall not palter with the canals as it has been doing for years and years, simply making appropriations for cleaning out some mud here and there and building a

bridge at some public crossing or farm or other place, but that it shall provide and direct a plan for the improvement of these canals, or such of them as it is desirable to improve.

Now, Mr. President, I further propose to reduce the amount which was named in my substitute to the sum of nine million dollars and to authorize the State to issue its bonds from time to time for a period of not to exceed thirty years. I hope that this Convention, coming here from the people of the State of New York, knowing something of the needs of the canals, the needs confessed by every member of the Canal Committee, from the distinguished chairman down, all of them admitting the necessity of this work, and many of them having been personally over the Erie and Champlain canals, and, therefore, speaking intelligently and authoritatively upon the question, I hope this Convention will not adjourn without doing something for these waterways in answer to the request of the great canal interests of this State, in answer to the request of the produce exchange of New York city; and in answer to the request of the board of trade and citizens' associations of every city of this State along the Hudson valley, the Mohawk and Genesee to Lake Erie. You cannot, gentlemen, afford to ignore this demand. You cannot afford to say that the people shall not have an opportunity to say whether their canals shall be improved and made not only effective waterways and tremendous factors in the transportation of the products of the State, but a tremendous factor in the transportation of the products of the whole counry. I hope, therefore, Mr. President, that the report of the committee will not be agreed to, but that it will be recommitted to the Canal Committee with instructions to report back some of these amendments.

Mr. Cady — Mr. President, I assume that the substitute which was proposed by the gentleman from Rensselaer, although it has not been sent to the desk, is substantially the same as that proposed by him in the Committee of the Whole.

The President — That is so.

Mr. Roche — I have reduced the amount from twelve to nine millions and have made certain other verbal changes.

The President — Will you send it to the desk?

Mr. Cady — Mr. Chairman, I want to say in respect to that proposition that it was submitted to the Canal Committee; that Mr. Roche appeared before the Canal Committee and argued its merits; that it was deliberately considered by that committee, and that it did not obtain a single vote of any member of the committee.

Whatever other propositions on canal improvements found favor with the committee, that one did not.

Mr. Nichols — Mr. President, I want to say one word in answer to some remarks I understood the gentleman from Rensselaer (Mr. Roche) in reference to the power now existing with the Legislature under the present provisions of the Constitution. I understood the gentleman to say that there was no power in the Legislature at the present time to improve the canals. I join issue with him upon that proposition, for two reasons. First, under the Constitution, as it now exists, the Legislature may devise a plan, and having so devised it may submit it to the people and ask authority for the money it is proposed to expend.

Second, the Legislature may appropriate more than a million dollars for canal improvements, and during some of the years they have done that, so that no amendment is necessary to effect the purpose which he speaks of.

Mr. Blake — Mr. President, I am in favor of the motion made by Mr. Roche, but I would like to amend by instructing the committee to insert eight millions of dollars. I think this Convention will make a great mistake in agreeing to the report of the Committee of the Whole. It seems to me that the Convention ought not to adopt the policy of doing nothing more to improve our canal system. I think, Mr. President, that the Convention did not understand the question properly when it voted upon it a few moments ago. I know that there were a great many gentlemen who voted in the Committee of the Whole, and the great majority of this Convention are not in favor of the action taken in the Committee of the Whole. I had some views to express upon the question if the time of the Committee of the Whole had not been taken up. I want to say in explanation of my vote in the committee that when the final vote was taken in the Canal Committee upon the question as to what policy should be adopted by the committee and recommended it to the Convention, I voted with what was then the majority. I believed that the annual appropriations by the Legislature would suffice to keep the canals in such condition as their needs would require. But, sir, I have investigated the matter further since then, and my mind has undergone a change in that direction. I have received information and what might have been apprehensions in my mind upon the subject have been cleared away. I believe, sir, that there is a popular demand that the canal should be improved, and I believe it should not go unheeded by this Convention. There are thousands of people whose interests are tied up by this canal

system and who depend upon it for their prosperity, and I think it would be unnecessary and unwise, and, more than that, unpatriotic, to turn a deaf ear to the cry of these people for relief, and I am surprised that this Convention should give such a vote as it has to-day. I tell you that the people of the State demand that some considerable improvement shall be made in our canal system. I do not say they are in favor of voting such a sum as twelve millions of dollars for that improvement, and I think the mistake was made in not dividing that question. I think the majority of this Convention are in favor of the proposition of the gentleman from Rensselaer, although the majority may not be in favor of the sum he named. I think we should have the question fairly and squarely decided here whether this Convention desires to improve the canal system of the State, and I desire to make my solemn protest on behalf of the people residing in New York, Brooklyn, Albany, Syracuse, Rochester and Buffalo against the action of this Convention. Now, sir, all I have to say in conclusion is, that I press to an issue the amendment which I have offered to this substitute of Mr. Roche's, that the amount be eight million dollars instead of nine.

The President — Does the gentleman from Rensselaer accept the amendment?

Mr. Roche — Mr. President, I am astonished that so many intelligent men here do not see that my amendment reads not to exceed nine millions of dollars. If it is not necessary to spend nine millions, it will not be spent.

Mr. Blake — Mr. Chairman, I have no objection to that. The report of the Superintendent of Public Works says that eight millions are sufficient.

Mr. I. Sam Johnson — Mr. President, I desire to call attention simply to the fact that the Legislature now has the power to appropriate every year more than a million and a half of dollars under the present Constitution. I hold in my hand a statement of the amount of appropriations made a few years since, not for the payment of the debt, not for the payment of the principal, but for the ordinary maintenance and improvement of the canals of this State, and I find, sir, that in 1888 they appropriated $1,436,634; in 1889, they appropriated $1,565,000. In 1890 they appropriated $1,680,000 for the improvement of the canals. If this is not satisfactory to the people, to the gentlemen on the other side who are urging this proposition, then I say that we should strike it out entirely, as the people of this State are not anxious to be burdened with this increased taxation. They are

opposed to it. They have come here in large numbers to oppose these measures. All I want to do is to call attention to the fact that these large sums may be appropriated unless they want to go above $1,500,000 upon this matter.

The President — The question is on the motion of the gentleman from Rensselaer, Mr. Roche, to recommit the amendment to the standing Committee on Canals, instructing them to amend as proposed by him, and that they report forthwith.

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

The Secretary proceeded to call the roll.

Mr. Barrow — Mr. President, I desire to explain my vote. We have a provision in the Constitution at the present time which prohibits the sale of the canals. It is in very solemn language. It provides that the canals shall not be leased, sold or otherwise disposed of, but that they shall remain the property of the State and under its management and control forever. They are very solemn words, strong words. Now, sir, it seems to me that either this provision should be stricken out of the Constitution and the Legislature should be given power to sell the canals, or else we should put into the power of the Legislature the means of their improvement, because I say, sir, that if you don't improve them you must pretty soon abandon them. In these days of speed, in these days when there is great competition, the idea that you can maintain these waterways and not improve them is absurd. If the New York Central railroad had not been improved in its management since 1862, the canals to-day would have been a greater competitor than they are, and I say if the Erie canal had been kept up with the New York Central railroad since 1862, it would have been to-day what the people wish it to be, and not what it is. Now, sir, I may not approve of these propositions in all their details, because I have not examined them very closely, but for the purpose of getting into the Constitution something that will enable the people to say whether they are in favor of canal improvement or not, I am in favor of Mr. Roche's proposition, and I vote aye.

Mr. Becker — Mr. President, let not the gentleman from Rensselaer make any mistake. The delegates from Erie county in this Convention, from the senatorial districts there represented, believe that the prosperity of the Queen City of the Lakes is largely dependent upon the Erie canal. They have been in constant and solicitous consultation with the great friends of the canal there, and with

those coming from New York and other parts of this State. It is not, Mr. President, so much what the friends of the canal want, what they would like to have, as it is what they think it possible to get under the temper of the people of this State. Evidences come from the counties of the State which are not particularly benefited by the canal, or cannot see that they are by the growth of the cities resulting from traffic upon the canal, showing clearly how strong that feeling is. I would be glad, and I think all of the delegation from Erie county would be delighted if they believed it possible that such a long step in advance as is proposed by this amendment of Mr. Roche's could be taken by this Convention, and if adopted by the Convention, could be ratified by the people at the polls; but we are fearful that while attempting to do something an attempt will be made to do too much, and forever, or if not forever, for many years to come, all prospect of canal improvement be immensely injured. Therefore, Mr. President, I make the statement that hereafter we expect to move some form of a modification of the proposal made by the Canal Committee, going a little farther than that proposition and yet not going so far as Mr. Roche's does, in the interest of canal improvement, making that certain which is now uncertain, putting into the Constitution the word "improved" where the words "superintendence and repairs" only are found. Year after year the Legislature has been appropriating moneys when its right to do so might have been at any time challenged by any citizen, and, therefore, I shall vote no on this amendment, but it is with the understanding that hereafter a proposition will be made of a substitute which, as I said before, will not give the opportunity for so much danger to the canal system and at the same time may work it some benefit.

Mr. Burr — Mr. President, I desire to explain my vote. I have always been a friend of the canals. One of the earliest public agitations that it was ever my good fortune to participate in was that agitation which resulted in making the canals free. I believe that there is no question but that the canals demand and deserve improvement at the present time, and I fully believe that the people of the State of New York are in favor of having their great undertaking, which has made the name of Clinton imperishable in the annals of the State of New York, equal to their present requirements. As Mr. Barrow said a few moments ago, the railroads have improved, while the improvement of the canals has been nothing. They have not kept pace with the times; they have not kept pace with the improvements of canals in other parts of the world. I believe that the improvement of the canals is opposed by the great

railroad corporations of the State of New York. I believe with my friend from Erie (Mr. Becker), who, some time since, in urging with much earnestness that new blood should be infused into the Court of Appeals, said that it is a serious question whether this is a government governed by the corporations or whether the corporations are dominated by the State government. I believe that we should be making a serious mistake should we say to the people now that we will not give them an opportunity to be heard upon this momentous question. I think the canals of the State of New York have done more than any other one institution in the State to give it its great commercial supremacy to-day. If we are willing to leave the canals as they are we shall be disappointing the people, and we shall, by striking a serious blow at this commercial supremacy. Therefore, I vote aye.

Mr. Cady — Mr. President, I desire to explain my vote. As I said a few moments since, this precise proposition, which is now presented to the Convention, was adversely acted upon by the Canal Committee, and I do not think that upon reflection and upon a careful examination of its very voluminous and somewhat intricate qualities, it would receive the vote of any substantial number of the delegates of this Convention. In the line of thought of the delegate from Erie (Mr. Becker), it goes altogether too far. I submitted in the form of my amendment this morning a reasonable, temperate and safe basis for canal improvement, as it presented itself to my mind. I think with some concert of action on the part of the friends of the canals who would be content to take something without undertaking to absorb the whole universe, such a proposition as that might have prevailed. It has been defeated. Certainly I trust that this proposition now pending before the Convention will fail of its approval. I vote no.

Mr. Cassidy — Mr. President, I desire to explain my vote. I am not hostile to the canals, nor am I sure that I could not approve of the amendment offered by the gentleman from Rensselaer; but I hesitate to vote upon any amendment that is so intricate and one so illy considered, without understanding its provisions; and I must, therefore, vote no.

Mr. Cochran — Mr. President, may I ask the gentleman from Erie (Mr. Becker) a question, as it may assist me in determining my vote. The gentleman from Erie says that there is an amendment to be introduced on this subject and that it will cover all that the canal people want. May I ask, for information, when it is expected we shall have that amendment in?

Mr. Becker — It is my intention, if nobody else offers it, to offer such an amendment when this is disposed of.

Mr. Cochran — I vote aye.

Mr. A. H. Green — Mr. President, I would like to explain my vote. We had pictured to us the other day the very pleasant condition of the State as to its debt. We are out of debt, and I should be very glad if we could keep out of debt. We all know that where there is a plethoric treasury the speculators and the peculators are always on hand to deprive it of its store. Now, sir, I believe in keeping out of debt; and if you want to make these improvements let it be done by taxation. Then the people know what they are about. And I would like to read for a moment a paragraph on this subject from a very distinguished Democrat:

"Four-fifths of the governmental intervention now practiced in carrying on the affairs of society should be dispensed with. Existing indebtedness should, indeed, be held sacred and to the last cent faithfully redeemed; but the power of borrowing money on the public credit, either by paper issues or otherwise, should be absolutely annulled. Neither the federal government nor any other, down to the smallest civil division of the State, should possess it. It is inconsistent with the perpetuity of free Republican institutions; it is the very life-blood of aristocrat rule, for it fetters labor as the bond-slave of capital. In modern times it furnishes the aliment indispensable to war; without it that most shocking of all national crimes and calamities would be impossible. * * * * Pay as you go, is a maxim not less sound in political economy than in private affairs. If adopted, peculation must cease to pervert government, and war could no longer lend legal sanctions to cruelty and oppression. And if, as some contend, war is the normal condition of mankind, posterity will have its own wars to sustain, and it is, therefore, unreasonable to burden posterity with debt for the cost of ours. * * * The power to borrow money is mischievous just in proportion as a government is liberal in form and as the nation is prosperous. The very constitution of human nature precludes any effectual regulation of it; in a monarchy there may be some supervision, but in a republic the tendency to abuse is absolutely incorrigible. No human skill can devise or human intelligence put in force adequate checks upon its exercise. If allowed to exist at all, it must inevitably be abused, and the abuse must progress to an extent absolutely intolerable. The mere burden of taxation induced by it is the least evil among its foul progeny. Fraud and corruption become virtues under its influence; statutes to be set up as

objects of popular reverence, and similar honors have been proposed for its cultivators, and if it be not extirpated, will hereafter be decreed to them."

Now, that is the opinion of Mr. Charles O'Connor, whose Democracy, I believe, nobody will doubt. I entirely agree with him, and I vote no.

Mr. Hawley — Mr. President, I understand that the Constitution now provides that for any specific work the Legislature may raise any amount of money necessary for that purpose, submitting their action to the approval of the people at a general election; and that if ratified then, the money can be raised and the work can be done. That being so, the proposition of the gentleman from Rensselaer adds nothing to the powers of the people as they now exist, makes no improvement upon the Constitution, but simply raises and organizes one more leech upon the treasury of the State in the shape of one more commission of investigation which is to report to the Legislature, and then have said report acted upon whether the Legislature likes it or not. I vote no.

Mr. Holls — Mr. President, I desire to explain my vote. I came here with the intention, and still have the hope, of voting for a thoroughly substantial improvement of the canals of this State; and if I were of the opinion that nothing more conservative than this proposition of Mr. Roche's could be brought before the House for action, I would vote in its favor now. But upon the statement of the distinguished chairman of the committee, and also the intimations given by the gentleman from Erie, I hope to have occasion to vote for this substantial improvement upon more conservative lines hereafter; and, therefore, I vote no.

Mr. Hottenroth — Mr. President, I desire to explain my vote. A proposition for amendment was drawn and submitted in committee, but has been somewhat amended since, and will be, in case this amendment should fail, submitted to the Convention. In answer to the gentleman from Steuben, and also to Mr. Johnson, I would say that section 10 of the Constitution provides that the State may, to meet occasional deficits or failures in revenue, or for expenses not provided for, contract debts, but such debts, direct or contingent, singly or in the aggregate, shall not at any time exceed one million dollars, and the moneys arising from loans creating such debts shall be applied to the purposes for which they were obtained, or to repay the debt so contracted, and to no other purposes whatsoever. Now, to-day, the State, as has been ably said by Mr. Green, is entirely free from debt. To-day we are better able

to spend a few million dollars for the improvement of the canals than we ever were before. To-day, we are much better able than the State was in 1828, when eight million dollars were raised for the canals, to devote money to such a purpose. To-day we have met, and I hope partially passed, a financial depression that swept over the entire world; and it appears to-day that if there is anything conducive to increasing the demand for labor, we in this body, representing the people of the State, can do nothing to commend itself more to the working people of the State and to give them a chance to improve the State's own property. In that direction, if in no other, this Convention might say that some work was done by it that might be approved of by the mass of the people. We have suggested improvements in the judiciary; we have suggested an additional expenditure in connection with an increased Legislature; why, gentlemen, should we not expend a few million dollars, and that spread over a series of years, in order to improve the property of the State which now is degenerated, which now is neglected, which now cannot give the service which it should and for which it was intended? I vote aye.

Mr. I. S. Johnson — Mr. President, I desire to explain my vote. As to the suggestion of the gentleman who has just spoken, in answer to my remarks, that the limit of a million dollars for the borrowing of money has no application to what I referred to; it was not the borrowing of the million dollars; it was the fact that the Legislature could, and did, from year to year, appropriate more than a million dollars; it is the direct taxation, and the people of this State have submitted to it year after year. For seven years they submitted to appropriations amounting to over twenty millions of dollars. The appropriations for the improvement and the repairs of the canals for the same seven years amounted to over eight millions of dollars; and it is not unfriendly to the canals to ask that the expenditure be confined to even so low an amount as that. Mr. President, I vote no.

Mr. McClure — Mr. President, I desire to explain my vote. We are told by the statistics furnished to us in connection with this canal matter, that the State of New York has expended nearly one hundred and eighteen million dollars upon the canals of this State; and all this to provide some means, and to keep a means, by which it should not be in the power of the railroad corporations of this State to establish a grand monopoly. One of the gentlemen here has said that there are four competing lines running to the western

part of this State, all practically controlled, as they are, by the same corporation. Now, Mr. President, the beggarly amount which the present Constitution permits the Legislature to expend upon these canals is of no value or importance. As has been said, the canals have not been kept up in improvement with the railroads. We do not want to keep them merely in repair. They want to be enlarged and extended so that more rapid locomotion can be had upon them, and so that they will really compete with railroad corporations; and all this in the interest of the great public of the State. Now this State is in receipt of large means from extraordinary sources that were never contemplated some years ago. I hold in my hand a report of the Comptroller of the State, and it appears from it that since 1880, when the tax upon corporations first went into effect, until the close of 1893, nineteen million dollars had been obtained by that extraordinary tax; and since 1886, when the collateral inheritance tax law first went into effect, until 1893, nine million dollars had been obtained from that source. So that we have by extraordinary taxation nearly thirty million dollars taken in by this State in those few years, something never contemplated as a revenue by the State when the canals were established. And these revenues are increasing in amount from those two extraordinary sources. Why cannot we, instead of peddling out a million or two a year to keep these canals simply in repair, make a grand improvement which shall cost eight or nine million dollars, and do something practical for the people of the State. I hope this Convention will not adjourn without doing something in this direction. Preserve the forests, keep the waters for the canals, but if you do not deepen and make the canals of use, we must abandon them; and as this proposition now before us seems to be the most practical offered and is an intelligent solution of the question, I vote aye.

Mr. McDonough — Mr. President, I desire to explain my vote. If I were to vote on this matter as an Albanian, from a selfish standpoint, I should be inclined to vote aye; but I was elected to represent the people of the State, and believe it is not for the interests of the people of the State that these canals should be maintained by the State. I look upon them, as I said this afternoon, as national highways. I intended to have said to you that the general government has appropriated thousands and hundreds of thousands of dollars for the Hennepin canal, and they are building it now, in the State of Illinois, and the time is not distant when Lake Michigan will be connected with the Mississippi by a canal built by the United States government. When that time comes, if these canals are what they ought to be, we shall have a waterway from New York to

Bismarck in Dakota, and the wheat and other products of the northwest will come in this direction. And the only way to bring that about is to have the United States government hold these canals. If that is to be done, the less the State of New York expends on them, the better; and I think that by defeating this the other proposition will come up sooner than it otherwise would. I, therefore, vote no.

Mr. McMillan — Mr. President, I am opposed to this proposed amendment, first, because it is in such form that no one can possibly understand it. The originator of this proposition took it before the Canal Committee and he spent more time to-day on the floor of this Convention attempting to explain it, and failed, than was given to any two other propositions before the Convention. I am opposed to it, and I shall vote against it, with the understanding, as suggested by my colleague from Erie (Mr. Becker), that a proposition will be made here making some provision for eight or nine million dollars, coupled with a provision to submit it to the people to vote upon. I vote no.

Mr. Putnam — Mr. President, I explain my vote. I believe that the canals of this State are of the utmost interest to all of its citizens. Citizens of certain localities see nothing but taxation without adequate benefit from canal improvement; but I believe, Mr. President, that a broad view of this question proves conclusively that the canals benefit all the citizens of the commonwealth. The canals of this State have had a powerful influence in developing the great cities and bringing wealth to the State. Are these great cities a menace? Do they not pay the bulk of the taxation of the State? The cities of this State pay into the treasury of many rural counties much more money than those rural counties pay into the treasury in the shape of school funds. I say that my friend from Wyoming (Mr. Johnson) has little cause to complain of the taxes which are paid by his county. The taxes of the State are paid by the great cities, and I believe that the canals should be strengthened and maintained and developed to the utmost for the benefit of all our people. I, therefore, vote aye.

Mr. Roche — Mr. President, I am very thankful to the gentleman from Erie for his compliments. He was not present at the Canal Committee meeting when I made my argument. I desire to say to him that I think the proposition is drawn in very plain English. His statement that the committee did not understand it is absolutely untrue, for both the chairman of the committee and members of it expressed their gratification to me at the proposition

and at the manner in which it was presented. I am sorry to have to make this personal explanation in response to a very uncalled for and a very undignified attack; and I want to say now to the gentleman from Erie (Mr. McMillan) that neither before the Committee on Canals, nor before any other committee of this Convention, have I appeared in advocacy of any proposition where I was interested either personally or as attorney for any company or corporation that was interested, and then come on the floor of this Convention and either made an argument or cast a vote upon that proposition. I would not have said anything, Mr. President, if it were not for his attack. And I desire to say also in response to the suggestion that was made by the gentleman from Wyoming, that the Legislature may regulate all this thing, this fact, that neither a Democratic Legislature nor a Republican Legislature, both of them seeking to make a record for economy, and to keep down expenses, in any one year, makes sufficient appropriations for the improvement of the canals. It is simply doleing out a little money now and then to keep them in repair. My proposition makes it obligatory upon the Legislature, and after the people have approved of it, to adopt, and frame, and put in execution, a plan, not for mere repairs, but for the improvement of the canals. I, therefore, vote aye.

Mr. Smith — Mr. President, I desire to explain my vote. This is a subject that should be dealt with by principles. It is a subject that will involve the expenditure of several millions, and should be dealt with by the people themselves and not by the Legislature. The Legislature is elected for ordinary legislation, and not to take into consideration and deal with a great subject of this kind. Now, as the city of New York pays 44 per cent of this sum, it should have 44 per cent of the voice in advising favorably upon the subject; and if Buffalo, another great city, so interested, and other great cities along the line of the canal, would join New York, the farmers would have very little to pay toward this very important improvement. I vote aye.

Mr. A. B. Steele — Mr. President, living in the vicinity of the great canal, and adhering to what I believe to be the wishes of the people in that vicinity regardless of party, I vote in favor of the proposition.

Mr. E. A. Brown — Mr. President, I ask to explain my vote. It has been stated in this Convention by several gentlemen that the Legislature had the power to expend money in the improvement of the canals. If that is true, then I am inclined, speaking for the people of my district, to vote no upon this proposition. If that is

not correct, then I propose, in the absence of any better relief, for the improvement of the canals, to vote aye upon this proposition. By section 3 of article 7 it is provided that the Legislature shall annually, by equitable taxes, make provision for the expenses of the superintendence and repairs of the canals. Now, that is the only provision that I find in the existing Constitution giving any power to the Legislature to raise money for canal purposes. It seems to me that this is a very simple matter, and that if the word "improved" was inserted, "for the expenses of the superintendence, improvement and repairs of the canals," that that would cover the whole question. I am not satisfied that there is now any constitutional provision which authorizes the Legislature to raise money by taxation except for the maintenance and repairs of the canal. With that word inserted as I suggest, then under section twelve of the same article (seven) any indebtedness that was incurred by the Legislature under that amended provision would have to be submitted to the people for their approval before any such debt could be incurred. I, therefore, vote aye.

Mr. Veeder — Mr. President, I desire to explain my vote. I thoroughly believe in the improvement of the canals of this State to the extent of accommodating the commerce of the country, necessarily going through those canals. As I understand it, the counties of New York, Erie, Albany and Rensselaer pay over 87 per cent of the State taxes, and I believe it is true to say that the great majority of the people of those counties are in favor of improving the canals and incurring such expense as may be necessary for their proper improvement. I see no reason why the proposition should not be submitted to the people for them to pass upon to what extent they shall be taxed for the proper improvement of these canals. I, therefore, vote aye.

The Secretary having concluded the roll-call, the following result appeared:

Ayes—Messrs. Baker, Banks, Barrow, Blake, Bowers, Brown, E. A., Burr, Campbell, Carter, Cochran, Coleman, Countryman, Davenport, Deady, Deyo, Emmet, Floyd, Forbes, Fraser, Gibney, Giegerich, Gilleran, Green, J. I., Hill, Holcomb, Hottenroth, Kerwin, Kimmey, Mantanye, Marks, McArthur, McClure, Meyenborg, Moore, Mulqueen, Ohmeis, Parmenter, Peck, Platzek, Porter, Putnam, Roche, Rogers, Sandford, Smith, Speer, Springweiler, Steele, A. B., Steele, W. H., Storm, Sullivan, T. A., Sullivan, W., Tekulsky, Tibbetts, Titus, Towns, Truax, C. H., Turner, Veeder, Williams—59.

Noes—Messrs. Abbott, Acker, Ackerly, Allaben, Arnold, Barhite, Barnum, Becker, Bigelow, Brown, E. R., Bush, Cady, Cassidy, Church, Clark, G. W., Clark, H. A., Cookinham, Cornwell, Crosby, Danforth, Davies, Dean, Deterling, Dickey, Doty, Durfee, Foote, Francis, Frank, Augustus, Fuller, O. A., Galinger, Goodelle, Green, A. H., Hamlin, Hawley, Hecker, Hedges, Holls, Johnson, I. Sam, Johnson, J., Kellogg, Kinkel, Kurth, Lauterbach, Lester, Lewis, C. H., Lewis, M. E., Lincoln, Lyon, Marshall, Maybee, McCurdy, McDonough, McLaughlin, J. W., McMillan, Mereness, Morton, Nichols, O'Brien, Parker, Parkhurst, Phipps, Pratt, Redman, Root, Schumaker, Spencer, Vedder, Vogt, Wellington, Wiggins, Woodward, President — 72.

The President — The question recurs upon the motion to agree with the report of the Committee of the Whole.

Mr. Baker — Mr. President, I move that this proposed amendment be recommitted to the Committee on Canals, with instructions to amend and report at once as follows ——

The President — Is this as a substitute or as an addition or what?

Mr. Baker — As an amendment.

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

Section 6 of article 7, shall be amended by adding the following paragraph after the word "forever," line 7, as follows ——

Mr. Veeder — I rise to a point of order. The hour of adjournment has arrived. I ask that my point of order be decided.

The President — It is competent for the Convention to change its rule if it desires to do so.

Mr. Veeder — I desire to have my point of order decided first.

The President — I have decided that.

Mr. I. S. Johnson — Mr. President, I move that the session be extended for one hour.

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

The President — The question is on Mr. Baker's amendment. The Secretary will please read it.

The Secretary resumed the reading of the amendment offered by Mr. Baker in the language following:

"The canals of the State may be improved in such manner as shall be provided by law, and the Legislature shall have the power to contract debts for the improvement of the canals, which shall

be made payable at such time and in such manner as the Legislature shall direct.

"The provisions of section 12 of this article shall not apply to the debts created pursuant to the provisions of this section."

The President put the question on the adoption of the amendment offered by Mr. Baker.

Mr. Veeder — I demand the ayes and noes, Mr. President.

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

Mr. M. E. Lewis — Mr. President, I desire to raise the point of order that the amendment offered by Mr. Baker, not having been submitted to the Committee of the Whole, is not in order.

The President — Whether it was submitted to the Committee of the Whole or not, it is in order. The point is not well taken.

The Secretary resumed the calling of the roll.

Mr. McMillan — I desire to be excused from voting. I am opposed to this proposed amendment for the reason that it leaves to the Legislature the power to make any appropriation without any limitation whatever, or without any submission to the people to pass upon that proposition. I, therefore, wish to withdraw my request to be excused, and vote no.

The Secretary having completed the call of the roll, the following result appeared:

Ayes — Messrs. Baker, Barrow, Blake, Bowers, Brown, E. A., Burr, Campbell, Carter, Cochran, Coleman, Davies, Deady, Dean, Deyo, Emmet, Floyd, Forbes, Frank, Augustus, Gibney, Giegerich, Gilleran, Green, J. I., Hill, Holcomb, Hottenroth, Kerwin, Kimmey, Mantanye, Marks, McArthur, Meyenborg, Mulqueen, Ohmeis, Parmenter, Pashley, Putnam, Roche, Sanford, Smith, Speer, Springweiler, Sullivan, T. A., Sullivan, W., Tekulsky, Titus, Truax, C. H., Veeder, Williams — 49.

Noes — Messrs. Abbott, Acker, Ackerly, Allaben, Arnold, Barhite, Barnum, Becker, Brown, E. R., Cady, Cassidy, Church, Clark, G. W., Clark, H. A., Cookinham, Cornwell, Crosby, Danforth, Dickey, Doty, Durfee, Foote, Francis, Fuller, O. A., Goodelle, Green, A. H., Hamlin, Hawley, Hecker, Hedges, Holls, Hotchkiss, Johnson, I. Sam, Johnson, J., Kellogg, Kinkel, Kurth, Lauterbach, Lester, Lewis, C. H., Lewis, M. E., Lincoln, Lyon, Marshall, Maybee, McCurdy, McDonough, McLaughlin, C. B., McMillan, Mereness, Moore Morton, Nichols, O'Brien, Parkhurst, Peck,

Phipps, Pratt, Redman, Root, Schumaker, Steele, A. B., Tibbetts, Vedder, Vogt, Woodward, President — 67.

The President — The question now recurs on agreeing with the report of the Committee of the Whole, which recommends the passage of general orders Nos. 58 and 54 and 53, as incorporated with 58.

Mr. Becker — I have an amendment which I would like to offer, Mr. President. I move to have the matter recommitted to the Committee on Canals, with instructions to report as follows. I will read it, "That general order No. 54 — that is the one that has now practically been adopted, and simply provides for the permission that the small portion of the canal lying between Main and Hamburg streets, in the city of Buffalo, may be sold, be amended by adding at the end of it, as follows: ——

The President — At the end of 54?

Mr. Becker — At the end of 54.

"The canals of the State may be improved in such manner as shall be provided by law, and the Legislature shall have the power to contract debts not exceeding eight million dollars for the improvement of the canals, which shall be made payable at such time, and in such manner as the Legislature shall direct.

"The provisions of section 12 of this article shall not apply to the debts created pursuant to the provisions of this section. But before contracting any such debt the Legislature shall submit to the people, at any general election, the question as to whether the amount of money proposed by the Legislature shall be expended for such improvement; and if such expenditure be approved, the money arising from the creation of any such debt shall be applied to such improvement or the repayment of such debt, and to no other purpose whatever."

I desire to explain this very briefly.

The President — The question is on the motion of Mr. Becker.

Mr. Becker — As has already been stated here, the only provision now in the Constitution which permits moneys to be expended for the canals comes under the head of superintendence and repairs. There is no provision whatever, allowing any improvements, as such, to be made, and the question is always a vexed one in the Legislature between the friends of the canals on the one side, and those who are opposed to any canal improvement on the other, as to whether what is proposed to be done is or is not repairs; and to meet this the fiction of what is called "extraordinary repairs" has been created. And it is under the theory of that fiction, under

the sanction of it, that from year to year such improvements have been made, and appropriations have been made for the purposes of such improvements. It certainly tends not very much to increase the self-respect of the people of this State that such a thing should be possible; and that it is possible is evidenced by the acts which have been read here, and to which reference has been made, in which it plainly appears that for years some improvements have been made upon the canals upon the theory and pretense that they were simply extraordinary repairs. Now, there is a provision in the Constitution as to when debts may be created by the State of New York, which has no special application to canal debts, but has application to all kinds and classes of debts. These provisions are found in section 12, article 7, and they are so peculiar and so singularly drawn that they would prevent the submission to the people with any hope of success, at any time, of any proposition on which the people might have the slightest difference of opinion, as would be the case with the proposition to improve the canals. These provisions ordain that no debt shall be created which shall run more than eighteen years; and we all know that the tendency of the people of this State would naturally be, if a large debt was to be created, to make bonds run a longer period than that, for, in the first place, the premium obtained on the sale of the bonds would be greater, and in the second place posterity, receiving a portion of the benefit of the debt would bear its portion of the payment of the debt. In the next place there is the provision that after the law has been submitted and the people have passed on it, the Legislature may, if they have not gone on to contract any debt, repeal the law and forbid the further levy for the debt. So we have the singular anomaly that the people of the State may vote to create a debt, and then the Legislature itself being given the power of refusing to do that which the people have said that they want to have done. In the next place, under this same section, the provision is that no such law shall be submitted to be voted on at any general election, when any other law or any bill, or any amendment to the Constitution shall be submitted to be voted for or against. That is the present Constitution. It might be very important for the Legislature to submit other amendments at the same time that these measures were submitted with reference to the creation of the debt, and under the provision of this article which I have referred to, it must be apparent to anybody that it might be impossible, where there was a difference of opinion among the people of this State upon any question, to get an amendment submitted under which it would be possible to create a

debt for the purpose of improving the canals. Now, the amendment that I have proposed simply does this. It says that all the specific and over-cautious provisions of this section shall not apply to the creation of this debt, but that the Legislature shall have power, if it chooses to do so, to pass a law for that purpose; but before doing so, the question shall be submitted to the people, "Shall the amount of money proposed by the Legislature and named in the law be expended for that purpose;" and then when the people have declared their willingness to go on and expend that amount of money for that purpose, it is placed within the power of the Legislature to expend that money in such a way as it desires for the purpose of improving the canals, and to create a debt for such period as it desires, not limiting it to the period of eighteen years, and not surrounding it with these very peculiar and extraordinary provisions of caution which are found in this section 12, and which seem designed forever to prevent any debt being created for any improvement of this character, however much the people may want to do so. Now, what would be the effect of this amendment? Briefly this. The Legislature would have an investigation, such for instance as is suggested by Mr. Roche; it would determine that it was desirable that a certain amount be expended for the purpose of improving the canals. It would then submit to the people the question (not according to the form provided for constitutional amendments, of passing two successive Legislatures, but after the passage by one Legislature of the proposition), "shall such an amount as we now propose at this session of the Legislature be expended for canal improvements?" If the people voted no, it would not be expended; no debt could be created for that purpose. If the people voted yes, a debt could be created if the Legislature saw fit to do so, and the work could go on. Those are the provisions of this amendment.

May I be permitted, Mr. President, and friends in this Convention, to add one more word in favor of this. Do not forget that we are on the eve of great improvements. When Governor Tilden wrote about the canals the steamboat was unknown. To-day you witness steam in operation on the canals, one boat pushing another ahead of it, and one alongside of it. On Saturday I saw a convoy of these boats going down the river, one steam canal boat pushing two in front of her and with two alongside of her, most of which she had no doubt brought down the canal with her. It is now proposed to apply electricity to the canals of this State. To do that the propeller wheel of the vessel must turn. If the propeller wheel turns, if she carries anything more than her own

burden, and propels other boats with her, which it is necessary that she should do in order to operate with commercial success, she must have considerable power. That necessitates the violent action of the wheel, the churning of the water. The giving way of the banks of the canal is possible under those conditions. Now, are you ever going to apply steam to its fullest extent, or electricity to its fullest extent, for propulsion, unless there is some improvement made in the canals; not necessarily by deepening them, but possibly by strengthening the walls and banks, strengthening the locks and improving them and widening them so as to make such things possible? Let us not stand in the way of such improvement. We beg of you to give this opportunity to the people of this State to have the question presented in a form for which they can all vote alike and stand alike, to see whether or not they want these improvements to be attempted, and in order that they may be made if the people should choose to do so; that the Legislature may create a moderate debt for that purpose and not be compelled to appropriate each year money for the purpose mainly of extraordinary repairs when what the people mean, and what the Legislature really means, is improvement. I hope that this amendment will prevail.

Mr. Hottenroth — I would like to ask Mr. Becker a question, if I may, as to whether he considers, under this amendment, a decision by the people would be final and would determine the question?

Mr. Becker — I do, sir.

Mr. Hottenroth — Well, Mr. President, this amendment as submitted by Mr. Becker is the amendment that I intended to submit, and the part I intended to submit is in typewriting. Now, if Mr. Becker will consent to change the word that is written in lead pencil, the word "shall" immediately after the typewritten portion, to "may," it seems to me that that will answer the purpose of canal improvements.

Mr. Becker — I regret, Mr. President, in the belief that I have that the people of this State will not approve such an amendment if you substitute "may" for "shall," but would unhesitatingly vote it down, because they desire to reserve the right themselves to approve these things, that I cannot accept the gentleman's suggestion. I think it should be submitted to the people, and then when once it is submitted and they have voted on it, we should all come in cheerfully and say that what the people want they should have.

Mr. Hottenroth — Mr. President, contrary, I believe, to Mr. Becker, I have not lost faith in the Legislature, and I do not think I would lose faith in it even if it were constituted in the manner that was projected by this Convention in the future. It seems to me that if the Legislature take up this matter as they should, make a proper investigation, and come to the conclusion, as representatives of the people of the State, and dared to do anything that was not in the line with their duties as the representatives of the people of the State in connection with public improvements of this character, I say that it is time to abolish the Legislature. But not only this; as you well know, the Legislatures of this State, if they are controlled at all, by anybody, are controlled by the railroad interests, by the corporate interests, and if they should determine upon improvements for the canals, it would be against those interests. And, gentlemen, it is not likely that any influence of that character will be used in favor of the canals. I believe it has been shown that the tendency to create rings in connection with canal improvements has had its day. We have passed those times. We have left a provision in the Constitution restricting the letting of contracts, restricting the violation of the conditions of contracts. We have every safeguard to protect the people of this State, and I say that if you leave any other question of importance to the Legislature, this is one truly which does not involve what many others do, and whereon the action of the Legislature is final; this one surely you can leave to that body.

Mr. Becker — At the request of some gentlemen I have added so as to make it distinctly clear that if this expenditure be approved, then the Legislature shall go on.

Mr. Hottenroth — Mr. President, I intended to submit as an amendment the striking out of the word "shall" and inserting in lieu thereof the word "may."

The President put the question on the adoption of the amendment offered by Mr. Hottenroth, and it was determined in the negative.

Mr. Becker — I call for the ayes and noes on my amendment.

The call for the ayes and noes was not sustained.

The President put the question on the adoption of the amendment offered by Mr. Becker, and it was determined in the negative.

The President then put the question on agreeing to the report of the Committee of the Whole, recommending the passage of general orders 58 and 54, and 53, as substituted for one of the sec-

tions of 58, and it was determined in the negative by a standing vote, 50 to 55.

Mr. Lauterbach — Mr. President, I move that the several amendments to the amendment reported by the Committee on Charities and Charitable Institutions, and which will be substituted in part for the amendment, be printed and placed on file.

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

Mr. Lincoln — Mr. President, I wish to make a motion in regard to the apportionment bill which is now in the hands of the Revision Committee, and for the purpose of making an alteration which was prepared, and which was intended to be introduced and made before this was ordered to a third reading. I move that the bill be recalled from the Committee on Revision, and that the committee be instructed to correct and amend in the particulars which I will state.

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

The President — Mr. Bush will please state his point of order.

Mr. Bush — My point of order is that this motion is not in order until the third reading of bills is called, the bill having been ordered to a third reading.

The President — The Chair is of the opinion that this motion can be made at any time, and that the point of order is not well taken.

Mr. Blake — Mr. President, I rise to a point of order. This Convention having disagreed with the committee's report on canals, is not the matter before the Convention? What is the situation of that question?

The President — This is another matter.

Mr. Blake — This Convention having disagreed with the committee's report on canals, what is the situation of the question, and is it not in order to recommit it to the Committee of the Whole?

The President — The Chair is of the opinion that the amendment, which was the subject of the last vote, has received a final quietus.

Mr. Blake — The Convention having disagreed with the report of the Committee of the Whole, is not the matter now before the Convention?

The President — Hardly, since the amendment of rule 29.

Mr. Blake — The matter comes at once before the Convention.

The President — That has been stricken out by an amendment, Mr. Blake.

Mr. Durfee — Mr. President, I move to reconsider the vote by which ——

Mr. Lincoln — I withdraw this motion for the present, Mr. President.

Mr. Durfee — I withdraw my motion.

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

The President put the question on the adoption of the motion to adjourn, and it was determined in the affirmative, by a rising vote, 51 to 49.

The President declared the Convention adjourned until Tuesday, September 11, at 10 A. M.

Tuesday Morning, September 11, 1894.

The Constitutional Convention met in the Capitol, at Albany, September 11, 1894, at ten o'clock A. M.

President Choate called the Convention to order.

Mr. Bush — Mr. President, I call for the reading of the Journal, particularly so much of it as relates to the action of the President yesterday in directing the Secretary to strike from the roll the name of a delegate to this Convention.

The President — That may be read.

The Secretary read the entry in the Journal as follows: "During the roll-call, to ascertain if a quorum was present, the President directed the Secretary to strike from the list the name of Mr. Koch, for the reason that he had not made his appearance and taken his oath of office."

Mr. Bush — Mr. President, I move that the further reading of the Journal be dispensed with, and, Mr. President, I rise to a question of privilege. It appears by the Journal that the President of this Convention has directed the Secretary to strike from the roll, the name of a delegate to this Convention, whose right to a seat has never been contested, and without a vote of any committee of this House having been taken, or any resolution taken to that effect, and without said member having had an opportunity to appear before any committee of this House, or protecting whatever rights he may have had in the matter. I think it clearly a usurpation of power on the part of the President to direct the Secretary to strike from the roll any member of this Convention who has been duly elected to this body. If that course could

be pursued, the President could direct the Secretary to strike from the roll the name of any delegate in this body at any time. The fact that it appears upon the Journal that the President says he has not taken the oath of office is not at all conclusive upon this Convention. He might have taken the oath of office before any notary public or justice of the Supreme Court. There is nothing in the act providing for this Constitutional Convention saying when he shall take the oath of office. I insist that the President has no right under any circumstances to make any such ruling or direction, and I, therefore, as a question of the highest privilege, offer this resolution, and move its adoption or consideration immediately, it being a question involving the privilege of every member of this Convention.

The President — The Secretary will read the resolution.

The Secretary read the resolution as follows:

R. 201.— "Resolved, That the name of Joseph Koch, a delegate duly elected to this Convention from the Ninth Senate District, be replaced on the roll of delegates to this Convention."

Mr. Root — Mr. President, I move as a substitute, that the action of the Secretary in striking from the roll the name of Joseph Koch, under the direction of the President, be ratified and confirmed, and upon that I move the previous question.

Mr. Bush — Mr. President, this is a question of privilege; this is not a motion. It is a question of privilege affecting the rights of every member on this floor. Questions of privilege are not amendable.

Mr. Root — Mr. President, I call for the question upon my motion.

The President — The question is upon Mr. Root's motion for the previous question.

Mr. Kerwin — Mr. President, I call for the ayes and noes on that.

Mr. Bush — Mr. President, the right of a member of this Convention cannot be brushed aside so easily.

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

The Secretary proceeded to call the roll on the previous question as moved by Mr. Root.

Mr. Bush — Mr. President, I ask to explain my vote. It seems a very peculiar proceeding on the part of any member to attempt to dispose of a matter of this kind without any consideration of the question whatever, or to attempt to substitute

a motion ratifying the action of the President yesterday for a question of privilege. If the President was right in his action of yesterday, then this Convention is not called upon to ratify it to-day. If his action was not right yesterday, then there is only one thing to do, and that is to pass this resolution, and let this Convention act in a proper manner, by having a committee appointed to report to it upon the matter. The fact that this motion is made is an admission that the President was wrong yesterday. There is no question that he was wrong. I vote no.

Mr. Lincoln — Mr. President, I wish to say a word in regard to my vote, not in explanation of it, however, in the full sense. As I understand the action of the Chair, it was simply striking the name of Mr. Koch from the Secretary's list. It does not assume to affect his membership in this Convention in the slightest degree, as I understand it. If Mr. Koch presents himself here and takes the oath of office, he will be entitled to vote upon every question, and his name would then necessarily appear upon the Secretary's list. That I understand to be the effect of the action of the Chair; so that the Secretary shall not be required to continue calling Mr. Koch's name until he shall present himself and take the oath of office. We cannot deprive him of his membership here in the Convention, if he wants to come in and take the oath. For that reason I sustain the action of the President, and I vote aye.

Mr. Powell — Mr. President, I have been very much surprised at the proposition made here this morning, that it is the duty of this Convention to carry the name of Mr. Koch on its rolls. He is not a member of this Convention. He has never been a member of it. No man can be a member of it until he comes here, duly elected, and takes the oath prescribed by law. I certainly am not in favor of carrying names on the roll of this Convention of persons who are not members of it. I, therefore, vote aye.

Mr. W. H. Steele — Mr. President, I desire to explain my vote in this matter. As I understand it, the gentleman from Ulster is mistaken in reference to the power of Mr. Koch to become a member of this Convention by being sworn in by some other official. Mr. Koch, as I understand the act by which this Convention was formed and has acted, cannot become a member of the Convention until he is sworn in by the President of the Convention. Shortly after my election I sent my oath of office to be certified by the county clerk of my county to the Democratic Secretary of State. I received back my oath of office with the statement from the Democratic Secretary of State that it was impossible for me to be

sworn in at any other time or place than by the Secretary of State at this Convention at the first meeting. Upon referring to the act, I found that it was so; that it appeared to be impossible for any one to be sworn in as a member of this Convention unless he was present at that time and was sworn in by the Secretary of State; that those sworn in after the first session, in the Convention of 1867-8 were never members of that Convention. It was this extraordinary provision in the original act that induced me to introduce the amendment to the act to be found in the Manual at the bottom of page 43, allowing the President of this Convention to swear in dilatory members. This gentleman's name was improperly placed upon the roll of this Convention. His right to become a member of this Convention neither the President nor any one else can attack, and it has not been attempted, as I understand it. So long as the gentleman refuses or declines to come here and be sworn in, he is not properly a member of the Convention. Therefore, I withdraw my request to be excused, and vote aye.

The President — The President will avail himself of the privilege given by the rules and not vote upon this question. He wishes, however, to state that there has been no interference with any right of Mr. Koch whatever. Mr. Koch has never appeared here, never was sworn in, never signed the roll which is in the Secretary of State's office, signed by all the members. The only effect and intent of the order was to strike his name from the tally-list, so that it should not be unnecessarily called.

Mr. Hotchkiss — Mr. President, after the explanation that the President has given of the intention of the direction yesterday, it is, of course, impossible for any one to impugn the interpretation which the Chair puts upon the action. I think that the resolution itself is phrased so awkwardly that it has, perhaps, caused the embarrassment which we are suffering under now. The resolution in its terms strikes the name of Mr. Koch from the roll, not from the Secretary's tally-roll. As the resolution reads, I vote no.

Mr. Lauterbach — Mr. President, I desire to explain my vote. I have the pleasure of a personal acquaintance with Mr. Koch. I believe that the reason for his absence from the Convention is easily explained. He occupies a judicial position in the city of New York, and I think he mistakenly has the impression that his qualifying here would in some respects jeopard the office that he there holds. I believe that it would have been courtesy, if that be the view that he takes, that some communication long before this should

have been addressed to the Convention, and I have been somewhat surprised that no such communication was sent. I do not think that it was exactly the proper thing to wait until near the termination of the Convention without taking some such step, because places upon committees, and other courtesies extended to members, probably, and I know in point of fact were extended in this particular direction. I believe there is no imputation by taking some course in respect of a member who fails to qualify during the long period of the session, now that it is about to close. As I understand it, should the member present himself at any time, the action taken would not militate against our right to pass a resolution restoring him to the list from which he has been dropped; and if Judge Koch should deem it advisable to present himself and qualify, I am sure that with perfect unanimity this Convention would be willing to make that restoration. It seems to me to be orderly, in considering who is in the Convention, to consider those who have qualified, and that more than a reasonable time has been permitted to elapse when qualification or an intimation to the Convention of intention not to qualify, should have taken place. Under these circumstances, while I might, perhaps, differ as to the precise phraseology which the resolution is couched in, I think the practical course adopted is just, both to the Convention and to Judge Koch. I, therefore, vote aye.

Mr. Tekulsky — Mr. President, I do not understand why all this trouble has been created here this morning. It seems that the name of Mr. Koch was merely dropped from the Secretary's roll so that it should not be unnecessarily called ten or fifteen times a day. I can see no harm in that. I am a personal friend of Mr. Koch, and if Mr. Koch cares to qualify, his place is here. He has not come here, he has sent no communication, and it is wrong on the part of the minority to try to create an impression here when there is no reason for it. I will not stand for anything of the kind, and I vote aye. (Applause.)

The previous question was ordered by the following vote:

Ayes — Messrs. Abbott, Acker, Ackerly, Allaben, Arnold, Baker, Barnum, Barrow, Becker, Brown, E. A., Brown, E. R., Cady, Church, Clark, G. W., Clark, H. A., Cookinham, Cornwell, Crosby, Davies, Dean, Deterling, Dickey, Durfee, Floyd, Foote, Francis, Frank, Andrew, Frank, Augustus, Fuller, C. A., Fuller, O. A., Galinger, Gilbert, Goodelle, Hamlin, Hawley, Hecker, Hedges, Hill, Hirschberg, Holls, Johnson, I. Sam, Johnson, J., Kellogg, Kinkel, Kurth, Lauterbach, Lester, Lewis, C. H., Lincoln, Lyon,

Manley, Mantanye, Marshall, McArthur, McDonough, McIntyre, McKinstry, McLaughlin, C. B., McMillan, Mereness, Moore, Morton, Nichols, Nostrand, O'Brien, Parker, Parkhurst, Pashley, Phipps, Porter, Powell, Pratt, Putnam, Redman, Root, Schumaker, Smith, Spencer, Springweiler, Steele, A. B., Steele, W. H., Storm, Sullivan, T. A., Tekulsky, Tibbetts, Turner, Vedder, Vogt, Wellington, Whitmyer, Wiggins, Woodward — 92.

Noes — Messrs. Banks, Barhite, Blake, Bowers, Bush, Campbell, Chipp, Jr., Cochran, Coleman, Danforth, Davenport, Deyo, Emmet, Forbes, Giegerich, Goeller, Green, A. H., Green, J. I., Holcomb, Hotchkiss, Hottenroth, Kerwin, Kimmey, Maybee, McClure, McCurdy, Meyenborg, Mulqueen, Nicoll, Ohmeis, Osborn, Parmenter, Peabody, Peck, Roche, Rogers, Rowley, Sandford, Sullivan, W., Titus, Truax, C. H., Tucker, Veeder, Williams — 46.

The President — The question is now on the substitute offered by Mr. Root.

The President put the question on the adoption of Mr. Root's substitute, and it was determined in the affirmative.

Mr. Root — Mr. President, I offer the following resolution:

R. 202.—Resolved, That henceforth no call for the ayes and noes be allowed, except upon the final passage of proposed constitutional amendments. I ask that it be sent to the Committee on Rules.

Mr. Bowers — Mr. President, I make the point of order that this Convention has adopted a resolution that it would proceed this morning, immediately after the reading of the Journal, with third readings. Under those circumstances no other business can be done.

The President — The point of order is not well taken, because no such resolution was passed. The resolution was as follows: "Mr. Root, from the Committee on Rules, reports in favor of the adoption of the following resolution: 'Resolved, That on Tuesday morning of next week, the Convention enter upon the consideration and disposition of such bills as shall then be on third reading, in the order in which they were sent to a third reading, and continue until they are completed.'" Mr. Bowers's point of order is not well taken. The resolution offered by Mr. Root is referred to the Committee on Rules.

Mr. Cady — Mr. President, in the hope that after the experience of yesterday, some resolution of the much-debated canal improvement question may be arrived at that will be satisfactory to a

majority of this Convention, I move that the vote of this Convention, taken last evening, by which the report of the Committee of the Whole on the canal amendments was disagreed to, be reconsidered.

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

The President — The question is now upon agreeing to the report of the committee.

Mr. Cady — Mr. President, if it be in order, before that vote is taken, I will state that upon that vote being taken, I shall move that all the amendments reported by the Canal Committee be referred back to that committee for the purpose of a further report.

The President — The Convention has already voted to reconsider it, and the question is now upon agreeing to the report of the Committee of the Whole, recommending the passage of 54 and 58, with 53 as an amendment to 58.

Mr. Mulqueen — Mr. President, that was not the motion of Mr. Cady.

Mr. Cady — Mr. President, I think that it would be competent, at all events, by unanimous consent of the Convention, that the several amendments reported by the Canal Committee and reported by the Committee of the Whole, be referred back to the Canal Committee before the vote to reconsider shall be actually taken, and I make that motion.

Mr. Vedder — Mr. President, I would suggest to the chairman of the Canal Committee, Mr. Cady, that he make this motion. This matter is now before us, the report of the Committee of the Whole, and I would suggest that he make the motion that the report of the Committee of the Whole be disagreed to, that the proposed amendments, whatever they are, be referred to the Committee on Canals, with power to report at any time, retaining its place on general orders.

Mr. Cady — Mr. President, I will withdraw the motion made by me and accept the suggestion of the gentleman from Cattaraugus.

Mr. Bush — The motion of the gentleman from Cattaraugus is improper. The report of the Committee of the Whole is to the Convention only, and cannot be referred to some other committee without action of the Convention.

Mr. Vedder — The gentleman from Ulster will understand the proposition, and he is too good a parliamentarian to deny it, that I moved that the report of the Committee of the Whole be disagreed to.

Mr. Bush — What is there to go back to any other committee? If it is disagreed to, it is dead.

Mr. Vedder — It is all one motion.

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

Mr. Lincoln — Mr. President, I desire to bring up again the motion I made last evening relating to the amendment now in the hands of the Committee on Revision. I move that the amendment be recalled from that committee and that the committee be instructed to amend the amendment as follows: First, strike out all of line 24, page 14, and all following the same to and including line 12, on page 15, and substitute therefor the following: "One Member of Assembly shall be apportioned to every county, including Fulton and Hamilton, as one county containing less than the ratio and one-half over; two members shall be apportioned to every other county; the remaining Members of Assembly shall be apportioned to the counties having more than two ratios according to the number of inhabitants, excluding aliens, in excess of two ratios. Members apportioned on remainders shall go to the counties having the highest remainders in the order thereof respectively. No county shall in any case have more Members of Assembly than a county having a greater number of inhabitants," and also as follows: There was an amendment introduced and acted upon and went to the order of third reading with the rest of the bill relating to apportioning Senators in counties where there were already four or more Senators. I move that the committee be instructed to strike out the first sentence of the amendment and to insert in place thereof this: "Every county having four or more Senators shall have a full ratio for each Senator. No county shall have more than one-third of all the Senators, and no two counties of the territory thereof as now organized, which are adjoining counties or which are separated only by public waters, shall have more than half of all the Senate."

Mr. Kerwin — Mr. President, a point of order.

Mr. Lincoln — Wherever the phrase "the number of inhabitants" occurs, it is suggested that the words "excluding aliens" be added. Upon this motion, Mr. President, I move the previous question.

Mr. Bowers — Mr. President, we call for the ayes and noes.

Mr. Veeder — I desire to rise to a point of order.

The President — Mr. Veeder having risen to a point of order, will please state it.

Mr. Veeder — I make the point of order that this proposition is out of order for the reason that the matter is not before the Convention. It is in the hands of the Committee on Revision, who have no power to make any alteration of any proposition except so far as the grammar is concerned, or the felicity of expression. But anything that is new matter, or in any way makes a change except as I have stated, cannot be considered at this time. There is nothing before the Convention upon this subject. It is in the committee and not reported. If it was on the order of third reading it might be considered by proper motion under the rules, but as it stands now no motion can be made upon the subject.

The President — The point of order is not well taken.

Mr. Bush — Mr. President, I rise to a point of order, that this Convention cannot consider a matter in another order of business until that order of business is reached. It is the same motion I made last night, and the Chair overruled me, but nevertheless I insist that the point of order is well taken.

The President — The point of order is not well taken.

Mr. Bush — I insist, Mr. President, that amendments of this important character should be placed before the Convention before the members are asked to vote upon them. You propose to change the whole subject matter of this apportionment without allowing a single member to criticise the action of the gentleman who makes the motion.

Mr. Veeder — May I call the attention of the President to the standing rule in support of the point of order? The rules of this Convention under the order of business require us now to proceed to the third reading of bills.

The President — Mr. Veeder's point of order is not well taken.

Mr. Peck — Mr. President, a point of order. I make the point of order that this is a resolution in form, and under the rules of the Convention must go to the proper committee and be reported.

The President — Mr. Peck's point of order is not well taken.

Mr. Bowers — Mr. President, I have demanded the ayes and noes, of which right we are not yet deprived.

Mr. Bowers's call for the ayes and noes was sustained.

Mr. Veeder — Mr. President, I appeal to you to look at rule 3 in the order of business.

The President — The Chair has disposed of the point of order of Mr. Veeder. The question is on Mr. Lincoln's motion to recall the apportionment amendment from the Committee on Revision, to

recommit it to the Committee on Legislative Organization and Apportionment, with instructions to amend as he has stated. The years and nays are called for, and gentlemen as their names are called, in favor of Mr. Lincoln's motion, will say aye, and those opposed will say no.

The Secretary proceeded to call the roll.

Mr. Bowers — Mr. President, I desire to explain my vote. I regard this application of the previous question——

The President — This is not on the previous question. We are voting upon Mr. Lincoln's motion.

Mr. Bowers — I beg your pardon.

The President — The Chair expressly stated the question to be on Mr. Lincoln's motion.

Mr. Bowers — The Chair may state questions improperly, but that does not prevent the members of the Convention from having the right to have them presented properly. The yeas and nays have not been called, except upon the previous question on Mr. Lincoln's motion. As it stands now, it is debatable, and we will proceed to debate the whole question.

The President — The previous question was not moved by anybody recognized by the Chair.

Mr. Bowers — Then, Mr. President, I make the point of order that the matter is open for debate.

The President — It is too late to debate after the call has been entered upon. The Secretary will proceed with the call. The gentleman may explain his vote.

Mr. Cochran — Mr. President, we called for the ayes and noes on the previous question.

The President — There was no person recognized who made any call for the previous question.

Mr. Cochran — Mr. President, I submit that Mr. Lincoln made a motion, and upon that motion moved the previous question.

The President — Is Mr. Lincoln present? Did Mr. Lincoln move the previous question upon his motion?

Mr. Lincoln — I moved the previous question at the close of my resolution, Mr. President.

The President — Then this call is upon the previous question. The Chair did not hear it.

Mr. Bowers — Then, Mr. President, being upon the previous question, I desire to explain my vote. Mr. Lincoln offers an amendment

to the proposed constitutional amendment as to apportionment, which he himself did not read. It was a matter of guess-work what he offered, in his mind, as much as the whole apportionment in the State of New York. This Convention now proposes to take from the Committee on Apportionment, as we are about entering upon the order of third reading, that proposition, and change it in respects which we are not even permitted to know. We are refused the privilege of debating it, and are ordered under the dictation of what must have been caucus dominion, to proceed to assent to it or to protest, as far as we may, against a change thus proposed to be made in the amendment; the most vitally important of any that have been presented to this Convention. We have known by the experience of the past ten days that so far as the rules are convenient to the majority they are adhered to, and that when we come across a provision that happens to protect some right of the minority, it goes to the wind as if it never had had any existence. There never was yet a deliberative body, even the poor Legislature of which this Convention has so frequently spoken in bitter terms, that ever showed such disregard of orderly procedure and of the decent protection which rules are supposed to afford. You came into this Convention this morning, and proceeded with a resolution to cut off the call for the ayes and noes. You proceeded with previous questions to make the most important changes in these bills, refusing us all opportunity to discuss them or to know what those changes are. If, as has been repeatedly said, in the course of this debate, you are ashamed to face the light of public criticism, you will have to do it before the people pass upon the Constitution at the coming election. You have turned a deliberative body into a mere partisan machine. You are running it in exact accordance with the rules of political conventions, but in violation of the rules of what are supposed to be deliberative bodies like this. I vote no.

Mr. Holcomb — Mr. President, it seems that the outrage that was committed here the other day upon the right of the minority was not quite complete. It does not seem to have been sufficient. If I understand the amendment offered now by Mr. Lincoln, the privilege is given to the Legislature to increase the representation in the Assembly of counties not now entitled to more than one Member of Assembly, whenever the Legislature shall see fit so to do; and there is the further restriction imposed upon the cities of this State, that no county shall in the future have more than one Member of Assembly or more than one-third of the whole representation in the Senate, no matter what the population of that

county may be; and I call attention, Mr. Chairman, to a few words which I find in the Herald bearing upon this proposition which is now before the Convention, for the purpose of illustrating what the effect of such an outrageous action as this would be upon the popular mind, when that mind shall be turned to a consideration of the deeds and words of this Convention.

A conspicuous illustration of this evil is afforded by the unbridled partisan debate on apportionment and the rank partisanship of the plan which the Republicans have forced through. It is needless to say that the purpose of apportionment is to secure fair and just representation according to population. In the fairest apportionment that can be devised there must be inequalities here and there. But in that now proposed at Albany there are glaring inequalities and unjust discriminations which are avoidable, and hence not necessary, and which are invariably to the advantage of the Republicans, and hence inexcusable.

This is not the result of chance, but the work of design. The proof of that is conclusive. In the cities the representation is less than the proportion of voting population, and in the rural districts it is greater. This is because the former are Democratic and the latter are Republican. It is even provided that no city shall ever have more than a third of the number of Senators, though its population might entitle it to half. This is aimed at New York, which is a rapidly growing city with a large Democratic majority.

Now, Mr. President, it is possible for this Convention to impose that burden upon our cities. It is possible for this Convention, here and now, in the exercise of the power that it has within its hands, to say that the people of this State shall not have their proper representation, either in the Senate or in the Assembly; but that proposition shall not go out to the people from here with my assent, or with other than my negative vote. I think the outrage committed this morning, without giving us the opportunity to debate this new proposition, which substantially gives to the apportionment a new character, is an outrage such as was never before perpetrated in any legislative body in this or in any other free State. Our right to debate is cut off, our right to deliberation is taken away from us, and we are simply compelled to stand here and vote at your dictation. At that dictation I never will vote, and I will vote no upon this proposition.

Mr. Jenks — Mr. President, I think it is about time that we should call a halt in this matter. If we do not respect the principles of free men and free debate; if we do not respect the rights of the people of the State, at least we ought to have enough self-

respect to carry on our business here in a decent and orderly way. We took five days, Mr. President, to debate this matter of apportionment, and now, in the very hectic of the morning, in the midst of the bustle and hurly-burly of a bear-garden, a man rises in the back of the Convention — a man for whom I have entire respect — and lacking the clarion notes of his usual declaration, he mumbles over from a foolscap paper some vital amendment, which is not heard, and, if heard, could not be grasped; and then, with the full rush of parliamentary procedure, the previous question is moved.

Now, whether this be meritorious or not, I do not know; whether it will be fair or unfair, I cannot say. I am not protesting against the amendment. I am protesting against the principle. Whether it be the result of caucus or not, I do not care; but I say that a Convention which devotes to the debate on apportionment five days, and yet at the behest of a member of the majority, within five minutes, moves the previous question on a matter which may be a radical amendment, has lost its head. This business should cease, and if we have to sit here until the snow flies, on these matters of peril and concern to the State, a decent self-respect demands that there should be an opportunity for fair debate. I vote no.

Mr. Kerwin — Mr. President, when I entered this building on the eighth day of last May and took part in the proceedings of this Convention, I attended the conference of the Democrats that morning in the cities committee room. There I heard it decided by the Democracy that they were not going to hold caucuses during the proceedings of this Convention, but that they would proceed in a non-partisan spirit. The Democracy of this Convention have lived up to that spirit and have carried it out to the present day. I came into the chamber that morning and heard the President stating that he hoped that we would all rise above partisan spirit and proceed with the business of the Convention in an unpartisan manner. Mr. President, this is one of the political questions in which I intended to take no part in the debate. I sat and listened to two or three gentlemen attack Members of Assembly from Albany county; but I ask the members of this Convention if they think it is right, honest or just to give, in the county of Monroe, with 84,000 inhabitants, three or four representatives in the Assembly and give a senatorial district such as Albany is, with 156,000 inhabitants, but two? And not alone that, Mr. President, but when my friend Mr. Lincoln was reading his amendment this morning as if it were a caucus rule, the Republicans of the majority sat on the floor talking and raising a hubbub. I rose and addressed the Chair, and the Chair totally ignored me — for what purpose I do not know. Whether he was

in consultation at the caucus this morning which decided on this action or not, I do not care; but, Mr. President, it looks as though it was cut and dried. The minority of the Convention could not hear the amendment, they cannot debate it, and it is to be rushed through with a hurrah. Mr. President, I vote no.

Mr. McClure — Mr. President, I ask the privilege of explaining my vote. I had hoped that my friend Lincoln, whose legal mind we have all come to admire in this Convention, and whose sense of fairness I never have seen cause to question until now, would have done the minority the justice, upon the call of his name upon this vote, to explain the force and effect of the proposition which he makes this morning; but the fact that he has failed to do so at any time, either in making the motion or when his name was called in the taking of the vote, satisfies me that he is ashamed, personally ashamed, of the part that has been assigned to him ——

The President — The gentleman will confine his remarks to parliamentary language.

Mr. McClure — That he is not proud, Mr. President, of the part assigned to him in this matter. We passed here, as the first amendment passed, as I remember it, encouraged by the thundering notes and tones of the gentleman from Cattaraugus, a constitutional amendment that no bill should become a law until it had been printed and upon the desks of the members of the Legislature for three days; and yet a provision which is to remain in practical operation for twenty years is presented to us to vote upon, when not a man of us has had the privilege of even hearing it plainly and clearly read, much less seeing it in print. I suppose, Mr. Chairman, that the nearness of the political convention, which is to decide so much, perhaps, in the interests of the Republican party, has an effect upon the minds of the delegates to this Convention; but I stand here to protest against this action as unnecessary, unwarranted and outrageous. I vote no.

Mr. Meyenborg — Mr. President, I think that amendments to the fundamental law should at least receive due deliberation. No hasty action should be taken. No one ought to be asked to vote upon a proposition that he has had no opportunity to examine. This proposition to amend the Constitution has never been printed, has never been considered in committee, and no one outside of the introducer understands it. It is unjust, unfair and scandalous to require delegates to vote upon it. Not knowing the nature of this amendment, not knowing whether it is good, bad or indifferent, I think the only safe course to pursue is to vote against it. I vote no.

Mr. Nicoll — Mr. President, may I explain my vote? Self-defense upon this proposition compels me to vote no. When I say self-defense. I mean this: this amendment is not printed; I cannot read it. It is not with the Secretary, I cannot get a copy of it from him. It has never been read to the Convention by the Secretary. Many of us have not had the opportunity of hearing it. It has been read only by its proponent, without any explanation by him as to its bearing upon the main proposition. Who among us all knows what its bearings are? None of the gentlemen who surround me understand it. It seems to me, Mr. President, that this is a departure from the rule which up to this point has governed the deliberations of the majority. After the debate upon the apportionment scheme the other day, the President will recollect that the gentleman from Erie introduced an amendment which changed it substantially in some respects. That was regarded as such a radical change that some of the majority themselves proposed that we should have an hour to debate it. But this amendment, perhaps proposing even more radical change — who knows? — containing another drive at the cities of the State, another evidence of the persecutions with which this Convention has visited the cities, is to be passed now under the lash of the previous question without an hour or a minute of debate. Under those circumstances, I say self-defense compels me to vote no.

Mr. Osborn — Mr. President, I desire to explain my vote. I think if the author of Vanity Fair had attended the apportionment debates, he would have found a good field for the exercise of his peculiar specialty; that is, the treatment of the way in which men attempt to gloss over their own little inconsistencies and defects by attacking what they consider to be the inconsistencies and defects of others. He had a peculiar talent for it, which he used with a great deal of frequency. Now, when Mr. Morton, of Kings, got off his humorous speech about Mr. Bush moving the previous question, and Mr. Bush doing so and so, it was a great deal of fun, wasn't it? He said there had not been any opportunity for debate. Now, has there been a moment during all the solemn farce which we have called debate upon this apportionment question, that there was any more doubt about what was going to happen than there was when Mr. Bush moved the question in the Assembly in this hall? What possible point is there in getting up here and claiming superior virtue in the presence of action of this sort? It is precisely the same thing. There never has been a time when the question was at issue at all. It has been a set-up thing from the beginning. In fact, it was a pretty apparent state of affairs to my mind that the

gentlemen of this Convention have heard from Maine this morning (applause), and that that has produced in them a spirit which is ordinarily in the country districts called brash. Now, whom the gods mean to destroy they first make mad. Mr. President, you have heard from Maine; and will permit me to make the humble suggestion that you are likely before long to hear from New York. (Applause.) I vote no.

Mr. Peck — Mr. President, I desire to explain my vote by saying that I shall vote no on this proposition because I have had no means of ascertaining what the proposition is. Perhaps it would be well to recall the text of Mr. Morton's speech, which was repeated so many times with so much effect: "The best laid schemes of mice and men gang aft a-glee." I vote no.

Mr. Platzek — Mr. President, I desire to explain my vote. I regard a discussion of the apportionment as a proper time for partisanship to assert itself; it cannot be regarded as entirely a non-partisan proposition; and the dominant party is entitled to a slight advantage, even a little unfair advantage, perhaps, provided they do not go to the extent of a complete gerrymander, grab or steal. I regret that I should be obliged to vote no upon this proposition for the reason that we are nearing the end of our work, and I was in hope that we could complete it as we began it, with good feeling, and in an unpartisan manner. But I do regard the action here for the previous question as very unfair, not alone to the minority, but to the majority. The apportionment bill was passed after five days of struggle, was sent to the Committee on Revision, and there it rested, until this morning we are confronted with a proposition changing it in principle. We do not know where the change is or how it is made; yet, nevertheless, on our oaths, we are asked to vote upon the proposition. The result is that gentlemen who have no responsibility in the matter vote "no" here, and that is not honest, because I say I am entitled to know whether I ought to vote "aye," even if every member of my party votes no. And not knowing what is before me, not having time or opportunity to consider it, what can I do but stand here, and in the language of the New York Herald of Monday, call this an infamous outrage and appeal to the people for the right which I cannot obtain here. I vote no.

Mr. Smith — Mr. President, I vote no, and I desire to explain my vote. I regard this as a case where a man is sentenced without an opportunity of being heard. The first example of natural justice occurred in the Garden of Eden. The Lord gave Adam a chance to be heard, and Eve a chance to be heard, before they

were sentenced, but when He came to the serpent He sentenced him without a hearing. He drew the line on the serpent. (Applause and laughter.) And He said to him, because thou hast done this thou art accursed above all the beasts of the field. But He never sentenced a human being without a hearing, never! That was the first example of natural justice. The previous question was employed against the serpent. It was never employed against humanity. I vote no.

Mr. Tekulsky — Mr. President, I certainly am anxious that the work of this Convention shall be done well and quickly, but you will never get through here by offering amendments that the members cannot understand, and moving the previous question almost before the introducer knows what he has introduced. I believe in fairness. I believe it is right to give the delegates on this floor the opportunity to know what they are voting upon. This delay, caused by the moving of the previous question, would certainly have been obviated if the previous question had not been moved, and members had been given an opportunity to understand what the amendment has been offered means; it may be right; there may be no objection to it; it may be entirely satisfactory to me, but there is one thing certain, the delegates here do not know what it is, and do not understand it, and it is wrong to force something down the throats of delegates without giving them an opportunity to know what they are going to get. I therefore vote no.

Mr. Vedder — Mr. President, I ask to be excused from voting and will briefly state my reasons. I cannot see any reason why gentlemen who call themselves the minority should have gotten hot at all in reference to this previous question. The gentleman from Cattaraugus (Mr. Lincoln), who moved it, is, as our friend, Mr. Jenks, said the other day, "the mildest mannered man that ever scuttled a ship or cut a throat," and it was not his intention when he moved it to open the red testament of bleeding war. Now the hour that they have spoken of will be given them on the third reading of the bill. This is only for the perfecting of the bill. The *locus penitentiae* will be when the bill comes up on its third reading. For these reasons I withdraw my request to be excused from voting, and vote aye.

The President — I desire to say in explanation of my vote, that I consider the application of the previous question was rendered necessary by the demonstration that has been made here since the opening of the session this morning. It looks as though there was

a combination in the chamber to prevent and obstruct the further doing of any business. I, therefore, vote aye. (Applause.)

Mr. Bush — Mr. President, I desire to explain my vote. The reasons given by the President for voting aye are rather peculiar. He says that the proceedings which have taken place this morning lead him to vote aye upon the application of the previous question in this matter; in other words, that because some of the members raised a protest against the usurpation by the President of the powers of the Convention, which the Convention by its act afterward repudiates, and that that is a reason why the previous question should be moved on very material amendments in this apportionment scheme. It is a very peculiar reason for saying that the minority should be gagged on one of the most important questions in this Convention, because a man rises here to protect his own individual rights. When I introduced this resolution this morning I rose to a question of privilege, and did not speak for the minority or for any other man than myself; but upon this question of amending the apportionment article, every member of this Convention and every voter in the State of New York is vitally interested. If you can, by an amendment of this sort, read by an individual from a slip of paper in his hand, do away with the effect of a five days' debate in this Convention, I have nothing more to say than to protest against such proceedings. That is all we can do in this Convention, that is all the right we have left, and that will soon be gone if the rule introduced by the leader on the floor of this Convention is applied—of no more roll-call. I vote no.

Mr. Forbes — Mr. President, I desire to explain my vote. It seems to me that we should have, upon this important question, an opportunity for debate. The only reason that can possibly be given against such opportunity is the fact that the Convention wasted its time at the beginning of its session, and now we would hurry away, because this is the last week under which we will receive pay by law. This is not the true rule. This apportionment goes to the very root of representation by the people of the State. It is the most important measure, as has been said, that is to be passed at this session. Now, if it is to be a merely partisan measure, I, who have sacrificed my own personal convenience and given up my leave of absence several times to expedite work, will have no further interest in this Convention, because, of necessity, what I may do will be of no consequence and whatever arguments I may make will have no influence upon the majority. I, therefore, vote no.

The previous question was ordered by the following vote:

Ayes — Messrs. Abbott, Acker, Ackerly, Allaben, Arnold, Baker, Barnum, Barrow, Becker, Brown, E. R., Cady, Carter, Cassidy, Church, Clark, G. W., Clark, H. A., Cookinham, Cornwell, Crosby, Davies, Davis, Dean, Deterling, Dickey, Floyd, Foote, Francis, Frank, Andrew, Frank, Augustus, Fraser, Fuller, C. A., Fuller, O. A., Galinger, Goodelle, Hamlin, Hawley, Hedges, Hill, Hirschberg, Holls, Johnson, I. Sam, Johnson, J., Johnston, Kellogg, Kinkel, Kurth, Lauterbach, Lester, Lewis, C. H., Lewis, M. E., Lincoln, Lyon, Manley, Mantanye, Marshall, McArthur, McDonough, McIntyre, McKinstry, McLaughlin, C. B., McMillan, Moore, Morton, Nichols, Nostrand, O'Brien, Parker, Parkhurst, Pashley, Phipps, Pool, Porter, Powell, Pratt, Putnam, Redman, Root, Spencer, Storm, Sullivan, T. A., Tibbetts, Turner, Vedder, Vogt, Wellington, Whitmyer, Wiggins, Woodward, President — 92.

Noes—Messrs. Banks, Blake, Bowers, Burr, Bush, Campbell, Chipp, Jr., Cochran, Danforth, Davenport, Deady, Deyo, Emmet, Farrell, Forbes, Gibney, Giegerich, Gilleran, Goeller, Green, A. H., Green, J. I., Holcomb, Hotchkiss, Hottenroth, Jenks, Kerwin, Kimmey, Marks, Maybee, McClure, McCurdy, Meyenborg, Mulqueen, Nicoll, Ohmeis, Osborn, Parmenter, Peabody, Peck, Platzek, Roche, Rogers, Rowley, Sandford, Schumaker, Smith, Sullivan, W., Tekulsky, Titus, Towns, Truax, C. H., Tucker, Veeder, Williams — 52.

The President — The Secretary will read Mr. Lincoln's amendment.

Mr. Bowers — Mr. President, for fear that we may be deprived of the right, I now demand the ayes and noes on the main question.

The Secretary read Mr. Lincoln's amendment as follows:

To strike out all of line 24, page 14, and all following the same to and including line 12, on page 15, and to substitute therefor: "One Member of Assembly shall be apportioned to every county, including Fulton and Hamilton as one county, containing less than the ratio and one-half over; two members shall be apportioned to every other county; the remaining Members of Assembly shall be apportioned to the counties having more than two ratios, according to the number of inhabitants, excluding aliens. Members apportioned on remainders shall go to the counties having the highest remainders in the order thereof respectively. No county shall in any case have more Members of Assembly than a county having a greater number of inhabitants." In place of the words "an additional Senator," on page 13, line blank, in general order

74, and the first five lines on page 14, insert the following: "Every county having four or more Senators shall have a full ratio for each Senator. No county shall have more than one-third of all the Senators, and no two counties or the territory thereof, as now organized, which are adjoining counties, or which are separated only by public waters, shall have more than one-half of all the Senate. The ratio for apportioning Senators shall also be obtained by dividing the number of inhabitants, excluding aliens, by fifty, and the Senate shall always be composed of fifty members, except that if any county having three or more Senators at the time of the apportionment shall be entitled on such ratio to an additional Senator or Senators, such additional Senator or Senators shall be given to such counties in addition to the fifty Senators."

Mr. Bowers's call for the ayes and noes was sustained, and the Secretary proceeded to call the roll upon Mr. Lincoln's amendment.

Mr. Blake — Mr. President, I do not know that it is possible for me to add anything to the sum total of the solemn protests which have been made here this morning against the proposed action of this Convention, but nevertheless, sir, I believe it to be very radical and dangerous in its tendency. The Convention seeks to accomplish something by indirection which I think should be accomplished after the fullest and freest discussion, the most deliberate and careful thought, and upon wise and judicious judgment. Sir, this action is contrary to good practice and good precedent in deliberative bodies. The Convention seeks to make fundamental changes in a proposition which is of the most vital importance, one of the most important of the three or four important ones submitted to the Convention, and which undoubtedly will be submitted to the people for their judgment and decision; and I submit to the Republican gentlemen on the other side of the chamber, whether they believe their action to be fair and just, that after sitting here for four months we shall, even at this stage of the proceedings, and under the pressure of time, if you please, pass, without discussion or debate or consideration, one of the most important amendments which are to be submitted to the people. Do the gentlemen think that is fair or just? Might they not, at least, give us one hour in which to consider this proposition, which I venture to say not a gentleman here understands fully, after having heard it read twice. It seems to me, therefore, that it is dangerous and wrong and unjust. As the gentleman from Kings has said, we had better sit here until the Ides of Novem-

ber, rather than under the lash of the previous question, or any other pressure or emergency, pass upon a question of this magnitude and importance; and I submit it to the judgment and conscience of the gentlemen upon the other side, whether they think this action is fair and just under the circumstances. I vote no.

Mr. Bowers — Mr. President, I desire to explain my vote. On the previous roll-call, Mr. McClure made some remark concerning the action of the majority upon this iniquitous proposition, which did not seem to me to be very much out of the ordinary course of decorous proceedings, and he was called to account by the Chair. Shortly afterward the Chair annouced that it was apparent that a combination had been made by the minority to prevent and obstruct the doing of business. Perhaps that was within the ordinary rules of debate. I desire to say that the impression which seems to have taken hold of the mind of the Chair has nothing whatever to sustain it. The minority have in no way combined, they have in no way resorted to any caucus, as the majority are doing day by day. Further than that, Mr. President, I want to say again that we have never called for the ayes and noes, or taken any other steps for the purpose of obstruction, but we have simply called for them when a motion was made backed by the previous question, so that we had not reasonable opportunity to understand it or to explain our views, and we have been forced by the majority to call for the ayes and noes, in order that we might get before the Convention to some extent the views that we otherwise would have expressed and then proceeded with regularity and rapidity. Even, sir, at this late day, and even in view of the extraordinary action of the majority of this Convention this morning, we have no desire to protract debate or prolong discussion. We shall only call for the ayes and noes, for the purpose of explaining our views when we again get the right, and when efforts are made, as were this morning, to deprive us of such rights. Except for the innate self-respect of the minority the rulings of the Chair and the conduct of the majority would long ere this have degenerated the dignity of this body to the position of an ordinary legislative body, run by like dominion. All that is left of your Convention in the way of dignity is to be attributed to the consistent self-respecting part that the minority have taken and intend to take to the end in its proceedings. On this proposition, as I have had no opportunity to discuss or to debate it, I most certainly vote no.

Mr. Forbes — Mr. President, I desire to be excused from voting, because there are some elements in this proposed amendment

which I am in favor of. There are other parts of the proposed amendment that I cannot pass upon without reading them more deliberately than I can by taking them from the desk at the moment, and which I cannot pass upon by hearing them read. I, therefore, ask the Convention to excuse me from voting altogether.

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

Mr. Holcomb — Mr. President, while I do not like to detain the Convention, I still think it my duty to say a few words before the vote is finally taken upon this proposition. It has been my privilege heretofore to say that I am a firm believer in the principle of universal suffrage, suffrage carried to its legitimate conclusion. If that principle were not carried to its conclusion there would be no such restriction upon the representation of the counties of this State in the Legislature of the State, whether the counties be joined or divided by public waters, or whether they be joined or divided by imaginary geographical lines. The division of representation would be squarely and fairly made upon the men in the localities where they reside, and not upon the acres from which they may derive their livelihood or out of which their bodies may be fed. This proposition is strongly contrary to every principle upon which our government rests; but it is also strictly in the line of the Republican misrule of this State for more than a generation. For thirty years you gave the county of St. Lawrence, when she had 80,000 population, three Members of Assembly, and when she and her adjoining county had hardly 100,000, for almost thirty years, you gave her a Senator in the Senate of the State. You took the county of Jefferson and you gave her, with 65,000 population, two Members of Assembly; you took the county of Cattaraugus when she had only 42,000 population, and you gave her two Members of Assembly; and you are carrying that injustice to its logical conclusion here to-day. It is the result of the long Republican education in politics in the State of New York. When the Democratic Legislature of 1892 met to reapportion the State, they found that those counties, with not their people represented in the Legislature, but with their acres, their farms having that representation; and it was because that injustice did abide upon the statute books, and because it has so abided for many years, for almost a generation, that this State was redistricted. And I say to you, gentlemen, here, that by the very proposition of amendment which we are considering, you confess the iniquity of your rule of this State for

almost the thirty years of which I have spoken. When the county of St. Lawrence did not have, and could not have had, the population she has to-day, you gave her more Members of Assembly than you give her under this very scheme. You do not go so far as the apportionment act of 1892 went, but as against her three Members of Assembly from 1866 to 1892, you now give her two members only. It is your own confession of your own iniquity, imposed upon the people for a generation of years. I am convinced that when you go to the people in November, you will hear their verdict spoken in a manner that will not be at all agreeable to your ears. I vote no.

Mr. Hottenroth — Mr. President, not knowing enough about this proposition to vote intelligently, and preferring to vote so that I know no danger can be done, I vote in the negative.

Mr. Lincoln — Mr. President, I wish to say a few words in explanation of my vote. I greatly regret that the members of the minority of this Convention think that an injustice has been done them by the presentation of this amendment by me, and the moving of the previous question thereon. I will state, as a part of the history of this matter, that that part of the motion relating to the apportionment of Members of Assembly was prepared last week, and it was supposed that it was introduced by the chairman of our committee, but it seems that in the confusion of Friday it was overlooked, and upon inquiry at the room of the Revision Committee, it was found that that part of the proposed amendment had not been offered, and so had not been acted upon, and had not been ordered to a third reading, as the friends of the measure intended it should be. That proposition was submitted to at least one member of the minority of the Committee on Legislative Organization.

It may be remembered that when the question of the apportionment of Senators in counties having more than four was acted upon, an amendment was introduced and went to a third reading. Now, it was thought upon further deliberation, that the form of that amendment was such that it might possibly embarrass the union of New York and Brooklyn, what is to be Greater New York. There is no desire on the part of any one to embarrass those great cities in their proceedings for further greatness, and the amendments simply express in form the ideas that were brought up by Andrew H. Green, as I understand it, and by Mr. Root and by Mr. Gilbert, and various other members relating to the share in the ultimate representation in the Legislature that should be given to the large cities. As we supposed, these amendments were intro-

duced and carried out the ideas suggested by various members in the course of the debate, and the chairman of the Revision Committee came to me last night and said the Revision Committee was nearly ready to report upon this measure, and if we had any further suggestions to make, they ought to be made at once so that the bill might be reported and printed as we desired to have it, and that was the object of introducing this measure first last night, and then withdrawing it and introducing precisely the same thing this morning, and moving the previous question to save the time of the Convention. It will be printed and it will be before the Convention on third reading. Opportunity will then be had for debate upon the entire proposition from beginning to end, so that the rights of the minority are not interfered with in the slightest degree. I am very sorry for their attack upon me, and upon the method in which this matter has been brought before the Convention this morning. I vote aye.

Mr. Cochran — Mr. President, I desire to briefly explain my vote. In the proceedings of this Convention yesterday in reply to a very polite request of one of the minority of this Convention as to the progress of our business this morning, the President of the Convention, in that very humorous and sarcastic manner for which he is so noted, took occasion to say that the progress of the business this morning would depend very much on the conduct of the members. I thought at the time it was very uncalled for, and I fail to see to whom it applied. But again this morning the President saw fit to explain his vote upon the previous question by saying that he saw there was a disposition on the part of certain members of the Convention to obstruct its business. Now, I have looked around and endeavored to think over the proceedings of the morning, and the only obstruction of business that I have seen here has been on the part of the majority in this Convention by endeavoring to close the mouths of the minority and shut off legitimate debate upon important subjects, thereby compelling the members of the minority to individually explain their votes upon this important question. I submit that if there has been any obstruction this morning we can charge it up to them.

As to the merits of this proposition, I cannot say what they are, but there is one thing which seems to me to be important, and that is the changing of the ratio. It may be recalled by the Convention that upon the discussion of this apportionment question it was charged, and it is undenied, that the apportionment that is now proposed to be submitted to the people is not drawn in conformity with the rules which the apportionment article says shall hereafter

govern the Legislature in respect of future apportionments. Now, the amendment which is stuck in here this morning, at the last moment, without an opportunity to debate, is a still further and a greater violation of this proposed apportionment, and this apportionment really is not drawn within its limits at all; and for that reason, if for no other, sir, I vote no.

Mr. Gilbert — Mr. President, I am going to vote in the affirmative; but I do it with a qualification which I want to put upon record. I think the proposed amendment is better than the proposition as it now stands, but I think it is radically wrong still, in this: that it provides for a possible contingency in which the cities of New York and Brooklyn will have a representation in the Legislature equal to the entire balance of the State. I want here and now, with all the emphasis I can command, to enter my protest against the recognition of any such possibility. Reasons have been partially stated, and time forbids a fuller statement, why those cities, acting compactly, the residents actually within speaking distance of each other by telephone, can command a concentrated force in the Legislature which will practically put the balance of the State at the mercy of the cities. Now, I believe there is no escape from that proposition. With the tremendous power of the metropolitan press, combined with the concentration of the metropolitan members, the country will be practically powerless. It is to a large extent so now; and the great corporations which center in the large cities, and the great cities themselves, will have the power to control the affairs of this State, which will leave all the rest of the counties of the State at their mercy; and, for one, I protest against it. Furthermore, Mr. President, I think I may say that I shall vote against the proposition if it finally comes up in that form. With this explanation, Mr. President, I vote aye.

Mr. Jenks — Mr. President, this amendment contains, among other matters, the following: "No county shall have more than one-third of all the Senators, and no two counties or the territory thereof as now organized, which are adjoining counties, or which are separated only by public waters, shall have more than one-half of all the Senators." In the remarks which I made upon the apportionment matter the other day, I asked the gentlemen of the majority why they provided for what was virtual proportional representation, and not popular representation. I pointed out to them that the Court of Appeals of this State unanimously had decided that no municipal corporation, or no quasi-municipal corporation, was represented, but that the representation was of the

individual; and I asked them why they departed from the cardinal principle of individual representation in the very Constitution wherein they provided that the next apportionment, made on the next enumeration, should be made of districts equal as near as may be, according to population. Now, I point out to the gentlemen of this Convention, that question never having been answered, that this is a plain, radical proposition, that no matter how great the population of New York and Brooklyn may be, they shall never have a population to exceed one-half of the Senators of the State. In other words, the imperial reconstituted metropolis may have ten, fifteen or twenty million inhabitants; the State may have but four or five millions; and yet never can the population of those two cities have representation of the individuals; in other words, you are writing into your Constitution a limitation upon the representation of the person, and you are virtually providing for taxation without representation. For the very reasons which moved Mr. Gilbert to complain and vote aye, I complain and vote no. Mr. Lincoln has said that the changes in this amendment are but of verbiage, and immaterial. It seems to me that this proposition, which I have been able to gain from the desk of the Secretary, is a reassertion in the very Constitution itself, that the principle of taxation without representation shall prevail, and that the people of the State, if, in the pursuit of labor and of their own happiness, choose to gather into the cities, therefore, and thereby they shall be disfranchised. I vote no.

The motion of Mr. Lincoln was carried by the following vote:

Ayes — Messrs. Abbott, Acker, Ackerly, Allaben, Arnold, Baker, Barhite, Barnum, Barrow, Becker, Brown, E. A., Brown, E. R., Cady, Carter, Church, Clark, G. W., Coleman, Cookinham, Cornwell, Crosby, Davies, Davis, Dean, Deterling, Dickey, Durfee, Floyd, Foote, Francis, Frank, Andrew, Frank, Augustus, Fraser, Fuller, C. A., Fuller, O. A., Galinger, Gilbert, Goodelle, Hawley, Hecker, Hedges, Hill, Hirschberg, Holls, Johnson, I. Sam., Johnson, J., Kellogg, Kinkel, Kurth, Lauterbach, Lester, Lewis, C. H., Lewis, M. E., Lincoln, Lyon, Manley, Mantanye, Marshall, McArthur, McDonough, McIntyre, McKinstry, McLaughlin, C. B., McMillan, Moore, Morton, Nichols, Nostrand, O'Brien, Parker, Parkhurst, Pashley, Phipps, Pool, Porter, Powell, Pratt, Putnam, Redman, Root, Spencer, Springweiler, Steele, A. B., Storm, Sullivan, T. A., Tibbetts, Tucker, Vedder, Vogt, Wellington, Wiggins, Woodward, President — 90.

Noes — Messrs. Banks, Blake, Bowers, Burr, Chipp, Jr., Cochran, Danforth, Davenport, Deady, Deyo, Emmet, Farrell, Gibney,

Giegerich, Gilleran, Goeller, Green, A. H., Green, J. I., Holcomb, Hottenroth, Jenks, Kerwin, Kimmey, Marks, Maybee, McClure, McCurdy, Meyenborg, Mulqueen, Nicoll, Ohmeis, Osborn, Parmenter, Peabody, Peck, Platzek, Roche, Rogers, Rowley, Sandford, Schumaker, Smith, Speer, Sullivan, W., Titus, Towns, Truax, C. H., Veeder, Williams — 50.

The President — This apportionment amendment will be now recommitted to the Committee on Revision and Engrossment, unless objection is made.

Mr. Bowers — We object, Mr. President.

Mr. Root — Mr. President, I move it be so recommitted.

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

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

The Secretary read Mr. Dickey's resolution, as follows:

R. 203.— Resolved, That the Committee on Revision be discharged from the further consideration of amendment (O., I. No. 383, P. No. 422, general order No. 45), and that such amendment be recommitted to the Judiciary Committee with instructions to amend it and forthwith report it, retaining its place on order of third reading, by amending section 7 by adding at the end thereof the following: "Whenever, and as often as there shall be an accumulation of causes on the calendar of the Court of Appeals that the public interests require a more speedy disposition thereof, the said court may certify such fact to the Governor, who shall thereupon designate seven judges of the Supreme Court to act as associate judges for the time being of the Court of Appeals, and to form a second division of said court, and who shall act as such until all the causes on the said calendar at the time of the making of such certificate are determined, or the judges of said court, elected as such, shall certify to the Governor that said causes are substantially disposed of, and on receiving such certificate the Governor may declare such division dissolved and the designation of justices to serve thereon shall thereupon expire. The second division of said court, hereby authorized to be constituted, shall be competent to determine any causes on said calendar which may be assigned to such division by the court composed of judges elected to serve in the Court of Appeals, and that court may, at any time before judgment, direct any of the causes so assigned to be restored to its calendar for hearing and decision. The rules of practice in both divisions shall be the same. Five members of the court shall

be sufficient to form a quorum for said second division and the concurrence of four shall be necessary to a decision. The judges composing said second division shall appoint from their number a chief judge of said division, and the Governor may from time to time, when in his judgment the public interests may require, change the designation of any justice of the Supreme Court to serve in such division, and may fill any vacancy occurring therein, by designating any justice of the Supreme Court to fill such vacancy. Said second division may appoint and remove a crier and such attendants as may be necessary. The judges composing said second division shall not, during the time of their service therein, exercise any of the functions of justices of the Supreme Court, nor receive any salary or compensation as such justices but in lieu thereof shall, during such term of service, receive the same compensation as the associate judges of the Court of Appeals. They shall have power to appoint the times and places of their sessions within this State, and the clerk and reporter of the Court of Appeals shall be the clerk and reporter of said second division."

And also amend section 9 so as to strike out the words "make the right to appeal depend upon the amount involved" and insert instead thereof "increase the amount or value upon which the right to appeal is now limited by law," so the section shall read:

"Sec. 9. After the last day of December, 1895, the jurisdiction of the Court of Appeals (except where the judgment is of death) shall be limited to the review of questions of law. No unanimous decision of the Appellate Division of the Supreme Court, that there is evidence supporting or tending to sustain a finding of fact or a verdict not directed by the court, shall be reviewed by the Court of Appeals. Except where the judgment is of death, appeals shall be taken to said court only from judgments or orders entered upon decisions of the Appellate Division of the Supreme Court, finally determining actions or special proceedings, and from orders granting new trials on exceptions, where the appellants stipulate that upon affirmance, judgment absolute shall be rendered against them.

The Appellate Division in any department may allow an appeal in any case which, in its opinion, involves a question of law which ought to be reviewed by the Court of Appeals.

The Legislature may further restrict the jurisdiction of the Court of Appeals and the right of appeal thereto, but it shall never increase the amount or value upon which the right to appeal is now limited by law."

Mr. Dickey — Mr. President, as we are about to reach the third reading of bills, including the judiciary article, before final action is taken upon that article, I offer these amendments, and I desire briefly to explain their purposes. The only changes made are two. The first is the retention of the Second Division of the Court of Appeals as the present Constitution provides it, in the actual wording.

The President — Will Mr. Dickey state whether the language of his amendment in that respect is exactly the same as in the present Constitution?

Mr. Dickey — It is exactly the same as the people voted for two years ago; and the only other change is striking out the prohibition that the Legislature shall not make the right of appeal depend alone upon the amount involved, and in lieu thereof inserting a provision that they shall never increase the present five hundred dollar limitation. I bring it up now so that it may be thought of by the delegates before the judiciary article is ordered to a third reading, and I move that the consideration of the matter lie upon the table, so that it may be brought up before a vote is taken, in order that the delegates may look it over.

Mr. Bowers — Mr. President ——

The President — The motion to lay upon the table precludes discussion.

Mr. Bowers — I wanted to ask, through the Chair, if the gentleman from Orange (Mr. Dickey) would allow me to add an amendment before he moves to lay on the table.

The President — Will Mr. Dickey allow an amendment to be added by Mr. Bowers, before he presses his motion to lay upon the table?

Mr. Dickey — Mr. President, I would prefer that he make it independently. I yield the floor so that he may do so.

Mr. Bowers — Mr. President, I move the following amendment to section 7, line 12, after the word "office," "and of two additional judges." Those are the only words that are necessary.

The President — Will Mr. Bowers state what will be the effect of his amendment?

Mr. Bowers — It will be to make the Court of Appeals consist of nine judges.

Mr. Root — Mr. President, I rise to a question of order, that under the rules no amendment can be offered at this stage, and I

call for the question upon Mr. Dickey's motion to lay upon the table the consideration of his motion.

Mr. Bowers — But, Mr. President, Mr. Dickey withdrew that expressly so that I could offer an amendment.

The President — Does Mr. Dickey withdraw his motion to lay upon the table?

Mr. Dickey — I withdrew it for the purpose of allowing Mr. Bowers to offer his amendment, with the understanding, however, that the motion to lay upon the table is to be put.

The President put the question on the motion of Mr. Bowers to recommit to the committee with instructions to amend as proposed by him, and it was determined in the negative.

The President put the question on the motion of Mr. Dickey to lay his amendment on the table, and that it be printed, and it was determined in the affirmative.

Mr. Burr — Mr. President, I desire to offer the following resolution, and with your permission I will read it.

R. 204.— Whereas, There are several amendments now on general orders which it is of the greatest importance should be considered and disposed of by the Convention before its adjournment, contemplating as they do great good to the people of the State, as follows:

Prohibiting the formation of trusts or combinations.

Making taxation equal and uniform.

Providing that employers shall not be relieved from liability for injury sustained by an employe through the negligence of another.

Providing for the suppression of gambling.

Providing for the establishment of State boards of arbitration between employers and employes.

Preventing the granting of franchises in city streets without local consent.

Preventing discrimination in rates of charges either by railroad, telegraph or telephone companies.

Therefore, be it resolved that this Convention remain in continuous session until the following matters have been disposed of in the order here stated, the said matters to be taken up for consideration after the completion of the business on the order of third reading and set down for this day:

General order No. 27, as to trusts or combinations.

General order No. 62 to amend article 3 by the addition of two new sections.

General order No. 69, relative to the liability of employers for injuries to employes.

General order No. 48, in relation to the suppression of gambling.

General order No. 46, relative to the establishment of boards of arbitration.

General order No. 68, relative to franchises in city streets and places.

General order No. 71, to prevent discrimination in rates or charges either by railroad, telegraph or telephone companies.

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

Mr. J. Johnson — Mr. President, I move to take from the table the resolution (No. 200) offered by myself, presenting a substitute for sections 5 and 6 of general order No. 13. The substitute is printed as No. 461, and is laid on the table.

The President — Will Mr. Johnson be kind enough to say when that was laid on the table?

Mr. Johnson — Last Saturday. It was printed as No. 461, and was laid on the desks of the members yesterday,

The President — Mr. Johnson moves to take from the table —— Will Mr. Johnson please repeat his motion?

Mr. J. Johnson — A resolution was offered by myself on Saturday last, directing the Committee on Cities to report a substitute for sections 5 and 6 of general order No. 13. The proposed substitute was printed and laid upon the table of the members yesterday as No. 461.

Mr. Cochran — Will the Secretary please read the Journal of yesterday so far as it relates to that? It is not on our files.

The President — That is what we are trying to find.

Mr. Johnson — The substance of it is stated in the heading of No. 461 ——

The President — One moment; the Secretary is trying to find the resolution. The question is on Mr. Johnson's motion to take from the table a resolution which he offered on Saturday, if the Chair recollects it rightly, instructing the Committee on Cities to take the amendment that has gone to a third reading and amend the same by inserting his original sections 5 and 6, and that they should report forthwith.

Mr. Johnson — No, sir. This is to present an amendment, a substitute for sections 5 and 6. The substitute is printed as No. 461, and is on the desks of all the members. As soon as the motion

is carried I shall take the liberty of stating very briefly the effect of the substitute.

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

Mr. J. Johnson — Mr. President ——

Mr. Nicoll — Now, may we have it read?

Mr. Holcomb — Mr. President, I ask that this proposition be read.

The President — The only record that there seems to be is under date of September 8, 1894. No. 461 was introduced in Convention by Mr. J. Johnson as a substitute for sections 5 and 6 of general order No. 13, printed No. 451, ordered printed and laid on the table, and then follows a section, a single section of forty-one lines.

Mr. J. Johnson — Mr. President, if the language of the resolution is not with the Secretary, I would ask permission to state the resolution, and let it be considered as a resolution.

The President — You will please state it.

Mr. J. Johnson — Resolved, That the Committee on Cities be directed to report forthwith complete, as a substitute for sections 5 and 6 of general order No. 13, an amendment in the language following, and then should follow what is printed in No. 461.

The President — The Chair is inclined to think that the motion in its present form is not in order. This amendment is upon the order of third reading, and is in the hands of the Committee on Revision.

Mr. J. Johnson — Mr. President, the motion ——

The President — Well, it is for the Convention to determine whether they will now instruct the Committee on Cities, as proposed by Mr. Johnson, to report this matter as an amendment to No. 13.

Mr. Bush — Mr. President, I rise to a point of order, and it is this, that sections 5 and 6, referred to by Mr. Johnson, are no longer in existence, either in any committee of this Convention, or in this Convention, and that his motion is improperly made for that reason. Upon the evening when the question was before this Convention, and it was moved that the cities article be committed to the Committee on Cities with instructions to amend, I raised the point of order when the chairman of the committee attempted to make a report, and the Chair sustained me, for the reason that the passage of that motion was in effect an amendment to the Constitution itself, which absolutely dissipated sections 5 and 6. They are no longer

in existence for the reason that the article was amended by striking out sections 5 and 6. Section 1 was all there was left of the article, and that was on the order of third reading. Now, it seems to me that if the gentleman desires to amend the article, his motion should be put into the form that the other motions were this morning.

The President — The Chair is of the opinion that the point of order raised by Mr. Bush is well taken; that the cities article consisting of a single section is now upon the order of third reading, and in the hands of the Committee on Revision, and the only way, in the opinion of the Chair, in which it can be altered or amended before being put on final passage, is for a motion to be made to recommit the first section as it stands now to the Committee on Cities, with instructions to report forthwith any amendment which may be proposed.

Now, in order that we may be entirely clear upon this subject, the Secretary has now found Mr. Johnson's resolution, and I think he will see that the point made by Mr. Bush is well taken. It is: "Resolved, That the Committee on Cities be directed to report complete, as a substitute for sections 5 and 6 of general order No. 13, an additional section as follows:"

Mr. J. Johnson — Mr. President, I desire to explain the theory upon which I made this motion. Immediately after the resolution to which Mr. Bush referred, whereby as he insists sections 5 and 6 were killed, a resolution was introduced by Mr. Bowers, which is printed on page 693 of the Journal, directing the Committee on Cities to report sections 5 and 6. To that objection was made, practically the same objection which is now made by Mr. Bush. The objection was overruled, as I understood, and thereupon it went over until the next day, and the next day Mr. Bowers's motion was laid upon the table. My first suggestion was to amend Mr. Bowers's motion, which is unquestionably before the Convention. It was suggested that it was the better way to do it the other way, and I have adopted this plan. I hope the gentleman will not put me to the trouble of bringing up Mr. Bowers's motion, for that unquestionably has been ruled on. It is before the Convention.

Mr. Holcomb — Mr. President, I rise to a parliamentary inquiry. I would like to ask why we cannot have this whole matter determined by the record as made up on Saturday when the matter was here? It must be on the Secretary's desk.

The President — Unfortunately the Journal has been sent to the printer, and has not been returned.

Mr. Holcomb — I do not think this matter should be determined

by the recollection of the chairman of the Committee on Cities. I move that the whole matter lay on the table until the Journal is returned from the printer.

The President — One moment, Mr. Holcomb. There is no recollection about it. The matter was laid upon the table. The question now would be on that resolution, but the Chair holds it to be out of order, inasmuch as sections 5 and 6 had ceased to exist, and the only mode of reaching the point desired by Mr. Johnson is to recommit the amendment, as it passed, to the Committee on Cities, with instructions to report forthwith, amended as may be desirable.

Mr. Cookinham — Mr. President, on August second, I moved to lay three proposed constitutional amendments on the table. They were on the order of third reading.

The President — One moment, Mr. Johnson's matter is not disposed of yet.

Mr. J. Johnson — The suggestion which I make is, that under the motion of Mr. Bowers this matter is brought back before the Convention. Mr. Bowers's motion is printed at page 593 of the Journal, and it was on the efficacy of that that I made this motion.

The President — Mr. Bowers's motion is printed on page 590 of the Journal. Mr. Bowers moved that the Committee on Cities be instructed to strike out the fifth and sixth sections, and proposed an amendment to said section and that the committee report forthwith. Pending the disposition of the motion, the Convention adjourned, and it does not appear that any action was taken upon it.

Mr. J. Johnson — I refer to page 593.

The President — There is nothing on page 593. It would be very easy for Mr. Johnson to make a motion in accordance with the other motions made this morning to recommit the matter to the Committee on Cities with instructions to report forthwith.

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

The President — Mr. Johnson has the floor. Mr. Johnson yields the floor to Mr. Cookinham.

Mr. Cookinham — Mr. President, on August second I moved to lay three constitutional amendments on the table. Those amendments were reported from the Committee on Revision. They should be put upon the order of third reading. I now move to take them from the table and proceed with their third reading.

Mr. Bowers — Mr. President, we could not hear the motion. I listened and could not hear.

The President — The Chair will state, and I think the gentlemen will all recall it. On August second the Committee on Revision reported the first three amendments that are printed in the list of matters on third reading. It was then suggested by Mr. Cookinham that great confusion would arise if they were really put upon their final passage after third reading, because other committees had other amendments under consideration relating to the same section. To prevent that confusion, he moved that they then be laid upon the table, to await the further action of the other committees on those amendments. He now moves simply to take them up, which will leave them in due course on the order of third reading.

The President put the question on the motion to take the proposed amendments from the table, and it was determined in the affirmative.

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

Mr. Cookinham — One moment. My motion was also that we proceed with the third reading of the amendments.

The President — The question now is, shall we proceed with the third reading of the amendments.

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

The President — The Secretary will read the title of the first amendment on the order of third reading. The amendments on third reading will be found in the file marked "Convention Resolutions."

The Secretary read the title of the first amendment on third reading, as follows:

General order No. 9 introduced by Mr. Dickey, entitled "Proposed constitutional amendment to amend article 10 of the Constitution, to do away with the office of coroner as a constitutional office."

The President — This matter is now open for debate under the rules for one hour. At the expiration of that time, unless the debate is sooner closed, it will be open for the previous question. If no debate is desired, the question will be put and the roll will be called. Does any gentleman desire to be heard upon this amendment before it is put upon final passage?

Mr. Mantanye — Mr. President, how much time is to be allowed to each delegate desiring to debate it?

The President — Five minutes.

Mr. Mantanye — This proposition, as recorded by the Committee on Revision, is simply the section as it already stands in the Constitution, dropping from it the name of coroner, or the word coroner, as one of the constitutional officers provided for by the Constitution. The Committee on County, Town and Village Officers had still further amendments before them in regard to that section, and it was on account of those that this matter, when it came from the Committee on Revision on August second, was laid on the table. At the request now of Mr. Parkhurst, the chairman of the Committee on County, Town and Village Officers, I will submit the report of that committee in regard to that section.

The President — That is not in order now, Mr. Mantanye. The question is on the final passage of this amendment.

Mr. Mantanye — I desire to make a motion to substitute the section which is reported by the Committee on County, Town and Village Officers.

The President — That is not in order. You cannot amend the proposition now.

Mr. Mantanye — Then I will make the motion to refer it back to the committee, with instructions to report forthwith as amended in accordance with the proposition contained in that report.

The President — Under rule 41 a motion may be made during the third reading of any proposed constitutional amendment to recommit it, and such motion shall not be debatable. It is entirely competent for you to move that it be recommitted to the committee with instructions to report such an amendment.

Mr. Mantanye — That is the motion I made. I have been asked what the change is and I proceeded to state it. The only change is to make it accord with the proposed constitutional amendment now on the order of third reading, providing for municipal elections on the odd-numbered years, and this section is reported by the Committee on County, Town and Village Officers, having been ordered to report, and the report being in the hands of the chairman. It is simply inserting in that section, dropping out the coroner, that the board of supervisors may, by a two-thirds vote, change the term of office of sheriffs, clerks of counties, including the register and clerk of the city and county of New York, and district attorneys from three years to two or four years, so that the elections for those offices may also be had in odd-numbered years.

The President — The Secretary will read the proposed amendment of Mr. Mantanye.

The Secretary read the proposed amendment of Mr. Mantanye as follows:

Section 1 of article 10 of the Constitution is hereby amended to read as follows:

"Sheriffs, clerks of counties, including the register and clerk of the city and county of New York, and district attorney, shall be chosen by the electors of the respective counties and as often as vacancies shall occur. But, by a general law, it shall be provided that boards of supervisors of counties or the common council of a city, whose boundaries are the same as those of a county, may, by a two-thirds vote of all members elected, change the term of said officers to two or four years, and provided that they may be elected in years of an odd number, and when a vacancy occurs it shall be filled for the unexpired term. Sheriffs shall hold no other office, and sheriffs shall be ineligible to the same office for the next three years after the termination of their offices. They may be required by law to renew their surety from time to time, and in default of giving such new surety when ordered, their offices shall be vacant. The county shall never be made responsible for the acts of the sheriff. The Governor may remove any officer in the section mentioned, within the term for which he shall have been elected, giving to such officer a copy of the charges against him, and an opportunity to be heard in his defense."

The President — Is that the intended amendment, the word "occur" for "happen?" Do you propose to substitute that? Your amendment says "occur." Do you mean that?

Mr. Mantanye — I do not know that it reads that way in the amendment. It may be an inadvertence.

The President — Does any other gentleman desire to be heard upon this amendment?

Mr. Bowers — I was out of the room a minute, and did not understand the ruling of the Chair on Mr. Mantanye's motion. Do I understand you to rule that the point of order is not well taken, that a motion to recommit to a committee with instructions to report forthwith is not in order?

The President — The Chair rules that it is in order.

Mr. Bowers — That rule was intended to mean, I will say with utmost respect, that the matter should be sent back to the committee, not that we should proceed to violate rules that we are trying to set up for the Legislature, and violate a rule which is of the most material character.

The President — When Mr. Bowers's point was made yesterday I examined the records as to what was said when this rule was brought in. It was stated by the chairman of the Committee on Rules and Mr. Vedder, and it was stated most emphatically, that the intent of the rule was that a motion could be made on third reading to recommit with instructions to report forthwith amended. It is the opinion of the Chair that it is intended to mean that. The Chair further looks back to the rule proposed in Mr. Steele's book of proposed rules, and finds that it was obviously the purpose as intended by that rule.

Mr. Bowers — Then, Mr. President, as I could not catch the full meaning of this amendment and cannot vote understandingly, I move, as an amendment, that it be recommitted to the committee from which it emanated, and that the same be printed and laid upon the desks of the members, and the third reading of the amendment be postponed until to-morrow morning.

The President — The Chair is of the opinion that that motion is out of order. An independent motion may be made with instructions to amend. The Secretary will read the matter that it is sought to have inserted. Mr. Bowers can make an independent motion.

Mr. Moore — Mr. President, I desire to ask for information whether if this amendment which is now on third reading and as amended by Mr. Mantanye, whether the effect will be to amend section 10 of article 14.

The President — Certainly not, Mr. Moore. The word coroner is in section 10 of article 14.

Mr. J. Johnson — Mr. President, I take the liberty of pointing out a difficulty in the amendment presented by Mr. Mantanye. In section 1 presented by the Committee on Cities it is already provided that in counties, the boundaries of which are the same as cities, the term of office shall be two years. That of course amends this section as it originally stood and makes it entirely unnecessary and I think improper — not good form at least — that the amendment should include counties, the boundaries of which are the same as cities. I would, therefore, suggest the amendment that line 3 after the word "counties" have stricken out from it the words "including the register and the clerk of the city and county of New York," and that there be inserted in place thereof the words "other than the counties of New York and Kings, and any county the boundaries of which are the same as the city," and that the words in the proposed amendment made by Mr. Mantanye, referring

to counties whose boundaries are the same as cities, be stricken out. This is all provided for in the section which is already on the order of third reading in relation to the separation from State and municipal elections.

Mr. Dickey — Mr. President, I had no purpose to debate this amendment, and I am only called to my feet by the offer of this amendment. As was well known, the proposition was introduced and carried through the Committee of the Whole abolishing the office of coroner as a constitutional office. That was its entire and sole purpose, and I would like to leave it that way, not complicated by any other question, so that when it goes to the people for their vote they will vote upon it, but not with such a proposition as Mr. Mantanye proposes permitting the supervisor's term to be extended to four years, and, therefore, my wish and hope is that these amendments be voted down and that the friends of this movement to abolish the office of coroner as a constitutional office will vote for the amendment as printed.

Mr. Nicoll — Mr. President, I do not rise for the purpose of debating the proposition, but for the purpose of drawing from the Chair a further ruling as to the power of amending either directly or indirectly upon third reading matters which have been reported from the Committee on Revision. I understand the Chair to have held that upon the third reading no amendment can be made under the rule which expressly prohibits it. I understand the Chair to also hold that although no amendment may directly be made on account of the rule prohibiting it, that a motion may be entertained to refer the matter back to the committee with instructions to report forthwith making any desired change. That, of course, is another way to amend.

The President — To recommit to the standing committee from which it originally came with instructions to amend?

Mr. Nicoll — To recommit to the standing committee with instructions to amend. If that is so, what becomes of rule 35? Rule 35 provides, "No proposed constitutional amendment shall be put upon its third reading until it shall have been reported by the Committee of Revision and Engrossment, as correctly revised and engrossed, unless by unanimous consent. Nor shall any proposed constitutional amendment be read the third time, unless it shall have been printed."

The President — All that has been complied with.

Mr. Nicoll — Has the proposed amendment of Mr. Mantanye been printed?

The President — All that has been complied with.

Mr. Nicoll — Has it been printed?

The President — Why, it is before you, and it is in this book as No. 1.

Mr. Nicoll — Not as proposed by Mr. Mantanye, no.

The President — Not as proposed by Mr. Mantanye, no. When that has been adopted it will be time to consider it.

Mr. Nicoll — Then it is competent, when speaking on subjects on third reading, to make motions to refer them back?

The President — As I understand it, and if the chairman of the Committee on Rules, or Mr. Vedder, will refer to the discussion on this rule when it was adopted, they will see the source of my understanding.

Mr. Cochran — A question of information, Mr. President. Do I understand that this debate, which has been proceeding since Mr. Mantanye offered his amendment, has been on the amendment?

The President — The debate is on the amendment and anything in regard to it, and one hour is allowed for debate.

Mr. Cochran — Do I understand that Mr. Mantanye's amendment will practically lay before the Convention until the final motion is put?

Mr. Tibbetts — Mr. President, is it in order now to move that this be recommitted to the standing committee, with instructions to strike out in line 7 the words "and be ineligible for the next three years after the termination of their term of office?"

The President — Not until Mr. Mantanye's motion is disposed of.

Mr. Kerwin — Mr. President, this is one of the bills ——

The President — The motion to recommit is not debatable. The question is on Mr. Mantanye's motion to recommit with instructions to amend.

The President put the question, and it was determined in the negative.

The President — Does any other gentleman wish to debate this proposition?

Mr. Bowers — What became of the amendment, Mr. President?

The President — It was lost.

Mr. Tibbetts — Mr. President, I now move that this be recommitted to the standing committee with instructions to strike out in line 7 the words "and be ineligible for the next three years after the

termination of their term of office." Now, Mr. President, I don't want this to be treated in the manner these amendments usually are ——

The President — These amendments are not debatable.

Mr. Tibbetts — I thought I had five minutes.

The President — Not according to rule 41. An amendment is not debatable on third reading.

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

The President — The question is on the final passage of this amendment. Does any other gentleman wish to be heard?

Mr. Kerwin — Mr. President, as I was about to state, this is one of the amendments which was before our committee and which I opposed. The people who are advocating that the office of coroner be abolished do not say manfully that they will do away with the office of coroner and all other officers that the Legislature may create to take the office of coroner. I only wish to state that all the arguments which I heard before our Committee on County, Town and Village Government, was, "do away with the office of coroner and then we will appeal to the Legislature for a new office to which none but physicians and medical gentlemen will be eligible." They desire to create new officers. With that understanding I am opposed to the amendment.

Mr. Moore — Mr. President, I opposed this measure in the committee to which it was referred. I opposed it first, because my people were opposed to it. They sent down here a petition asking me to vote against it. I admit that I was the only man in the committee who voted against it, and, therefore, Mr. President, I shall be consistent for once and vote against it on its passage here. I know that this amendment does not abolish the office of coroner, and that the supervisors may provide for the election of coroner, but it takes the office out of the range of the constitutional officers. It abolishes the office. Now, this office comes very near the people, dead and alive. Therefore, I think this Convention ought to do something for some officer who is near to them, in the Constitution. I think the amendment should be defeated.

Mr. Hottenroth — Mr. President, it appears to be unpopular to be in opposition to this amendment, but it seems to me that some office ought to be preserved in the Constitution, or at least some officer whose duty it shall be to properly protect the interests of the counties in connection with deaths, and in connection with

matters of great importance to the counties. Now, there is no provision in this Constitution for the creation of any other office that shall take the place of the coroner's office. We understand that the coroner will still exist under the laws of the State. The question is as to whether it will not be as advisable to leave the coroner and fix the qualification by statutory provision in such manner as shall better subserve the interests of the counties. We might fix certain qualifications for the coroner. We might demand that he should pass a civil service examination. We can regulate all these things by statutory provision, and yet preserve in the Constitution an officer that should take his place.

The President — Does any other gentleman desire to be heard before this amendment takes its third reading?

Mr. J. Johnson — Mr. President, I would renew the motion made by Mr. Mantanye, to the same purpose, and would, therefore, move that this section or proposed amendment be sent back to the committee from which it was reported, with instructions to add at the end thereof the following: "The Legislature may, by general law, devolve upon boards of supervisors of any county, other than the counties of New York and Kings, and any county the boundaries of which are the same as a city, the power to make the terms of office of the officers in this section named at two or four years." The difficulty with the amendment of Mr. Mantanye was, as I regard it, that it duplicated provisions in the article already reported for separating elections, and was somewhat in conflict with it. This leaves the provisions practically the same as the amendment to which we have already agreed.

Mr. Root — Mr. President, may we have it read?

The President — Mr. Johnson moves to recommit this amendment to the Committee on County, Town and Village Officers, with instructions to amend by adding the provisions stated by him, which the Secretary will now read.

The Secretary read the proposed amendment of Mr. Johnson.

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

Mr. Mantanye — Mr. President, it seems to me that there is now nothing left for this Convention but to refuse to pass this amendment. Various propositions for amendment were very properly sent to the Committee on County, Town and Village Officers. They have passed upon them——

The President — Mr. Mantanye is out of order, because the rule

prescribes that no member can speak more than five minutes, nor more than once.

Mr. Mantanye — I have not taken the full five minutes.

The President — Mr. Mantanye has spoken more than five minutes of the time allotted.

Mr. Mantanye — I think not.

The President — The Chair measured the time and it was seven minutes. Does any other gentleman wish to be heard on this amendment before the third reading is completed? No other delegate desiring to be heard, the debate is closed, and the Secretary will read the amendment — all after the title.

The Secretary read the amendment (O. No. 6, G. O. No. 9), as follows:

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

Amend article 10, section 1, by striking out the word "coroners;" the purpose of the amendment being to do away with the office of coroner as a constitutional office.

The President — The question will now be taken on the final passage of this amendment. Under the rule, eighty-eight votes will be required to secure its passage. Gentlemen, as your names are called those of you who are in favor of the passage of this amendment will say aye, and those opposed will say no. The Secretary will call the roll.

The Secretary proceeded to call the roll.

Mr. Ackerly — Mr. President, in explaining my vote I would say that I am not in favor of the word coroner being stricken out of the Constitution. The balance of this section, as I understand, is as the present Constitution now is. If we do certain work that we propose to do, this section will have to be amended as it stands in the old Constitution. With that understanding I will vote aye.

Mr. Kellogg — Mr. President, I am opposed to this amendment striking the word coroner from the Constitution, and I vote no.

Mr. Lincoln — Mr. President, I wish to explain my vote. Upon this question it seems to me that if we pass this amendment we are simply abolishing a name, but must, at least, retain the functions of the office of coroner. I suppose the Legislature can provide for that by creating some other officer, or can still continue the name of coroner by legislative enactment. I looked over the statutes of Massachusetts, and found that, since the abolition of coroner in that

State, they have an officer called medical examiner. The functions of that officer are the same as coroner in this State. I regard this amendment as of a somewhat indifferent character, and I, therefore, vote aye.

Mr. McClure — Mr. President, whenever I find an amendment that I regard as indifferent and unimportant, I vote against it, and, therefore, I vote no.

Mr. Tibbetts — Mr. President, I am in favor of the proposition to abolish the office of coroner. It was to this section that I offered an amendment striking out the ineligibility for the office of sheriff. I was in earnest in that proposition, as I believe it, like a great deal of the rest of the Constitution, dead matter. We do not put very much into the Constitution, and we ought to lop off all the useless matter. I believe that what I proposed to strike out is the vermiform appendix of the Constitution. However, as I could not accomplish that, I am in favor of this proposition, and, therefore, I vote aye.

The President — This amendment is adopted — ayes 97, noes 40.

The vote in detail is as follows:

Ayes — Messrs. Abbott, Acker, Ackerly, Allaben, Arnold, Baker, Banks, Barhite, Barnum, Barrow, Becker, Brown, E. A., Brown, E. R., Cady, Carter, Cassidy, Chipp, Jr., Church, Clark, G. W., Clark, H. A., Cookinham, Cornwell, Crosby, Davenport, Davies, Davis, Deady, Deyo, Dickey, Durfee, Emmet, Floyd, Foote, Forbes, Francis, Frank, Andrew, Frank, Augustus, Fuller, C. A., Galinger, Gilbert, Goodelle, Green, A. H., Hamlin, Hawley, Hedges, Hill, Hirschberg, Holls, Hotchkiss, Johnson, I. Sam, Johnson, J., Johnston, Kimmey, Kinkel, Kurth, Lauterbach, Lester, Lewis, C. H., Lewis, M. E., Lincoln, Manley, Marshall, Maybee, McDonough, McIntyre, McKinstry, McLaughlin, C. B., McMillan, Morton, Nichols, Nicoll, Nostrand, O'Brien, Parker, Parkhurst, Phipps, Platzek, Pool, Powell, Pratt, Putnam, Redman, Roche, Root, Rowley, Spencer, Steele, A. B., Steele, W. H., Storm, Sullivan, T. A., Tibbetts, Vedder, Vogt, Wellington, Wiggins, Woodward, President — 97.

Noes — Messrs. Bowers, Burr, Bush, Cochran, Coleman, Danforth, Dean, Deterling, Fuller, O. A., Giegerich, Gilleran, Goeller, Green, J. I., Hecker, Holcomb, Hottenroth, Jenks, Kellogg, Kerwin, Lyon, Mantanye, Marks, McClure, McCurdy, Mereness, Meyenborg, Moore, Mulqueen, Ohmeis, Parmenter, Peabody, Schumaker, Speer, Springweiler, Titus, Towns, Truax, C. H., Veeder, Williams — 40.

The President — The Chair desires to state that there will be a meeting of the Committee on Rules in the President's room immediately, to consider the matters referred to them this morning.

Mr. Marks — Mr. President, before the Committee on Rules considers the proposition referred to them this morning, I would like to ask Mr. Burr if he will include general order No. 49 in his motion?

Mr. Burr — With the greatest pleasure.

Mr. Peabody — Mr. President, I wish to be excused from the afternoon session.

The President — Is it for illness?

Mr. Peabody — No, sir.

The President — The new rule prohibits the President from entertaining the motion.

The hour of 1 o'clock having arrived, the President declared the Convention in recess until three o'clock P. M.

AFTERNOON SESSION.

Tuesday Afternoon, September 11, 1894.

The Constitutional Convention met at the Capitol, Albany, N. Y., Tuesday, September 11, 1894, at 3 P. M.

President Choate called the Convention to order.

The President — The next matter upon the order of the third reading is O., I. 73, P. 365, general order No. 1. The Secretary will read the title.

The Secretary read the title in the language following:

"Proposed constitutional amendment to amend section 15 of article 3, so as to secure great publicity and deliberation in the passage of all bills."

The President — Before entering on this order of business, excuse is asked for Mr. Durnin, who is confined to his bed by illness, for yesterday and to-day.

Granted.

The President — The title of this constitutional amendment having been read, it is now open for debate for one hour.

Mr. Vedder — Mr. President, this amendment is merely in relation to section 15 of article 3, of the Constitution, providing that a bill shall have been printed and be upon the desks of members of

each branch of the Legislature three calendar legislative days prior to its last reading. It is a bill I believe which every one who is in favor of orderly and intelligent legislation will approve of. I believe, Mr. President, there is a quorum present, and I do not think any one desires to speak upon it. At least, I do not, except to announce what it is, and that is commendation enough.

The President — Do any other delegates desire to be heard before the third reading is proceeded with? There being none, the debate is closed, and the Secretary will read the amendment.

The Secretary read the amendment in the language following:

Section 15 of article 3 is hereby amended to read as follows:

"Sec. 15. No bill shall be passed or become a law unless it shall have been printed and upon the desks of the members, in its final form, at least three calendar legislative days prior to its final passage, unless the Governor, or the acting Governor, shall have certified to the necessity of its immediate passage, under his hand and the seal of the State; nor shall any bill be passed or become a law, except by the assent of a majority of the members elected to each branch of the Legislature; and upon the last reading of a bill, no amendment thereof shall be allowed, and the question upon its final passage shall be taken immediately thereafter, and the ayes and nays entered on the Journal."

The President — The vote will now be taken on the final passage of this amendment.

The Secretary proceeded to call the roll.

Mr. Veeder — I desire to explain my vote. I regard this absolutely as trash, and only another effort to blind the people and tell them how virtuous certain parties are in this Convention. I vote no.

Mr. Cochran — Mr. President, I ask that we establish the practice, after these roll-calls, of reading over the names of those who voted in the affirmative and those in the negative. I think it is apparent even from this roll-call that mistakes have occurred. I do not think intentionally. I would like to have that corrected.

The Secretary having completed the calling of the roll, the following result appeared:

Ayes—Messrs. Abbott, Ackerly, Arnold, Baker, Barnum, Barrow, Brown, E. A., Brown, E. R., Burr, Cady, Campbell, Carter, Cassidy, Church, Clark, G. W., Clark, H. A., Coleman, Cookinham, Countryman, Davenport, Davies, Deady, Dean, Deterling, Deyo, Dickey, Durfee, Emmet, Farrell, Floyd, Foote, Forbes, Frank,

Andrew, Fuller, C. A., Fuller, O. A., Galinger, Gibney, Giegerich, Gilbert, Gilleran, Green, A. H., Hamlin, Hawley, Hecker, Hedges, Hill, Holls, Johnson, I. Sam, Johnson, J., Kellogg, Kimmey, Kinkel, Kurth, Lewis, C. H., Lincoln, Lyon, Manley, Mantanye, Marks, Maybee, McArthur, McClure, McDonough, McIntyre, McKinstry, McLaughlin, C. B., McMillan, Mereness, Moore, Morton, Nichols, Nostrand, O'Brien, Ohmeis, Osborn, Parker, Parkhurst, Parmenter, Pashley, Phipps, Pool, Porter, Powell, Pratt, Putnam, Redman, Roche, Rogers, Root, Rowley, Sandford, Schumaker, Spencer, Springweiler, Steele, A. B., Steele, W. H., Storm, Sullivan, T. A., Tekulsky, Tibbetts, Titus, Truax, C. H., Turner, Vedder, Vogt, Wellington, Whitmyer, Wiggins, Williams, Woodward, President — 107.

Noes — Messrs. Bigelow, Chipp, Jr., Cochran, Holcomb, McCurdy, Peck, Towns, Tucker, Veeder — 9.

The President — Does Mr. Cochran make a motion to that effect?

Mr. Cochran — I do not believe it is necessary. To save time ——

The President — Mr. Cochran moves that those voting in the negative on each amendment be read by the Secretary. The Secretary will read the names in the negative on this amendment.

Mr. Cochran — I do not move that. I think I would like to have that on this amendment. I do not think it is necessary for a motion.

The President — The Secretary will read the names of those in the negative.

Mr. Cochran — I ask for the ayes, also. I object to having any great privilege extended to me. If it is not right I do not want it.

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

The President — By unanimous consent it will be offered.

Mr. Cochran — I object.

Mr. McClure — I ask that it be read before consent is asked.

Mr. Holcomb — Before consent is given I ask that it be read.

The Secretary read the resolution offered by Mr. Kurth, in the language following:

"Whereas, Thomas Rochford was, on the 22d day of May, 1894, duly appointed messenger of this Convention and duly qualified and entered upon his duties as such; and

"Whereas, Thereafter, and on the twenty-ninth day of May, he was transferred to the office of the Financial Secretary of the Con-

vention and therein required to do clerical work and assist in making up the pay-rolls and receipts of the Convention, as well as perform duties as messenger in said office;

"Resolved, That the said Thomas Rochford be, and hereby is, entitled, since the twenty-ninth day of May, to such pay as is commensurate with such added duties and work required and performed by him."

The President — Unless objection is made to the receipt of this, it will be referred to the Committee on Contingent Expenses.

The next matter on the order of third reading is general order No. 10 (O., I. 269, P. 271-368).

Mr. Holcomb — Mr. President, I understood the gentleman from Kings (Mr. Cochran) to ask for the reading of the result of the roll-call. That, I understand, is the privilege of any delegate of this Convention.

The President — The Chair can put the question as to whether the Convention will order it to be done. It will consume a good deal of time.

The President put the question on ordering the names of those voting in the affirmative and the negative repeated by the Secretary after every roll-call, and it was determined in the negative.

The Secretary read the title of the amendment before the House for the third reading, in the language following: "Proposed constitutional amendment to amend section 7 of article 4 of the Constitution."

The President — This is now open for debate for the space of one hour.

Mr. Cochran — Mr. President, when this proposed constitutional amendment was under consideration by the Committee of the Whole, I took occasion then, very briefly, and I might say very hastily, as I had not at that time examined the amendment, to offer an amendment so as to provide that, in case of the inability of the Governor to perform the duties of that office, and also the inability of the Lieutenant-Governor to succeed to it, the Secretary of State should succeed to the office instead of the Speaker of the Assembly; but, as usual with all amendments that have been introduced by the minority, it was voted down, and I expect the same vote will proceed with any amendment I offer now. Nevertheless, I desire to do what I believe to be my duty, to have an officer succeed to the gubernatorial chair who is elected by the entire electoral vote of the State, and not to have one succeed to that office who is

selected possibly by five hundred votes in some retired hamlet of the State, or some lower portion of the communities in the cities, which have been so much abused in this Convention. I, therefore, move, sir, that this proposed constitutional amendment be recommitted to the Committee on Legislative Powers, with instructions to strike out, on page 2, lines 2 and 3, the words "Speaker of the Assembly," and insert in lieu thereof the words "Secretary of State," and to report the same forthwith.

The Secretary read the amendment as offered by Mr. Cochran.

Mr. Cochran — I ask for a rising vote, Mr. President.

Mr. McClure — Mr. President ——

The President — This is not debatable under the rules.

A vote was then taken on the amendment offered by Mr. Cochran, and it was determined in the negative.

The President — Does any other gentleman desire to be heard on this amendment?

Mr. McClure — Mr. President, I did desire to be heard upon that amendment, but as that was out of order I will say what I would have said in opposition to the present amendment. I think it would be a great mistake, Mr. President, to have the Speaker of the Assembly occupy the chair of Governor of this State in case such an emergency should arise. The Secretary of State is an official elected by the people, elected for a number of years, and is apt to be a man better fitted to fill the office of Governor than the Speaker of the Assembly. We have in our experience, Mr. President, seen curious Legislatures in this State, and one of them sat last year, when it increased the salaries of a body of men in the city of New York who were at the same time under investigation by a committee of the Legislature for wrongdoing, and refused to allow more than fifteen hundred dollars for the preservation of the great forest lands of the State. Now, I am opposed to putting it into the power of any man elected by arrangement, by a deal, perhaps, Speaker of the Legislature of this State. I am opposed to putting him in the seat of the Governor of the State. I do not think he is apt to be ordinarily a big enough man for the place. I think it would be a dangerous thing to do, and I shall, therefore, vote against the amendment as it is now proposed.

The President — Does any other delegate desire to be heard on this amendment? If not, the debate is closed. The Secretary will read the amendment the third time.

The Secretary read the proposed amendment in the language following:

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

Section 7 of article 4 of the Constitution is hereby amended so as to read as follows:

"Sec. 7. The Lieutenant-Governor shall possess the same qualifications of eligibility for office as the Governor. He shall be President of the Senate, but shall have only a casting vote therein. If, during a vacancy of the office of Governor, the Lieutenant-Governor shall be impeached, displaced, resign, die, or become incapable of performing the duties of his office, or be absent from the State, the President of the Senate shall act as Governor until the vacancy be filled, or the disability shall cease; and if the President of the Senate for any of the above causes shall become incapable of performing the duties pertaining to the office of Governor, the Speaker of the Assembly shall act as Governor until the vacancy be filled or the disability shall cease.

The President — The final vote will now be taken on the adoption of this amendment.

The Secretary proceeded to call the roll.

Mr. Vedder — Mr. President, I desire to be excused from voting. The only amendment which this makes to the Constitution is this, that if the Governor cannot act, if the Lieutenant-Governor cannot act as Governor, if the President *pro tempore* of the Senate cannot act as Governor, then, and only in that event, can the Speaker of the Assembly act as Governor. The gentleman from New York (Mr. McClure) objects to the Speaker upon the ground that he is not as good a man as the Secretary of State. I want you to compare the Speakers of the Assembly, as far back as you can remember, and see whether or not the Speakers of the Assembly are not as able men as the Secretaries of State. Not only that, but the duties of the Secretary of State are entirely outside and different from those of the Governor, or of the President *pro tempore* of the Senate, who represents the legislative branch pure and simple. The Secretary of State is nothing more than a high-class, high-priced clerk. That is all. The Speaker is chosen for his qualifications as a legislator, for his known and proved ability, and is chosen by the elect and the select of the State, by the majority of the Assembly, always; and he represents the State next to the Governor, the Lieutenant-Governor and the President *pro tempore* of the Senate. He is in the line of the governorship; and I have followed in this, Mr. President,

simply the language of the Constitution of many other States; and there is not an exception where, when they extend the line further, they do not bestow it on the Speaker of the legislative house. That is all the amendment there is. All the rest is in the present Constitution. I withdraw my request to be excused, and vote aye.

Mr. Cochran — Mr. President, before the vote is announced, I rise to a question of privilege. I ask that a recapitulation of this vote, showing the ayes and noes, be called off; and in doing so, sir, I contend it is a question of privilege, and that it is the right of every member in this Convention to have that recapitulation announced by the Secretary before he announces the total vote for or against a measure; and I desire to submit to the President of this Convention so high a parliamentary authority as Mr. Cushing, who provides distinctly that it is the duty of the Secretary, after the vote by the ayes and noes has been made, and after all the members have answered who are present, to call over the names of those who have voted, first those in the affirmative, and then those in the negative, in order that members may see that their votes are correctly recorded. I have also an authority to the same effect in Crutchfield's Manual, which is the guiding star for the proceedings in the Congress of the United States. I submit, sir, we want no better authorities than those; but if we did, it might be found in Mr. Reed's book on parliamentary rules. I submit, therefore that it is a privilege to which any member of this Convention is entitled; and as to this talk that it will waste a minute or two, why, we waste more minutes here in matters that amount to nothing than we do in giving a member his legitimate rights.

The President — I believe that in some antiquated bodies that operation has prevailed, but this Convention has voted that it should not be done, and it will have to abide by the vote of the Convention until it is changed.

Mr. Cochran — May I ask, sir, how Mr. Banks is recorded?

The Secretary — Mr. Banks is recorded in the negative.

Mr. Cochran — May I ask how Mr. Bigelow's name is recorded?

The Secretary — Mr. Bigelow did not vote.

Mr. Cochran — May I ask how Mr. Bowers's name is recorded?

The Secretary — Mr. Bowers did not vote, according to the Secretary's record.

Mr. Cochran — May I ask how Mr. Campbell voted?

The Secretary — Mr. Campbell voted in the negative.

The President — It is out of order for Mr. Cochran to indulge in these personalities.

The Secretary having completed the calling of the roll, the following result appeared:

Ayes — Messrs. Abbott, Ackerly, Allaben, Arnold, Baker, Barnum, Barrow, Becker, Brown, E. A., Brown, E. R., Cady, Carter, Church, Clark, G. W., Clark, H. A., Coleman, Cookinham, Cornwell, Countryman, Crosby, Davies, Davis, Dean, Deterling, Deyo, Dickey, Durfee, Emmet, Floyd, Foote, Francis, Frank, Andrew, Frank, Augustus, Fuller, C. A., Fuller, O. A., Galinger, Gibney, Gilbert, Goeller, Hamlin, Hawley, Hecker, Hedges, Hill, Hirschberg, Holls, Johnson, I. Sam., Johnson, J., Kellogg, Kinkel, Kurth, Lauterbach, Lester, Lewis, C. H., Lewis, M. E., Lincoln, Lyon, Manley, Mantanye, Marshall, McArthur, McDonough, McIntyre, McKinstry, McLaughlin, C. B., McMillan, Mereness, Moore, Morton, Nichols, Nostrand, O'Brien, Parker, Parkhurst, Pashley, Phipps, Platzek, Pool, Porter, Powell, Pratt, Putnam, Redman, Root, Sandford, Spencer, Springweiler, Steele, A. B., Steele, W. H., Storm, Sullivan, T. A., Tibbetts, Turner, Vedder, Vogt, Wellington, Whitmyer, Wiggins, Woodward, President — 94.

Noes — Messrs. Banks, Blake, Burr, Campbell, Cassidy, Chipp, Jr., Danforth, Davenport, Deady, Farrell, Forbes, Giegerich, Green, A. H., Green, J. I., Holcomb, Hotchkiss, Hottenroth, Kimmey, Marks, Maybee, McClure, McCurdy, Meyenborg, Ohmeis, Osborn, Parmenter, Peck, Rowley, Schumaker, Titus, Towns, Truax, C. H., Tucker, Veeder, Williams — 36.

The President — The next matter on the order of third reading is O., I. 191, P. 192-380, general order No. 15, introduced by Mr. Tucker. The Secretary will please read it.

Mr. Tekulsky — Mr. President, I move the call of the House on that measure. This is an important measure.

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

The Secretary read the title of the proposed amendment, in the language following:

"Proposed constitutional amendment to amend article 1 of the Constitution, as to damages for the loss of human life."

The President — The matter is now open for debate for one hour.

Mr. Dickey — Mr. President, as this matter was very fully debated in Committee of the Whole, or in the Convention, on the motion to disagree with the report of the committee, it is, perhaps, unnecessary to repeat now more than to call the attention of the Convention to the particular amendment so that they may vote with a thorough understanding of what they are voting on. This amendment, in the first part of section 19, preserves the right of action now existing to recover damages for injuries resulting in death, and says that it shall never be abrogated. The present right to recover in such cases is purely a statutory right, and the purpose of this part of the amendment is to make it a constitutional right, and take away from the Legislature any right ever to abrogate it. The next part of the section, and the concluding clause, is to do away with the ridiculous present prohibition of a recovery beyond the sum of $5,000 in death cases. The mere statement of this proposition, and the additional statement of the favor with which it met in Committee of the Whole, receiving 104 votes in a light House, against twenty opposed to it, would seem to me to be all that was necessary to attract the attention of delegates to the fact that such a proposition is before the Convention, seems all that is necessary to get for it the eighty-three affirmative votes that are needed to carry it.

Mr. Johnson — Mr. President, with the proposition contained in the first clause of this section, I am in full and hearty sympathy. I can but believe, sir, that the second section, as it stands, is pregnant with danger. It is not often, the liability being limited to the pecuniary loss of the next of kin, that the damage will go above $5,000. I think it is very rare that it will go above $10,000. I would be quite willing to vote for a limitation of $10,000. I think it would not be in but one out of one hundred or more cases that the liability, at the limit now fixed, would be overrun. But this is the situation, fellow-delegates, that every time there is an accident, the menace, the fear, is, according to what may be stated, in the complaint. As I say, I would be quite willing to vote for a ten thousand limitation if that were suggested by the friends of the measure, but my theory is that there shall be no limitation whatever that will defeat the small manufacturer, the small employer, from going into business. I may say here, sir, that I do not now, and never have, represented a transportation company such as would be liable for these accidents. I know that it is supposed that this reaches railroad companies, but it reaches much farther. It reaches every man that employs another in any capacity whatever. I suggest that the friends of the measure may, perhaps, be satisfied if the liability can be fixed in the Constitution, and a limit that would

be satisfactory, as large as they would expect to recover, but which would not be a menace beyond that amount, might be put in.

Mr. J. I. Green — Mr. President, I ask that the doors of the House be closed and that the Sergeant-at-Arms compel members to take their seats and vote.

The President — The Sergeant-at-Arms will notify members that a vote is about to be taken.

The Secretary read the proposed amendment, in the language following:

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

"Article 1 of the Constitution is hereby amended by inserting the following as a new section:

"Sec. 19. The right of action now existing to recover damages for injuries resulting in death shall never be abrogated; and the amount recoverable shall not be subject to any statutory limitation."

The President — The final vote will now be taken on this amendment.

The President put the question on the final passage of the proposed amendment, and the Secretary proceeded to call the roll.

Mr. Abbott — Mr. President, I am opposed to this proposition from the fact that it is legislation, as I look upon it, pure and simple, and is altogether too sweeping in its results. It applies not only to corporations, against whom many attacks have been made here, but it applies also to the poor farmer, who may happen to have a defective barn door, or to the small manufacturer, and to all classes of inhabitants of this State. I am, therefore, opposed to it as being too sweeping, and I vote no.

Mr. Becker — Mr. President, I voted for this amendment when it was before the Convention formerly. Since then I have given it very careful consideration. I have conversed with a great many manufacturers, contractors, persons engaged in business, not having a large amount of capital invested, but still having sufficient business to make it necessary for them to procure accident insurance. They all are very much opposed to taking off this limitation. I tried to convince them, as I do believe, that courts and juries would regulate the question, but it seems impossible to make them believe it. They are all afraid that it is going to injure them very seriously in their business relations. Some of them say that now, with the limitation, they know about what amount of damage to expect in the course of a given period, and can make preparations to meet it, just

as they would any other law. I must confess that the extreme trepidation that these people feel in regard to this matter has somewhat changed my belief about it. I think it is a matter that the Legislature, perhaps, could regulate better than this Convention. For that reason, and believing that it is better to do what one believes to be right, although it may not be in accordance with his former action, I deem it my duty to vote no.

Mr. Bigelow — Mr. President, I regard this amendment as an expression on the part of the Convention of distrust of the people and of their representatives, and, as has been remarked by the gentleman from Erie (Mr. Becker), the Legislature is, in my opinion, probably better qualified to judge of a question of this sort than this Convention is, with the very limited consideration it could give to the subject. I, therefore, vote no.

Mr. E. A. Brown — Mr. President, I desire to explain my vote. This amendment reads as follows: "The right of action now existing to recover damages for injuries resulting in death shall never be abrogated; and the amount recoverable shall not be subject to any statutory limitation." In relation to this, it is our province to leave something to the courts of the State and the judges of those courts, before whom the facts of each case are brought, and to the juries before whom all negligence actions are tried. It is a matter peculiarly within the province of those courts and those juries to pass upon. We should not seek to tie up the juries, which are the great bulwark of the liberties of the people of this State, and the judges of our courts, by taking away the statutory limitation now existing. As I understand it, at common law no sum whatever was recoverable for injuries resulting in death. That, by legislative provision, has been changed, and a cause of action has been given, and the limit for such injuries has been fixed at the sum of $5,000. This has continued for many years in this State. If it is removed, no individual engaged in a manufacturing business, no small corporation, whether a railroad or a manufacturing corporation, can exist, if they are left at the mercy of juries in cases of this kind. Therefore, I believe it is in the interest of the people of this State, and will prevent lumbering up the courts with a great number of appeals, and, so believing, I vote no.

Mr. Countryman — Mr. President, I do not understand what is meant when it is said that this provision, if it should be adopted and become a part of the Constitution, would tie up the judges of the courts. I do not understand that it affects in any manner the relations of the judges or the juries to any controversy growing out of

an action where this limitation, or the old limitation, would apply, except that it enables them, as in all other cases which are brought in courts of justice, to administer justice, and justice alone, equally between the parties. If a man is injured, and he survives, there is no limitation to the amount of damages which he can recover. If he dies, there is no more reason why there should be a limitation than in the other case; and there is no more danger to corporations or individuals who may be held liable in the courts of justice in one case than there is in the other. The courts, as in all other cases, have the right, and it is their duty, to set aside verdicts which are excessive in amount. They are to be just, fair, honest verdicts, and if they are excessive the courts must exercise their jurisdiction in this case, as in all others. There is no danger, therefore, whatever in removing this limitation, and every principle of right and justice requires that it should be removed, or that the right of the action should be entirely obliterated. I, therefore, vote aye.

Mr. Dickey — Mr. President, I desire briefly to explain my vote in answer to what has been said. There is no use in looking to the Legislature for relief in this matter, because, as has already been stated, it has allowed it to remain as it is for fifty years without any change in the limitation of $5,000, and, in fact, has never been able to get out of a committee of the Legislature such a measure, to say nothing of having a hearing before the Legislature. And this cry about small corporations is a scare-crow. The present amount of $5,000, permitting that recovery in death cases, is as much as a small corporation can ever stand anyway, and they are not ruined by that, nor is there any greater danger if the five thousand limitation is taken away. That is a covert excuse that some members, it seems to me, have for some other reason that they do not give for voting against this proposed amendment. I vote aye.

Mr. Francis — For reasons heretofore quite fully set forth by myself, and believing this to be a suitable matter for legislation, and that there it should remain, I give my vote in the negative.

Mr. Goodelle — Mr. President, I cannot favor this proposition in the broad terms in which it is drawn; and I desire to say in answer to my friend, Mr. Dickey, that he hardly could have meant what he said in stating that the limitation of $5,000 had not been changed for fifty years. It has only been two years since any person, or the heirs of a deceased, have been able to recover anything for damages occasioned by death. It is a law, therefore, which the Legislature has established, and it seems to me entirely safe to leave it to that Legislature to carry out the provisions of the law

which they have created themselves; and except they had created it, it would have been impossible for any recovery whatever to be had. The idea is often suggested, why not leave it to a jury to say? Well, it requires no argument among lawyers to understand that in cases of this character it is extremely difficult to make juries comprehend, when they are drawn on a case, especially in the country, the difference between the two classes of cases in which a man has been injured, and, perhaps, cases in which his damage consists in his being compelled to drag through a long life of forty or fifty years of constant suffering; where that may be the great foundation or basis for his damages, and a case of this character, in which the claim is based upon no such principle, but is purely and squarely based upon the question as to what the heirs of the deceased have suffered by his loss. I say, therefore, it is extremely difficult to make a jury understand, or, if they understand, to carry out the principle that where a man recovers, perhaps, $6,000 or $7,000 for injuries, a man that has been killed, his friends or relatives should be limited to $5,000. And another thing. As has been suggested, it seems to me striking at very small manufacturers, as well as every physician who is practicing in our State, and is subject to an action for malpractice, in rendering them liable to the caprice of a jury to any extent that they may see fit to go. I cannot, Mr. President, as broad as this amendment is, give it my support. If it were confined to the great wealthy corporations, or to railroads, as some one has suggested, it might be evening up matters. I might, perhaps, in that case, so far as the principle is concerned, look at it differently from what I do now, and I could support it under those circumstances much more readily than I can support this proposition. But, inasmuch as it applies to every single individual, public and private, to every farmer and every individual through whose alleged negligence death may occur, it seems to me to be a measure that ought not to be adopted by this Convention. I, therefore, am constrained to vote no.

Mr. A. H. Green — Mr. President, I would like to inquire of the gentleman who so feelingly took the poor farmer, with his barn door, in hand, what particular distinction there is between the two cases. Suppose that rickety barn door injured that man. There is no limitation in that case; and there is just as much reason why there should be an absence of limitation in the event of that man being killed, considerably more so. What is the distinction? I do not see any. I do not see any propriety in this limitation. I vote aye.

Mr. Kellogg — Mr. President, notwithstanding the poor farmer, the poor this thing, that thing and the other thing, that have been so feelingly spoken of by various gentlemen in explaining their votes, I have heard this one amendment more favorably spoken of by all classes of people than any other amendment before this Convention. I vote aye.

Mr. Lauterbach — Mr. President, I desire to explain my vote. If $5,000 was an adequate compensation in 1848, when this statute was passed, $5,000 is not an adequate compensation for the same state of facts in 1894, when the value of a dollar is probably one-third less than it was at the time when the statute was originally enacted. Recognizing that fact, repeated applications have been made to the Legislature to increase the limitation from $5,000 to a higher sum. The efforts of corporations have been successful in preventing that from being done. I always have thought it a mistaken and an unfair policy to pursue, and if now all limitation is taken off I think that it will be a fair retaliation. But there is no injury, in my opinion, if the limitation be absolutely removed. I think the judges can be trusted, if juries cannot be trusted, to limit the amount of damages to be recovered to an amount that will not be excessive, and there is nothing in the statute that prevents the reduction of an excessive verdict to an amount that shall be reasonable and just. There is another reason why I should vote for this proposition. I understand that the friends of labor, the laboring men represented in this Convention, and laboring conventions, have asked of this Convention that some justice be accorded them, and that some ear be given to their earnest appeals. This is one of the most meritorious applications that has been made on their behalf. I do not believe in licensing boycotting; I do not believe in making an innocent employer who has furnished the best methods for the performance of work and engaged the best skilled labor to perform it, liable for the acts of a co-employe, but I do believe that the unfortunates who are the survivors of one who has died as the result of carelessness over which he had no control, and it is only in those cases that a recovery can be had, shall be left to the fair judgment and the determination of a jury and of a judge in deciding what amount shall be recovered. Under all these circumstances, with other suggestions that might be made influencing me, I vote aye.

Mr. Lincoln — Mr. President, I took pains to make an examination of a few records for the purpose of getting at some facts in relation to this matter. I intended to give it some attention when

the question was in Committee of the Whole, but I was called out at that time and did not take part in the debate. I find that a good many people in the State of New York die every year from accident or violence. The number recorded by the Bureau of Vital Statistics for 1893, who came to their death in that manner, was 5,295. How many of those deaths occurred under circumstances which might have given rise to a cause of action does not appear, because the department has no statistics upon that subject. I find by the report of the Railroad Commissioners that for the year ending June 30, 1893, 742 persons were killed or came to their death by means of railroad accidents in some way or other, and that during that same time only thirty passengers on trains were killed, and, as reported by the Railroad Commission, only ten of those were killed under circumstances which might have entitled their survivors or administrators to maintain a cause of action. The report further says that 306 employes of the railroads were killed during that same period, and 1,602 were injured. Now, the report of the Factory Inspector shows that the reports from the factories and manufactories during the year contain a statement of deaths numbering, I believe, forty-six, among the various manufacturing concerns throughout the State that made reports during the last year. Now, I do not suppose that very many of these cases that I have referred to out of this large number were of such a character as to enable their survivors, or their executors or administrators, to maintain an action. But, as has been suggested, it is quite difficult to state any substantial difference in theory, or in principle, between an action brought under the statute as now framed, and an action brought for personal injuries to the plaintiff himself. A great many people, clients of mine, have asked me why that limitation was placed in the statute, and what the reason of it was; and I confess that I have had great difficulty in explaining to them why any limitation was ever placed upon the right of action in cases of this sort. The English statute contains no limitation. I do not think there are very many cases on record of verdicts in which the amount received in case of death reached $5,000. These cases are very rare, probably, as a matter of fact, but as a matter of principle it seems to me that we can afford now by constitutional provision to remove this limitation, and for that reason I vote aye.

Mr. Maybee — Mr. President, this amendment has been approved by the New York Times, the Tribune, the Sun, the World, all the great metropolitan newspapers. It will be a popular measure. It is a measure in the interests of the people as against the corporations. It makes the law consistent. There is no reason in con-

sistency or in common sense why a limitation should be placed upon this cause of action any more than on any other class of actions. The recovery ought to be left in this class of cases to the sound discretion of the courts and juries just as in all other cases. The gentleman from Herkimer (Mr. Brown) has objected to tying up courts and juries. That is exactly what is done by the present legislative limitation. This provision removes the fetters, takes away the fetters that bind courts and juries now in the allowance of damages in this class of actions. If a jury returns an excessive verdict, the court may set it aside under well-known rules of law that govern trials, and there is no injustice which can be compassed or brought about by this proposed constitutional provision if adopted. I vote aye.

Mr. McKinstry — I regard this as a rich man's law. I can see in it great opportunities for great fees, great lawyers, and great verdicts for rich families. I believe that poor families will get less money than they do now. The result will be that to the family that hath much, much shall be given; and to the family that hath little, they will hire a second-rate lawyer, and he probably will take away what little they have. It renders hazardous all investments in machinery and in all transportation facilities for passengers. We have a little railroad in Chautauqua county, twenty-five miles long. If it should happen to kill the President of this Convention the company would have to hand over the whole railroad to his family — track, locomotives, cars and depots, and the family might take them all down to New York. If some other man was killed at the same time, his family would get only a few snow-shovels and wheelbarrows. Now, sir, one man's life is as dear to him as another's is to him. I believe the penalty for its destruction should be the same, and only regulated by the degree of culpability of the employer or corporation that caused the death, as the penalties for murder are varied according to the verdict of first degree, second degree or manslaughter. That is the way, in my estimation, in which these verdicts should be regulated, and, therefore, for these reasons, and the reasons I have given before this Convention on a previous occasion, I shall vote no.

Mr. Mereness — When this matter was up in Committee of the Whole I voted against an overwhelming storm of ayes against the proposition, but it seems to-day we are to have rather more company than we did then, though whether or not a sufficient number I am yet unable to say. Since the former vote I have looked into the matter a little, and I would like to cite an additional reason or

two to those I gave then for my voting against this proposition. It has been held by the Court of Appeals that " the cause of action in a case of this kind is the wrongful act, and the pecuniary injuries resulting afford simply a rule to determine the measure of damages. However much the husband, widow, or next of kin may suffer pecuniarily by the act causing death, it constitutes no cause of action, independent of evidence that it was occasioned by the negligence or wrongful conduct of another. Proof that it occurred in consequence of the contributory negligence of the deceased person, or without the fault of the defendant, furnishes a perfect answer to such an action, and a conclusive reason why the death produced by the wrongful act is the cause of action.

The cause of action thereby given is not to the estate of the deceased person, but to his or her representatives, as trustees, not for the purpose of general administration, but for the exclusive use of justified beneficiaries. The wrong defined indicates no injury to the estate of the person killed, and cannot, either logically or legally, be said to affect any property rights of such person, unless it can be maintained that a person has a property right in his own existence. The property right, therefore, created by this statute, is one existing in favor of the beneficiaries of a recovery only, and depends for its existence on the death of the party injured. It had no previous life, and cannot be said to have been injured by the very act which creates it.

Another suggestion, that the death of the wrongdoer wipes out the cause of action, and the subsequent marriage of the widow of the person killed is no bar to a recovery; and thus it may produce another anomaly. There has been one produced now, as has been referred to by several gentlemen. But if this gets into the Constitution of the State we will have one article of the Constitution providing that the common law, as it existed in 1877, shall continue to be the law of this State, except that it is modified by statute, with another provision of the Constitution effectually contradicting that article. For these reasons, in addition to those which I have stated before, I vote no.

Mr. W. H. Steele — Mr. President, I desire to explain my vote a little more fully than I did when the matter was under consideration in Committee of the Whole. Since that time I have come more strongly to the belief that this proposition is uncalled for and unwise. Not having a dollar of interest in any corporation in this State, large or small, directly or indirectly, I believe I have a perfect right to express my views without being accused of sympathy with any corporate interests. I would like to ask the lawyers of this

Convention why it happens that so many of these judgments are below $5,000. Any man who knows the ordinary way of arriving at a verdict by a jury, knows full well that it is on account of the difference of opinion among the jurors. Five thousand dollars is the highest sum to which any member of a jury can go. Another member of a jury may be in favor of no cause of action. It is invariably settled by a compromise. Now, if the limit is entirely taken away, one member of the jury may be in favor of $50,000. Influenced by the pleas of some great lawyer, who has the power of touching the tender spot in the hearts of juries, some juror might be in favor of a hundred thousand dollars, while another might favor a small verdict or "no cause of action." All these matters are disposed of in the jury-room by a compromise, and often an unjust compromise, and I believe that while the rich corporations of this State are amply able to protect themselves, the small corporation or the individual often is not. We know perfectly well that the corporation invariably takes care of itself. The people pay back every dollar that they force from the corporations of this State. As an example of that fact, look at the insurance companies doing business in this State. Because fires have been more extensive during the past few years, because they have suffered more than formerly, what have they done within the last three years? They have increased the rates all over this State from thirty-three and one-third to fifty per cent, and the poor man has to stand it equally with the rich man. I believe the principle upon which this amendment is based is wrong. If it is intended to strike only the great corporations, why were not the great corporations exclusively named in this amendment? Why this broad and sweeping proposition that may wrongfully change the earnings of the rich man, or of the man who has obtained a small capital for his business and the support of his family — change these earnings, by the verdict of a biased jury, into the hands of another family, and, perhaps, render his own paupers? I vote no.

Mr. Woodward — Mr. President, I wish to explain my vote. I have reflected somewhat upon this question, because I was a little in doubt whether I would vote for this proposition or not. But I have concluded, on the whole, I shall vote aye, and I wish to give my reasons for it. In the first place, if a man's family, any of them, are injured, if he is injured himself, or his wife or children, he is allowed to sue and recover every dollar of damages that he has suffered, and the jury are to assess it. Why should not his family, in case he is killed — the man that takes care of them, and supports the wife and children — why should they not recover the full dam-

age that they have suffered, as well as when a member of his family is killed? Now, if you look at the decisions of the Court of Appeals, and of the courts generally, you will find that if a man is guilty of the slightest negligence, no matter if the corporation is guilty of the main negligence, still he cannot recover. He must show that his skirts are clear, and that he is not guilty of the slightest negligence. If he is, he cannot recover. And it is so with reference to a man's family when they bring an action. They must show that when he was killed he was not guilty of the slightest negligence. It is affirmative proof that they have to make. It is not sufficient to prove that the corporation was guilty of negligence. The courts have decided very strongly and gone very far in looking with favor on the corporations. The rule should be that if the corporation is guilty of the main negligence, even though the plaintiff may have been guilty of very slight negligence, that he should still recover; while at present he cannot recover unless he proves that he is not guilty of any negligence. It is so when a family have lost the husband and protector of that family. Now, why should not they recover the full value of his life? Here is a man; perhaps he has half a dozen small children and a wife, and is earning their support; perhaps is able to furnish them many of the luxuries of life. All at once he is killed by the absolute negligence of a corporation. Why should they not recover the full value of his life? Why should they be reduced to only a part of the damages that they have suffered? Why should they not be entitled to recover the full damage that they have suffered? I can see no reason why they should not, and for that reason I vote aye. (Applause.)

The President — In explanation of my vote, I desire to say that I look upon this amendment as a mere piece of legislation which ought not to have a place in this or any other Constitution. Of course, the limit of $5,000 ought to be raised, but it ought to be raised by the Legislature. Certainly it ought not to be put in such a position that if, upon removing the limit back, as seems to be the wish of the Convention, it should be found to work more harm than good, more wrong than right to the State, the Legislature should be forever restrained from restoring a reasonable limit. This is a purely artificial cause of action, not founded in reason, not founded in right, but simply the creature of legislative action, and, in my judgment, ought to be always subject to the control of the State which created it. I, therefore, vote no.

Mr. Cornwell — Mr. President, I desire to state the reasons for my vote upon this question. I am obliged to confess that I have

been puzzled more over this proposed amendment as to what was the right thing to do, than upon any other proposition that has come before this Convention. The law, as it stands, in regard to this matter, which has been in practical operation for more than forty years, has, beyond question, been a benefit to all parties concerned, and whether it would be a good thing to strike out the limitation of $5,000 as the maximum sum to be paid for accidents causing the death of the parties injured, is a question which may well be considered in all its bearings, and should be handled with great care, as it affects every industry in the State where machinery is used.

I certainly would not wish to do an injustice by my vote on this or any other question. When we consider the interests involved, affecting as they do, not the railroads alone, but every town in the State that has a bridge to build and keep in proper repair; every farmer or business man that is obliged to use machinery in the conduct of his business; every mill, every factory, every printing office, every business in the city, town or country that uses steam or any other power in carrying on such business, we may well pause and reflect upon the consequences of removing this limitation. It seems to me we can well afford to be conservative in our action, if it might be possible, that by the striking down this barrier, the limit as to damage, we might thereby endanger the business interests of the State. The more I consider the matter, the more I am convinced we had better let well enough alone, resting content with the provisions of the law as it stands. Mr. President, I vote no.

Mr. Goeller — Mr. President, I desire to explain my vote. In spite of what I may say before I get through, I think the Legislature long ago should have raised the $5,000 limitation. I voted aye when the subject came up at a previous session and upon a former consideration by this Constitutional Convention of this amendment, so grave in its consequences, and have since considered and given it many moments of my best judgment, and must say that while it is said here that many persons of our community commend it with enthusiasm, an untold number of men of reflection and large business experience, rich and poor men conversant with the affairs of the world, educated in questions of losses by negligence, how happening, how to be prevented, thoroughly familiar with its bearings, and who can intelligently debate on wrongs, crimes, damages and losses, and they strongly oppose putting into the Constitution such business as this. I explain this, my vote, simply upon the ground that I have changed from views entertained by me upon a former

occasion and have changed views on the question upon reflection and consultation with some of my intelligent fellow-men, viewing it now by lights cast upon this subject by mature reflection. I have nothing to gain by voting either way, and in conclusion will say, that one argument will always prevail with me, that the Legislature is created for the enactment of laws upon this subject and matters should be left there. If we fail to place the same in the Constitution, it is not an arbitrary ending of agitation or promotion of the subject. Relief can be had in the Legislature. For these reasons, Mr. President, I vote no.

The roll-call being completed, the amendment to article 1, as to damages for loss of life, was adopted by the following vote:

Ayes — Messrs. Acker, Ackerly, Allaben, Arnold, Baker, Banks, Barhite, Blake, Bowers, Brown, E. R., Burr, Cady, Campbell, Carter, Chipp, Jr., Clark, G. W., Cochran, Coleman, Cookinham, Countryman, Crosby, Davenport, Davis, Deady, Dean, Deterling, Dickey, Durfee, Emmet, Faber, Farrell, Floyd, Forbes, Frank, Andrew, Fraser, Fuller, C. A., Gibney, Giegerich, Gilbert, Gilleran, Green, A. H., Green, J. I., Hedges, Hill, Hirschberg, Holls, Hottenroth, Jenks, Johnson, I. Sam, Kellogg, Kimmey, Kinkle, Kurth, Lauterbach, Lewis, M. E., Lincoln, Manley, Marks, Marshall, Maybee, McArthur, McClure, McDonough, McIntyre, McLaughlin, C. B., Meyenborg, Moore, Morton, Nichols, Nicoll, Nostrand, O'Brien, Ohmeis, Osborn, Parkhurst, Pashley, Phipps, Platzek, Porter, Powell, Pratt, Putnam, Redman, Roche, Rogers, Root, Rowley, Sandford, Smith, Spencer, Springweiler, Steele, A. B., Storm, Sullivan, T. A., Tekulsky, Titus, Towns, Truax, C. H., Tucker, Turner, Vedder, Veeder, Vogt, Wellington, Whitmyer, Wiggins, Williams, Woodward — 107.

Noes — Messrs. Abbott, Barnum, Barrow, Becker, Bigelow, Brown, E. A., Cassidy, Church, Clark, H. A., Cornwell, Danforth, Davies, Foote, Francis, Frank, Augustus, Fuller, O. A., Galinger, Goeller, Goodelle, Hamlin, Hawley, Holcomb, Hotchkiss, Johnson, J., Lester, Lewis, C. H., Lyon, Mantanye, McCurdy, McKinstry, McMillan, Mereness, Parker, Parmenter, Peck, Pool, Schumaker, Steele, W. H., Tibbetts, President — 40.

The President — The next matter is the third reading of general order No. 16. The Secretary will read the title. The amendment was introduced by Mr. Vedder.

The Secretary read the title of the amendment as follows (O., I. No. 216, P. Nos. 218-382):

"' Proposed constitutional amendment to amend section 10 of article 3 of the Constitution."

The President — That is now open to debate. Are there any delegates who desire to be heard? No delegates desiring to be heard, debate is closed, and the Secretary will make the third reading of the bill.

The Secretary read as follows:

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

"Section 10 of article 3 of the Constitution is hereby amended so as to read as follows:

"Sec. 10. A majority of each House shall constitute a quorum to do business. Each House shall determine the rules of its own proceedings, and be judge of the elections, returns and qualifications of its own members; shall choose its own officers, and the Senate shall choose a temporary president to preside in the absence or impeachment of the Lieutenant-Governor, or when he shall refuse to act as president, or shall act as Governor."

The question being upon the final passage of this amendment, the Secretary proceeded to call the roll.

Mr. Bush — Mr. President, I desire to explain my vote. I am opposed to the change provided for by this article of the Constitution, for the reason that it permits the majority in the Senate, at any time, to depose the Lieutenant-Governor when, in the opinion of the majority, he declines to act. I think that absolutely degrades and sets aside the Lieutenant-Governor, an officer elected by the people of the State, and for that reason I am opposed to it, and vote no.

Mr. Countryman — Mr. President, I am paired on this question with Mr. Cochran, who would vote against it. I am for it.

Mr. Smith — Mr. President, I wish to explain my vote. When I entered the Convention I resolved to act upon principle (applause), as far as it was in my power to see the principle. I think this amendment is animated by a spirit of the orderly conduct of business in an orderly way, and is consistent, and I vote aye.

The roll-call being concluded, the amendment to section 10 of article 3 of the Constitution was adopted by the following vote:

Ayes — Messrs. Abbott, Acker, Ackerly, Allaben, Arnold, Baker, Banks, Barhite, Barnum, Barrow, Becker, Brown, E. A., Brown, E. R., Burr, Cady, Carter, Church, Clark, H. A., Coleman, Cornwell, Davies, Davis, Deady, Dean, Deterling, Dickey, Durfee,

Emmet, Faber, Floyd, Foote, Francis, Frank, Andrew, Frank, Augustus, Fraser, Fuller, C. A., Fuller, O. A., Galinger, Gibney, Gilbert, Goeller, Goodelle, Green, A. H., Green, J. I., Hamlin, Hawley, Hecker, Hedges, Hill, Hirschberg, Holls, Jenks, Johnson, I. Sam, Johnson, J., Johnston, Kellogg, Kinkel, Lauterbach, Lester, Lewis, C. H., Lewis, M. E., Lincoln, Lyon, Manley, Mantanye, Marshall, Maybee, McArthur, McDonough, McIntyre, McKinstry, McLaughlin, C. B., McMillan, Mereness, Moore, Morton, Nichols, Nicoll, Nostrand, O'Brien, Osborn, Parker, Parkhurst, Pashley, Phipps, Platzek, Pool, Porter, Powell, Pratt, Putnam, Redman, Roche, Rogers, Root, Rowley, Sandford, Schumaker, Smith, Spencer, Springweiler, Steele, A. B., Steele, W. H., Storm, Sullivan, T. A., Tekulsky, Tibbetts, Turner, Vedder, Vogt, Wellington, Whitmyer, Wiggins, Woodward, President — 115.

Noes — Messrs. Blake, Bowers, Bush, Campbell, Chipp, Jr., Danforth, Davenport, Deyo, Farrell, Forbes, Giegerich, Gilleran, Holcomb, Hotchkiss, Kerwin, Kimmey, Kurth, Marks, McClure, McCurdy, Meyenborg, Ohmeis, Parmenter, Peck, Sullivan, W., Titus, Tucker, Veeder, Williams — 30.

Mr. Marshall — Mr. President, I move that this session be continued until six o'clock.

The President put the motion of Mr. Marshall to continue the session until six o'clock, and it was decided in the affirmative.

The President — The next amendment is No. 6, general order No. 31, introduced by Mr. O'Brien. The Secretary will read the title.

The Secretary read the title of the proposed amendment as follows (O., I. No. 119, P. No. 119-399):

"Proposed constitutional amendment to amend section 3 of article 2 of the Constitution, as to the suffrage."

The President — It is now open to debate. Does any delegate desire to be heard? No delegate desiring to be heard, debate is closed, and the Secretary will read the amendment the third time.

The Secretary then read the proposed amendment as follows:

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

"Section 3 of article 2 of the Constitution is hereby amended so as to read as follows:

"Section 3. For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or

absence while employed in the service of the United States; nor while engaged in the navigation of the waters of this State, or of the United States, or of the high seas; nor while a student of any seminary of learning; nor while kept at any alms-house or other asylum or institution, wholly or partly supported at public expense or by charity; nor while confined in any public prison."

The President — The final vote will now be taken on this amendment.

The Secretary then proceeded to call the roll on the proposed constitutional amendment to amend section 3 of article 2 of the Constitution, as to the suffrage.

Mr. Jenks— Mr. President, as I understand this amendment, it deprives the inmates of the Soldiers' Home from voting. The Court of Appeals has decided that inmates of the Soldiers' Home, honorably discharged veterans of the late war, the inmates of the home at Bath, were really the inhabitants or the inmates of a charitable institution, and, as I understand this present amendment, this, in positive terms, takes away from the discharged soldiers and sailors of the late war all power to cast a vote. I introduced an amendment which was referred to the Committee on Suffrage, trying to give to the men who saved the Union the right to vote for it and for its officers. This takes away the right of franchise, that the men who saved the country by their bayonets cannot help to sustain it by their ballots. I withdraw my request to be excused, and vote no.

Mr. Lester — Mr. President, I want to explain my vote. This proposed amendment does nothing such as was stated by the gentleman who took his seat a few moments ago. It simply provides that a citizen in this State shall not lose his residence by his removal therefrom to an institution supported wholly or in part by charity. It leaves him his residence, to which he is always at liberty to return and cast his vote. It prevents, however, the accumulation of a large vote in a charitable institution in a neighborhood where such vote overwhelms the votes of those who reside in the vicinity, who are responsible for the management of the affairs and who are interested in the success of the community. It prevents those charged with the duty of guiding the affairs of the community from being overwhelmed by a vote gathered from all parts of the State and brought within the limits of a charitable institution which does not participate in the burdens of the community in any way whatever, and for that reason, sir, I vote aye.

Mr. Nichols — Mr. President, I desire to be excused from

voting and will briefly explain my reasons. The effect of this amendment is no more nor less than putting into the Constitution what the Court of Appeals have declared to be the proper construction to be given to the present Constitution relating to the right of the soldiers in the home to vote. I took the liberty of introducing into this body a proper system which it seemed to me would enable the Legislature to give to the soldiers special privileges in regard to the transmission of their votes to their respective residences. That proposition was not reported favorably, so that it is not here for consideration. It seems to me, however, that this in no way affects the status of the soldiers in the home at Bath. They can return to their homes as they have done heretofore, and their residence may be retained there where their interests are and where their families dwell. For these reasons, and because I believe that it does not affect the soldier injuriously, and if the proposition did not prevail, and the proposition were not established as we now have it under the Constitution, it would be a very serious matter to the residents of the district wherein the home is situated. I do not believe, sir, that either of the great political parties desires that the soldiers should cast their votes where the home is located, and for that reason and because I believe it to be beneficial to every one interested in the soldiers as well as to the soldiers themselves, I vote aye.

Mr. Smith — Mr. President, at first I was under the impression that this amendment was correct, or, at least, that it was not fraught with any danger; but upon further inquiry and reflection, I fear that it might deprive soldiers who have no homes, except in the charitable institutions where they may be living, of the right to cast their votes. Now, it was the policy of the whole country during the war to let soldiers engaged in the actual service of the country vote, and commissions were appointed to go to the field of battle and collect their votes. These men fought the battles of the country and when the war was ended many of them returned, but had no homes save these charitable institutions. You could not say that they have their homes in the places where they formerly lived, because they have none, and if they are not allowed to vote where they are maintained by charity, they would be deprived of their right to vote. The men to whom we are under the greatest obligation are these very men. I, therefore, fearing that this would deprive them of the most sacred of rights, the right to vote, vote no.

Vice-President Steele here took the chair.

Mr. Veeder — Mr. President, I desire to explain my vote. The

new matters in this proposition are the words "or institution wholly or partly supported at public expense or by charity." In addition to the criticisms made by the honorable gentleman from Kings and the honorable gentleman from New York, I desire to call the attention of the Convention to the fact that you are striking a blow at the helpless old men of this State, of which I am one of the number. Sir, we have, throughout the State, a charity which is one of the noblest in the country — the old man's home. There is one in Albany. There are institutions of that kind in our county, and in almost every county, and you require here that any poor old man, whatever service he may have been to the State or to the nation, who is decrepit and old and unable to go to his last residence, or who may have been committed or gone to an institution — he is not committed at all — who is taken into this institution shall not have any residence there at all. Nowhere can he claim his residence, for the unfortunate being has none. You put in the miserable word "kept"— kept in a home of charity. It is an inelegant expression in the Constitution of the State. Why, it is an absurdity, and I vote no.

Mr. Dean — Mr. President, I believe that a man who has faithfully discharged his duties as a citizen and who may find in his old age that he is obliged to become the subject of public charity is as much entitled to his vote under any circumstances as an old soldier or any other individual. As this looks to me like an effort to discriminate against people who are unfortunate in any respect, I, therefore, vote no.

The question being on the proposed constitutional amendment to amend section 3 of article 2 of the Constitution as to suffrage and the roll-call being concluded, the proposed amendment was adopted by the following vote:

Ayes — Messrs. Abbott, Acker, Ackerly, Allaben, Arnold, Baker, Barhite, Barnum, Barrow, Becker, Brown, E. A., Brown, E. R., Cady, Carter, Cassidy, Church, Clark, G. W., Clark, H. A., Coleman, Cornwell, Countryman, Crosby, Davies, Davis, Deterling, Dickey, Durfee, Faber, Floyd, Foote, Forbes, Francis, Frank, Andrew, Frank, Augustus, Fraser, Fuller, C. A., Fuller, O. A., Galinger, Gibney, Gilbert, Goodelle, Hamlin, Hawley, Hecker, Hedges, Hill, Hirschberg, Holls, Johnson, J., Kellogg, Kinkel, Kurth, Lauterbach, Lester, Lewis, C. H., Lewis, M. E., Lincoln, Lyon, Manley, Mantanye, Marshall, McDonough, McIntyre, McKinstry, McLaughlin, C. B., McMillan, Mereness, Moore, Morton, Nichols, Nostrand, O'Brien, Parker, Parkhurst,

Pashley, Phipps, Pool, Porter, Powell, Pratt, Putnam, Redman, Root, Spencer, Springweiler, Steele, A. B., Steele, W. H., Storm, Sullivan, T. A., Turner, Vedder, Vogt, Wellington, Wiggins, Woodward, President — 98.

Noes — Messrs. Banks, Blake, Bowers, Burr, Bush, Chipp, Jr., Cochran, Danforth, Davenport, Deady, Dean, Deyo, Emmet, Farrell, Giegerich, Gilleran, Goeller, Green, A. H., Green, J. I., Hottenroth, Jenks, Johnson, I. Sam, Kerwin, Kimmey, Marks, Maybee, McArthur, McClure, McCurdy, Meyenborg, Nicoll, Ohmeis, Parmenter, Peck, Platzek, Roche, Rogers, Rowley, Sandford, Schumaker, Smith, Speer, Sullivan, W., Tekulsky, Tibbetts, Titus, Towns, Truax, C. H., Tucker, Veeder, Whitmyer, Williams — 53.

The President *pro tempore* — The next amendment is No. 7 (O., I. No. 9), general order No. 6. By the rules of this Convention one hour is given for debate.

Mr. Goodelle — Mr. Alvord, the introducer of this proposition, being absent, I desire simply to call the attention of this body to it. The Convention will remember it refers to the question of the Salt Springs at Syracuse. The matter was before the Convention and received considerable attention, and I believe in the form in which it now exists. When it passed the Committee of the Whole, it received an almost unanimous approval at the hands of the Convention. It simply abrogates that section which provides that the Legislature shall never sell or dispose of the Salt Springs belonging to the State, and it leaves the matter entirely in the hands of the Legislature to do as they see fit in reference to it.

The President *pro tempore* — The Secretary will read the title of the amendment.

The Secretary then read the title as follows (O., I. No. 9):

"Proposed constitutional amendment to amend section 7 of article 7 of the Constitution, entitled 'Salt Springs.'"

The President *pro tempore* — Does any member of the Convention desire to debate the proposition?

Mr. Dean — Mr. President, I suppose it is absolutely useless for any one to stand up in this Convention and oppose the passage of this proposed amendment. I am, however, convinced that it is simply a continuation of an effort which has been made on the part of certain gentlemen in this State during the past fifteen years, systematically to grab whatever public property the State of New York owns. Ever since 1882, at the time the Genesee canal, in this State, was practically stolen, having been sold for the sum of

$500, there has been an effort upon the part of certain gentlemen in this State to control the lands and the politics of the city of Syracuse, a ring which is made up of gentlemen who have made their fortunes out of the bounties of the State; has been juggled for the express purpose of getting this salt land into a position where it can be used for real estate purposes, rather than the manufacture of salt. I am entirely opposed to it, and I believe the State of New York is able to own its real estate. I believe that in view of the fact that the Legislature is exceedingly prodigal of the property of the State, especially of its real estate, it is unwise at this time to pass this amendment, and I shall vote against it.

The President *pro tempore* — If there is no other delegate who desires to be heard, the Secretary will read the amendment a third time.

The Secretary then read the proposed amendment as follows:

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

"Section 7 of article 7 of the present Constitution is hereby abrogated."

The President *pro tempore* — The question is upon the passage of the proposed amendment. The Secretary will call the roll.

The Secretary proceeded to call the roll.

Mr. I. S. Johnson — Mr. President, I desire to explain my vote. In voting for this proposition I do so with a great deal of hesitation; it is a choice between two evils. I think that at present there is a great political machine at Syracuse which has cost this State from $40,000 to $50,000 a year, and for that reason I think that it ought not to be so. I think that, without any restraint placed upon it, as I hope there would be, providing for the extinguishment of a supposed title, or a pretended title, upon the part of certain pretended owners of the Salt Springs, the result will be that they will stand there and simply say: "If you buy this property, unless you belong to the Salt Springs ring, you buy a lawsuit," and that the result is going to be that we are going to give away whatever property we have there, but I am inclined to believe that it is better to give it away than it is to keep it and allow it to be used as a political corruption fund, and I, therefore, voted aye.

The roll-call being concluded, the proposed amendment was adopted by the following vote:

Ayes — Messrs. Abbott, Acker, Ackerly, Allaben, Arnold, Baker, Banks, Barhite, Barnum, Barrow, Becker, Brown, E. R.,

Cady, Carter, Cassidy, Chipp, Jr., Church, Clark, G. W., Clark, H. A., Cornwell, Countryman; Crosby, Davies, Davis, Deterling, Dickey, Durfee, Faber, Floyd, Foote, Forbes, Francis, Frank, Andrew, Frank, Augustus, Fraser, Fuller, C. A., Fuller, O. A., Galinger, Goodelle, Green, A. H., Hamlin, Hawley, Hecker, Hedges, Hill, Hirschberg, Holls, Johnson, I. Sam, Johnson, J., Kellogg, Kurth, Lauterbach, Lester, Lewis, C. H., Lewis, M. E., Lincoln, Lyon, Manley, Marshall, McIntyre, McKinstry, McLaughlin, C. B., McMillan, Mereness, Nichols, Nostrand, O'Brien, Parker, Parkhurst, Pashley, Phipps, Platzek, Pool, Pratt, Putnam, Redman, Root, Rowley, Spencer, Steele, W. H., Storm, Sullivan, T. A., Tekulsky, Tibbetts, Turner, Vedder, Vogt, Wellington, Whitmyer, Wiggins, Woodward, President—91.

Noes — Messrs. Bowers, Brown, E. A., Burr, Bush, Campbell, Coleman, Davenport, Deady, Deyo, Emmet, Farrell, Gilleran, Goeller, Jenks, Kerwin, Kimmey, Marks, McArthur, Meyenborg, Moore, Morton, Ohmeis, Parmenter, Peck, Powell, Roche, Rogers, Schumaker, Speer, Springweiler, Sullivan, W., Titus, Truax, C. H., Veeder, Williams — 36.

Mr. Root — Mr. President, I ask permission to introduce a resolution which I suppose to be a matter of privilege.

The President *pro tempore* — The Secretary will read the resolution.

The Secretary then read the resolution as follows:

R. 206.— "Resolved, That the Committees on Privileges and Elections and Contingent Expenses, to whom was referred the resolution on page 493 of the Convention Journal, August 15, 1894, be and the same are hereby discharged from the further consideration thereof; and be it further

"Resolved, That the sitting delegates of the Sixth Senatorial District, Messrs. John C. Kinkel, Charles J. Kurth, Charles L. Pashley, William Deterling and J. Lott Nostrand, be and they are hereby 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 payment thereof out of the fund appropriated for the expenses of the Convention be, and it hereby is, authorized and directed."

Mr. Root — Mr. President, if I am at liberty to do so, I would like to say a word upon that resolution. It is not the fault of these gentlemen that they were not sooner permitted to take part in the deliberations of this body. It was the delay which we ourselves

caused in considering their claims to be admitted as members. They are entitled to be paid for the time during which they stood at our gates ready to perform the services which had been charged upon them by the people. I think it is time that justice, though it be tardy, was done to them, and for that reason I have introduced this resolution. It has been referred to a committee, to which reference is made, by that committee referred to a sub-committee, and I am told the sub-committee is equally divided, and has long been endeavoring to agree and is unable to agree. I understand there is no personal objection on the part of the committee or the sub-committee to the matter taking this course. I move the adoption of the resolution.

Mr. Becker — Mr. President, may I ask the gentleman a question?

Mr. Root — Certainly.

Mr. Becker — What has become of the position or status of the delegates from the Thirtieth Senatorial District in reference to the same matter?

Mr. Root — Mr. President, I have before me a similar resolution in regard to them, which I purpose to offer if the resolution which I have just proposed meets the views of this Convention.

Mr. Tekulsky — Mr. President, I desire to amend that resolution by adding that the counsel fees be paid also. As these gentlemen were not to blame, as they have been deprived of their seats and they were compelled to employ counsel to look out for their interests, I think it is the duty of this Convention to pay their counsel fees as well as their per diem.

Mr. Root — Mr. President, I hope that the gentleman from New York will not press that. That involves some other questions which ought to be considered. They do not press for it now. The amount of counsel fees certainly ought to be considered before there is any action upon it; and I hope the Convention will act upon this one question by itself of their payment for the time for which they are entitled by law to be paid.

Mr. Deady — Mr. President, can I hear that resolution read?

Mr. Tekulsky — Mr. President, I desire to withdraw my amendment.

The President *pro tempore* — The resolution will be read by the Secretary, as its reading is requested.

The Secretary then read the resolution offered by Mr. Root as follows:

"Resolved, That the Committee on Privileges and Elections and

Contingent Expenses, to whom was referred the resolution on page 493 of the Convention Journal, August 15, 1894, be and the same are hereby discharged from the further consideration thereof; and, be it further

"Resolved, That the sitting delegates of the Sixth Senatorial District, Messrs. John C. Kinkel, Charles J. Kurth, Charles L. Pashley, William Deterling and J. Lott Nostrand, be and they are hereby 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 payment thereof out of the fund appropriated for the expenses of the Convention be and it hereby is authorized and directed."

Mr. Deady — Mr. President, I was one of the sub-committee to which this question was referred. We have had several consultations and I for one am satisfied that this Convention has no right in law to pass this resolution. The delegates *de facto* from this district who were unseated received their pay up to the second day of August. This Convention has paid for the service rendered by them. The law is clear with reference to other officials, whether appointed ——

Mr. Nicoll — I rise to a point of order. If this is a resolution which gives rise to debate, must it not go over under rule 50?

The President *pro tempore* — This being a privileged resolution, it is at the option of the Convention whether they will act upon it at this time or whether they will postpone it.

Mr. Bowers — Now, Mr. President, we are satisfied to yield a good deal, but it is a very extraordinary thing to introduce a resolution here in the midst of a third reading in the middle of the afternoon, between five and six o'clock, and ask to have it passed anyhow. There is a general feeling that these gentlemen ought to be paid. It, however, is well known that there are strong legal authorities against it. The Judiciary Committee was considering it at one time, and I think so determined, and now for the Chair to rule that it is privileged, I do not know how it is privileged, except improperly privileged, by being introduced at all at this hour of the day and, therefore, is not governed by the rule referred to. We have no desire to defeat this resolution. We would like to see these gentlemen paid. We would like to consider the resolution and find out what the law is and what is proper to be done, and we think it rather hard to be deprived of that privilege, and our representative on the floor on that committee called down and unable to get the full consideration that we ought to have by the ruling that

it is privileged, instead of following the general practice, that it gives rise to debate it ought to stand over.

Mr. Choate — Mr. President ——

Mr. Deady — Haven't I the floor, Mr. President?

The President *pro tempore* — Mr. Deady has the floor. Having given away to Mr. Bowers, I supposed that Mr. Deady had surrendered the floor. If he demands the floor it is his.

Mr. Deady — I think this resolution is a little ungracious, Mr. President. We were considering the matter, and giving it our best attention, and had had several discussions in the sub-committee, and I myself think that this Convention had no power to pay these delegates, that their pay had been given to the delegates who were *de facto*, and the authorities of this State are to the effect that an officer performing the duties of an office and *de facto* an officer, is entitled to his pay, and the disbursing officer cannot refuse to pay it, and would have no defense to assume, and the authorities are, as I understand them, that the only recourse that an officer who has been deprived of his pay has, is to sue the person who has received that pay, one of the authorities holding that for the purpose of collecting that pay he was the agent of the *de jure* officer. Now, I think that more consideration ought to be given to this, that it ought not to be hurried. As Mr. Bowers well said, we are all willing that they should have their pay, but it is a very serious question whether this Convention has power to pay them. We have only power to pay the expenses of this Convention. We are not a legislative body to the extent that we can appropriate money. We can only pay the money that has been given to us, and pay it in the way prescribed by law. I hope that this matter will stand over until further deliberation can be had on the subject.

Mr. Powell — Mr. President, there is no doubt that the statute, which regulates its proceedings so far as it has power to regulate them, gives to this Convention an absolute control over the funds which have been set apart for the expenses of the Convention. A part of those expenses are the per diem and mileage of the delegates, the amount of which is provided by the statute. Now, these delegates, ever since this Convention assembled, have been knocking at the doors of the Convention, as has already been said, prepared to take their oaths of office and enter upon the duties to which they were elected. They did not rest quietly upon their rights, but they came here and the very day that this Convention opened their protest was laid before us, and if, in the face of that protest, we

have paid out the money which belonged to those delegates to other parties, we having the power to pay it or to hold it back, if we have paid it to the wrong parties, certainly it does not behoove this Convention to say to the rightful parties, "Go and hunt up those to whom we have wrongfully paid the money." There is a certain class of cases wherein it is held that a public official whose position has been usurped by another must seek the salary which has been paid to that other by an action against him. But those cases will all be found to turn upon the point that the disbursing officer had absolutely no discretionary power at all; in other words, he was compelled by law to pay the specific sum to the *de facto* officer of the time being and if there had been, on the part of that disbursing officer, any right under the law to determine who was rightfully entitled to the money that was due, then, undoubtedly, the decision of the courts would have been altogether different. But here is a Convention, which has the power to determine who are entitled to certain seats, and before it has passed upon that question, before it has exercised its discretionary power, it pays the money out. Now, can it, with any equity or with any show of right, turn to these members who were entitled to these seats and say: "We have paid the money out wrongfully, go and hunt for it," and turn them off? The principle of law enunciated in the decisions which have been referred to by Mr. Deady is that the *de jure* officer must bring his action against a *de facto* officer who has drawn pay. Now here are from the Sixth Senatorial District five members of this Convention. Against whom shall they proceed? For example, take the case of Mr. Kurth. Who drew the money to which Mr. Kurth was entitled? Was it Mr. Riggs, or was it Mr. Curran, or was it Mr. Roderick? And who can decide that? And suppose that these five delegates, pursuing the remedy which has been suggested, were all so unfortunate as to commence their actions against Mr. Riggs. We should then have five *de jure* officers suing one *de facto*, while the other four went entirely free. It seems to me that the only thing we can do, as a matter of justice, as a matter of right, as a matter of absolute equity, is to pass this resolution and thereby do justice to these members of the Convention who have always been ready and willing to perform their duty. I certainly hope that the resolution will prevail.

The President *pro tempore* — The Chair will say to the Convention that this having been received as a privileged resolution under the parliamentary rule, it is at the option of the Convention whether they will entertain it at the present time or whether they will pass it over. The Chair has already heard debate from one gentleman

upon one side and one upon the other. The Chair is of the opinion that the question is now before the Convention, whether they will entertain this privileged question at this time or not.

Mr. Powell — Mr. President, I move that we entertain this resolution at the present time.

The President *pro tempore* — The Chair holds that the motion is properly in order, whether the Convention will entertain this resolution at the present time.

The question being put on the motion of Mr. Powell, to entertain the resolution at the present time, it was decided in the affirmative.

Mr. Choate — I should like to say a word about this. I have not the slightest doubt of the right of these gentlemen to receive pay from the beginning. I do not see on what principle it can possibly be denied them. I think, also, according to all legislative precedent, State and federal, that I ever heard of, the members whose places they took, having been sworn in under the certificate of the Secretary of State and acted as members and discharged the duties of members, serving upon the committees like all the rest of us, were entitled to their pay. It was in that view that I certified for them, as I did for all other members of the Convention, that they had been members so long, until they were declared to be no longer entitled to their seats. Now, I had some talk with the Deputy Comptroller, in the absence of the Comptroller, on the subject of this claim after it came up, and he expressed informally the opinion that it all turned upon the control of this Convention as a matter of law over the fund appropriated for the expenses of this Convention. Of course, it is quite for the purpose, in the ordinarily legislative case, that a payment being ordered by the Legislature, they have power beyond question over the funds. It seems to come down to the question of law, whether we, as a Constitutional Convention, have, for the purpose of the pay of our members, control over the fund which has been set apart for that purpose. Now, I understood the Comptroller that he would take the opinion of the Attorney-General, and it seems to have been a matter on which the Attorney-General and the Comptroller have hesitated like the committee. While I think it very desirable that these gentlemen shall receive their just dues, I think that it would not do any harm for members of the Convention to think of it for two or three hours, and we are now so near the hour of the termination of our extended session that I should rather deplore a vote being pushed in view of such statements as Mr. Deady has made, until gentle-

men have looked at it on all sides. That these members will get their pay, I have not the least doubt in the world. That it will come out of that fund I have no doubt. But I do not think we ought to be jumped on in an instant, especially after the statement Mr. Root, who brings it forward, has made that committees are divided about it. There ought not to be such a very urgent case as that.

Mr. Lincoln — As a member of the Committee on Privileges and Elections, possibly I may be able to give some light upon this matter, and state, at least, the present condition of it. This resolution was introduced at the time stated in the resolution offered by Mr. Root, and was after some delay referred to the Committee on Privileges and Elections and the Committee on Contingent Expenses jointly. Those two committees at a meeting a few days ago agreed to appoint a sub-committee of two from each general committee. Mr. Deady and myself were appointed from the Committee on Privileges and Elections, and Mr. Whitmyer and Mr. J. I. Green were appointed from the Committee on Contingent Expenses. I was then called away from the Convention, and did not return until Monday evening of last week, and I immediately set about trying to get a meeting of the sub-committee for the purpose of disposing of this question. The sub-committee did not agree fully on some of the points of law presented, and it was determined on Saturday morning last to submit the question from the sub-committee to the Attorney-General. Mr. Deady and myself went to the Attorney-General's office and presented the question to Mr. Hogan, one of the deputies, and I think the only gentleman being present, Mr. Hancock being absent. Mr. Hogan assured us he was trying to render an opinion so that we might have it this morning, as I remember. It was learned to-day that Mr. Hogan had been ill, and had been unable to give it attention, and this afternoon after the session opened I was assured by Mr. Davies that Mr. Hancock would be here during the day, and the matter would be presented to him, and that sometime during this evening we would have an opinion upon this question. Then, the sub-committee, having that opinion, intended to make a report to the general committee and from that committee, of course, to this Convention. But if the Convention sees fit to act upon it independently, personally I see no reason to complain, and I do not object. But I think that during the evening we will obtain the opinion of the Attorney-General and perhaps to-morrow morning will be able to present his opinion, which will be of value to every one. It ought to be of value to every one and may be of particular

value to the Convention, and, in view of the suggestion of the President, may be of importance. We may postpone this a little and possibly get that opinion, or if the Convention sees fit at the adjourned session this evening to take it up independently of the Attorney-General's opinion and dispose of it, let the Convention take that course.

Mr. Veeder — Mr. President, I think there are always enough in this Convention to decide so great a question as this right off. (Laughter.) I do not think we want to adjourn it for consideration. It is the unanimous practice of legislative bodies, congressional and State, where contestants have been successful, to compensate them for the period that they would have held the office. I submit it is no more than fair and I think it is very good law, and I hope the motion will be entertained now and disposed of.

Mr. Countryman — Mr. President, I think that the proposed amendment to this resolution is the best answer to all the arguments that have been made in favor of the passage of this resolution. If these members are entitled as a matter of law to payment here and now in this Convention the counsel who represented them in this contest and the witnesses who were sworn in this contest and all the expenses which have been incurred are equally entitled to be paid from the same fund. It strikes me that that is a sufficient answer to the entire argument. There is no doubt of their equitable and legal right to their compensation. The simple question is, who is to pay it and where the money is to come from. They should go to the Legislature, where it will be paid as a matter of course and be appropriated out of the funds of the State. This fund has been set apart by a special act of the Legislature for the payment of the members of this Convention and only the members of the Convention or persons who have been paid and occupied seats in this Convention. That ends all the power of this Convention over the matter. They cannot pay more members than have ever occupied seats here properly. They cannot pay twice over. The compensation is to be paid to members. They cannot pay more than the regularly elected members who have occupied seats and are entitled to that compensation, and when they have paid it once they cannot pay it again. The only way for these contestants is to bring action against the members *de facto* who have drawn the funds improperly, or to apply to the Legislature, where they will undoubtedly be recognized and the payment be made.

Mr. A. H. Green — I move that the resolution lie on the table.

Mr. Countryman — I suppose they cannot take the money prop-

erly applicable to paying the other members of this Convention for paying these claims. We do not know whether we are going to have funds enough to pay all the legitimate expenses or not.

Mr. A. H. Green — Mr. President, I move the resolution lie on the table.

Mr. Choate — Do I understand the motion was that the resolution be laid on the table so that it can be taken up again at any time?

Mr. A. H. Green — Yes, sir.

The question was put on the motion to lay on the table, and it was decided in the negative.

Mr. Dickey — Mr. President, it seems to me these five members have lost enough by being kept from voting in this Convention at the time they were. This resolution to give them their pay, so far as we can do it by giving them our votes, ought to be passed, and I will vote for it.

Mr. Root — Mr. President, it seems to be conceded that these gentlemen are entitled to their pay, and no one will dispute it. I believe it to be in accordance with universal precedent that their pay should be accorded to them, if it is within the power of the body to do it. Now, I do not care what the Attorney-General says or what anybody else says, I want to do whatever I can toward giving justice to these gentlemen by voting that this money shall be paid. If after we have done it the Attorney-General says that does not warrant the payment, let him say so; we have done our duty, we will have done what we can, and the rest of it is for the other officers of the State government. I hope, Mr. President, the motion will be adopted now.

Mr. Bowers — If the gentleman from New York was so anxious to proceed with this motion, he could have done it many weeks ago. I have never doubted that it was right these gentlemen should be paid. It is merely a question of time and occasion. It is an extraordinary occasion that has been selected. It means that when the majority see fit to introduce a measure of any nature they will select their own time and place without reference to the rules by which we have been heretofore governed. It is a pretty late day for the gentleman from New York to have discovered this sudden light. He had better have discovered it some time ago, then we would have no differences. Since, however, the Convention has determined that it is wise and proper to proceed with this matter now, I want to say, for my own part, I entirely agree with

the proposition that they ought to be paid, and that we have power to pay it out of the fund over which we have control. Having thus made my ineffectual protest against forcing business at a moment's notice upon this Convention, when we are engaged in other business, I shall now proceed to sustain the resolution, and hope it will pass and these gentlemen receive their money.

The question being put upon the passage of the resolution of Mr. Root, it was decided in the affirmative.

Mr. Root — Mr. President, I offer the following resolution:

The President *pro tempore* — The Secretary will read the resolution.

The Secretary then read the resolution as follows:

R. 207.— "Resolved, That Messrs. Thomas Sullivan and Harvey W. Putnam, two of the sitting delegates from the Thirtieth Senatorial District, be, and they are hereby, 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 June 28, 1894, and that the payment thereof out of the fund appropriated for the expenses of the Convention be, and it hereby is, authorized and directed."

Mr. Kerwin — Mr. President, in view of the fact that this is the very same question as the one that preceded it, and the same debate covers the same ground, I move the adoption of the resolution, and on that I move the previous question. (Laughter.)

The President *pro tempore* then put the question on the adoption of the resolution of Mr. Root, and it was decided in the affirmative.

The President *pro tempore* — The hour having arrived at which the Convention takes a recess, the Convention will now take a recess until eight o'clock this evening.

EVENING SESSION.

Tuesday Evening, September 11, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber, at the Capitol, at Albany, N. Y., Tuesday evening, September 11, 1894.

Second Vice-President Steele called the Convention to order at eight o'clock.

The President *pro tempore* — The Convention now has under

consideration general order No. 4, third reading No. 8. The Secretary will read the title.

The Secretary read the title, as follows (O., I. No. 183, P. Nos. 184-381):

"Proposed constitutional amendment to amend section 5 of article 2 of the Constitution, relating to the manner of elections."

The President *pro tempore* — By our rules, one hour is given to debate this proposition. Do any gentlemen desire to debate this proposition? The Chair sees no evidence of a desire to debate it.

Mr. Hill — Mr. President, I do not think there is a quorum present at this time. This bill was so thoroughly considered when it was in Committee of the Whole that it seems hardly necessary to say anything more in regard to its provisions.

The President *pro tempore* — Order must be preserved. The gentleman will suspend until order can be had.

Mr. Goodelle — Mr. President, I raise the point of no quorum and ask for a roll-call.

The President *pro tempore* — The Secretary will call the roll.

The Secretary called the roll, and 131 members answered to their names.

The President *pro tempore* — A quorum is present. Mr. Hill has the floor.

Mr. O. A. Fuller — Mr. President, I ask that Mr. Acker be excused from this session on account of sickness.

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

The President *pro tempore* — Mr. Hill has the floor.

Mr. Hill — Mr. President, it seems hardly necessary at this time to add anything to what has already been said upon this proposed amendment. It has been twice considered in Committee of the Whole and reported favorably from that committee, and now comes up in due order of business for third reading. I hardly think it is necessary to say anything further in regard to its provisions, and, if there are no questions to be asked, I think we can proceed with the roll-call, unless some member desires to debate it.

The President *pro tempore* — Does any gentleman desire to debate this proposition?

Mr. I. S. Johnson — Mr. President, it seems to me that we ought not cut off any privilege of the Legislature for the next twenty years to make an improvement in our election laws, in the manner

indicated by this bill. In the town in which I live we have used what is known as the Myers ballot machine for several years, and we have come to the conclusion that it is a very valuable improvement upon the old manner of voting, and the probabilities are that it will be still further improved. One of the great advantages of this machine is that there seems to be no way of cheating. There seems to be no way by which the views of the voter can be ascertained by any one on the outside. It gives absolute secrecy to the ballot. Another thing in its favor is that it is a saving in expense. The question was raised during the discussion on the bill in Committee of the Whole, that there would be an additional expense. One of the reasons urged at the time that we purchased the machines for use in our town, was the fact that it was to be a great saving of expense. It would save the printing and distribution of a large number of ballots. It has worked so successfully that in my own town I have not heard of a single objection to it. Every one has spoken favorably of it. Every one is anxious to have it continued, not only in the town meetings, but in the general elections, if the Legislature shall see fit to extend it. There is nothing in this amendment which makes it obligatory upon the Legislature, but any time in the future when this machine shall be so perfected that it is evident that it can be used to advantage, they may adopt it. They are not obliged to adopt it until that time, and for that reason I hope that this amendment will be adopted.

Mr. Hawley — Mr. President, on the day when this bill went to its third reading, I was not able to be in the Convention, and so I have had no opportunity but the present to express my continued opposition to its passage. The bill contemplates two things; one, an assault upon the Legislature by the owner of some patent right, to have the Legislature adopt some device, and the last speaker seems to know exactly what device it is proposed the Legislature shall adopt, because he has told us how nicely it works. Think what a gold mine that is to come to the Legislature, and have adopted for use in all the election districts of this State, a machine which is covered and protected by a patent. What sort of a scene will we have in the Legislature on that interesting occasion?

The second thing that it proposes is that a man shall go into a closet and touch a button, and the machine will do the rest. We have been accustomed to taking our ballots in our hands, delivering them to the ballot clerk, and seeing with our own eyes that they were put into the ballot-box, and to know that so far as our

personal duty was concerned it had been faithfully and fully discharged.

We are now invited to trust to an intricate system of mechanism, about the registry of which we know nothing, and as to the whole system of which we must exercise a faith which is beyond reason.

Now, Mr. Chairman, I have received extensive communications in hostility to this whole scheme. Some of them come from a town where this model and correct machine was used at a town meeting, and about the middle of the day it ceased to register, and they had to guess at the result. In another case, in my own county, a like calamity overtook the voters. I believe, Mr. Chairman in personal voting, in the personal contact of the voter with his ballot (applause), and with the sense of personal responsibility which comes from that act, and I believe that we shall do a great and lasting injury to this State when we put the voters away from contact with the ballot and simply set them to operating a complicated machine. (Applause.)

Mr. Forbes — Mr. President, I am both surprised and amazed at the speech which has just been made, because there is not one word in this proposed amendment which prescribes any particular machine. It is simply permissive to the Legislature. It was said when the railroad was proposed to be built between Hartford and New York that it would destroy the stage line, and, therefore, the farmers would lose their sale of hay, and the farmers opposed the railroad and we have seen the result. It is not proposed by this amendment that there shall be a voting machine of any particular kind, but, as this Convention is not to sit for another twenty years, it is permissive to allow the Legislature, in its wisdom, to provide for what may arise in that time.

We have nothing more accurate at our command at this time than the subtle thing called electricity. And in regard to patented articles, I must say that long before the twenty years has expired all present patents that now exist will have run out.

Mr. Barhite — Mr. President, after sitting for nearly four months in this Convention I am convinced that there is only one pure and disinterested patriot among the delegates in this Convention who come from various parts of the State, and that gentleman is the distinguished gentleman from Seneca, the great objector, Mr. Hawley. Everything that comes up here seems to be in his mind simply a signal and indication of some great scheme or some large amount of stock which is in the pockets or in the safe of some delegate. Nothing seems to him to be good. Everything seems to be bad.

He does not give us any legitimate or any fair argument against any proposition, but simply attempts by innuendo and insinuations to break down and cast aside that which other delegates deem to be a benefit. He has used the same argument upon this floor, with regard to this proposed measure, that he has used in regard to other measures which have been before this Convention. I do not remember that he has yet looked with favor upon a single proposition before this body. He seems to be always looking backward and not forward. I do not believe in any such method of procedure as that. I believe that this proposed bill or amendment is a good one. I believe it should receive the requisite number of votes from this Convention. It is permissive in its character. It is not in favor of any particular machine. It is not in favor of any machine at all. It simply provides that the Legislature, in its discretion, if they determine that some other method of voting is better than that which now exists, may adopt that particular method. This is the age of progress and not the age of movement backwards. How can we see that in the next twenty years there will be no better method devised? I know that now there is a better method devised than that of casting the paper ballot. They talk about the liberty of the voter. The gentleman from Seneca speaks about taking the piece of paper in his hand and going up to the ballot-box and giving it to the ballot clerk, and watching it with that eagle eye of his until it is safe in the ballot-box. Does this propose that any machine would prevent that? Does not he have the opportunity himself to press the button? Does anybody control his actions? Does any machine or any method tell him to vote in one way and not in another? I know from personal experience that the gentleman from Seneca is inclined to machine voting in the ordinary sense, and why he should object to this particular kind I cannot explain. I hope the amendment will prevail. (Applause.)

Mr. Augustus Frank — Mr. President, I have no interest in this matter in any way other than the public good. I believe the mode of balloting we now have is, of itself, good enough, except it is very slow, very cumbersome and very troublesome many times. I remarked, when this matter was up before, that in our town we had tested the ballot machine so much talked about, and it has worked for two years most admirably. Not a fault of any kind was found with it, and when the polls closed the machine itself had counted the votes and announced the result correctly in a few moments. I see no objection to any machine that will do that. This proposed amendment says nothing about any machine. It

simply says, in substance, that any method the Legislature may see fit to adopt during the next twenty years we may accept. It does not ask this Convention to take any action regarding it, but leaves it entirely to the Legislature to do as they may see fit. I cannot understand why any member of this Convention would not be as well pleased to see improvements in voting as improvements in traveling or telegraphing, in the telephone, or anything that may be a great improvement during the next twenty years. There are now, I understand, several machines completed, or looking toward completion, in regard to voting. Some of them are similar in many respects to the Myers ballot machine. Some are very simple and much less expensive. It should be remembered that it would be left entirely with the towns to decide whether they use them. The State would not be put to any expense, and, while the price of the machine now in use is somewhat costly, it may not be so in the future. Competition will bring the price down, and there can be no harm in allowing the Legislature of the State of New York to adopt anything better in the way of voting, either by machine or otherwise if they see fit, than we have now. I see no possible reason why any of us should object to the passage of the present amendment, and I trust it may be adopted.

Mr. McKinstry — Mr. President, while I was enjoying my illness at home, I talked with my constituents about measures that had been introduced here, and I found them quite unanimous that they do not want any more so-called reform in the manner of voting. In fact, I was sorry I voted against the referendum, because I am satisfied that if our present Saxton ballot law could be referred to the people, seven-eighths of them would vote to sweep it out of existence. The nearest that we could come to a referendum would be to have Senator Saxton run on the Republican ticket this fall. I think he would then get a good idea of what the people think of his law. He would probably carry Chautauqua county, but a great many Republicans would vote against him, because of their disgust with his so-called ballot reform. Under that law the printer who prints the ballots can disfranchise the voters of whole districts. If I had the printing of the ballots for Chautauqua county, I could, by mistake, disfranchise five or six thousand Democrats. A little gum under a type which should make a little stronger impression mark on the ballots would serve to throw out a whole district. A pin-hole in a set of ballots of one party would render them liable to be thrown out, and the same pin thrust into one of these machines would serve to disarrange the whole of it. There is one thing about the Myers machine that may be said in its favor, and

that is, it does not favor bogus tickets. You are not invited by it to get up a Democratic ticket with a Republican name upon it, or a Republican ticket with a Democratic name upon it. That is the way that Senator Vedder was beaten in our district the last time he ran — by a bogus Republican ticket, provided in pursuance of certain provisions in the Saxton ballot law. With the genuine and bogus Republican tickets made to look exactly alike, and the law prescribed that the counterfeit must be absolutely perfect, you can see that when these tickets are handed with others to the unsuspecting voter, on the law of chances, half the Republicans would vote the bogus ticket. And that is the way Senator Vedder was defeated. The same thing was tried last year, and I should not be here to-day, except that our Republican State candidates notified the Secretary of State in time to keep their names off the proposed counterfeit. Therefore, I say this much for the machine, I don't think it will go into the counterfeiting business. Just think, however, of voting for thirty-six electors in one of those machines before you reach the State ticket. It has been claimed that a large sum would be saved in printing. There will not be much saved in printing. The cards have to be printed carefully and separately for both sides of the machine. Then when you come to an election for Congressman, the Congressman must be voted for by ballot, so you have two ways of voting and greater expense. All of these considerations militate against the machines, and I know the voters whom I represent do not wish to be exposed to even the possibility of being compelled to purchase them.

Mr. Tekulsky — Mr. President, as I said when this measure came up in the Committee of the Whole, I had the extreme pleasure of trying this machine. I have found that the machine was out of order. In trying to vote for six different candidates five would work and the sixth one would not, and the consequence was that the whole six would not work at all. Now, I do not propose to be a party to any scheme whereby we can have an opportunity to have a fraudulent election. I have certainly had a very large experience as far as elections are concerned, and for the last eighteen years I have been standing at the poll on election day from the time it opened until it closed, and quite often very many hours afterward (laughter), and I certainly do know the workings of elections, and I cannot see any device that can be proposed that will give us a better system of elections than the old-fashioned vest-pocket ballot. Every man could make up his ballot at home and walk into the polling place and cast his ballot. There was no putting men into a chicken-coop and having a little boy under

the shelf there ready to fold his ballot for him, because some men, no matter how intelligent they are, cannot fold it themselves. He has come at every election, and said he could not fold this ballot, or was blind, or his arms were out of order, and we would have to send in some boy to fold his ballot for him. All these schemes I am opposed to, because I am positively in favor of honest elections. When we have honest elections every man will get what he is entitled to. You can never get honest elections by a machine, because machines are made by some sort of mechanical device where there are springs. While I am in favor in some respects to springs, I am not in favor of a spring in a machine. (Laughter.) Now, this machine may get out of order on some very important election, and some of our dearest friends may be candidates. The consequence will be that that election district where this machine was out of order would be obliged to be thrown out, just the same as you did in this Convention, you threw out the First Ward of Buffalo. I cannot understand why men will come into this Convention and advocate a machine that a little dust, or a little dirt, or a fly, or anything that can creep into it, is liable to put it out of order, and still they come here and cry "give us honest elections." Why do they want these machines? Are not people in these times intelligent enough to know what a ballot is without touching a button? There are certain times I am fond of touching a button, but not in this way, and I hope that this Convention will vote down this amendment, although they allowed it to go to a third reading. I want to see honest elections, but you can never get them by machines. Have intelligent men to man your polls and honorable men to be your candidates and you will have honest elections.

Mr. McIntyre — Mr. President, notwithstanding that I might be called one of those old fogies that believe in the past and are suspicious of the future, I am opposed decidedly to this amendment. The Constitution, as it reads at present providing that all elections shall be by ballot, is good enough for me. I think that a man who is not capable of voting with a ballot ought not to vote. If you have got to have a complicated piece of machinery or mechanism to vote by, we had better not vote at all. Some gentlemen say there is nothing in this amendment about a machine. I think anybody, even if he is as near-sighted as I am, can see a machine in there. The amendment says "all elections by the citizens, except for such town officers as may by law be directed to be otherwise chosen, shall be by ballot or by such other method as may be prescribed by law, provided that secrecy in voting be preserved."

Now, we have had a machine in this building since we have been here, so that everybody could look at it. It will not be long before there will be an agent in every election district of this State to sell these machines. Just as soon as you pass this amendment the State will spend a million dollars for voting machines, just as sure as you are sitting here. That is what this is for. It is only the beginning. Some of the patentees that are around will sell to the State machines that, in all probability, will be worthless. It will be years before these machines will be perfected. If the time shall ever come when the people are not intelligent enough to vote by ballot, then let the Constitution be amended. Let us attend to that which is absolutely necessary, and not go speculating in the future. We have voted by ballot up to this time with enough intelligence, and, if the time ever comes that the American people are not able to vote by ballot, I think we had better have a monarchy. I think all the reforms in voting that have been made have been very detrimental in getting out the vote of the party, and all that has been said in criticism of them is very near the truth. Notwithstanding the fact that we are advancing and so eager to improve everything, I think we had better take what we have got. We know the ballot now is all right, and we know we have intelligence enough to cast it. Let us stop at that.

Mr. E. A. Brown — Mr. President, I think we want this amendment. I believe it is a good thing to have at least one amendment that proposes to leave something for the Legislature to do, and, if it is possible that this machine — I have understood it to have been referred to upon the floor as "this machine" — that if this machine will do the voting of the people of the State of New York by simply pushing a button and the machine does the rest, I do not see why anybody should object to it. Why, Mr. Chairman, in the evolution of this machine, the time may come when the people can touch a button and have a Constitution turn up, to perfect apportionment bills, to perfect bills for cities, with home rule, even to the satisfaction of all the city members. I think this is a magnificent thing, this machine, which I have heard so much about from my friends in Monroe county. It must have had its birth in Monroe county, and, if our Legislature wants to have some fun with this machine, and our friends from Monroe come down to the Legislature and argue that a machine in politics is a good thing, by all means, gentlemen, do not let us deprive the Legislature of that privilege. By all means let us have a machine, and more than one machine, if necessary. I think it is wise for this Convention

not to decide upon this machine, but to leave it to the Legislature. I am heartily in favor of it.

Mr. Meyenborg — Mr. President, I am in favor of voting by ballot, and by ballot only; yet the time may arrive when a machine of such perfection may be recommended as to commend itself to the good sense of the Legislature. When that time has arrived it will be time enough to propose and have the people adopt an amendment for this innovation. As yet the machine, the most perfect, is liable to get out of order, and in that case the voters of a whole election district might be disfranchised. An actual majority might be turned into a minority. No machine can be as satisfactory to the voters, and as honest in its results, as the present method of voting by ballot. The present mode of voting inspires the voter with a sense of security of the individual control of the right of franchise, which no machine can possibly supplant. I hope this amendment will not prevail.

Mr. Mereness — Mr. President, I am decidedly in favor of any improvement, but all things which are called improvements are not such. We have heard a great deal about the beauties of the Saxton ballot reform law, but we know that under the provisions of that law 1,252 honest voters in the county of Onondaga, after their ballots had been handed out to them by regularly-accredited election officers, and after they had prepared them for voting, and after they had handed them back to the election officers and they had been canvassed, that afterward, by a mistake in the indorsement on the ballots, those voters were actually disfranchised. We have heard during the last few years of frauds perpetrated under this law which were never dreamed of under any other ballot law that we ever had. Now, my friend from Wyoming (Mr. I. S. Johnson) says this is simply permissive. Why, of course, the Myers ballot machine people are too smart altogether to come in here and ask to have their machine put into the Constitution. All they ask is to be allowed to go to the Legislature. All they will have to do is to push the button and the rest will be done. It will be done in the twinkling of an eye. I am in favor of going back to the old system of voting, and it is useless to say that any machine can be invented by man that some other human ingenuity cannot circumvent.

Another thing which occurs to me is this: that it has always been held in this State that a candidate for office who, perhaps, was confronted with some chicanery could invoke the aid of the courts and could go behind the ballot-box and show who was elected to the office. But, sir, if by any peradventure those

machines should get out of order and should fail to record the election, tell me how any one could have any redress in such a case are that? You could not go behind it. If this machine method of voting is adopted, you might just as well abolish the writ of *quo warranto*. I am in favor of the ballot, as my friend from Seneca is, notwithstanding that he has been accused of being a crank. If he is a crank of that kind, I am glad to be welcomed into the company of cranks. Give us the good old-fashioned method of voting that flourished for so many years. (Applause.)

Mr. Kellogg — Mr. President, I am in favor of the machine, because, in the first place, this is an age of progress, and I believe it will be possible to combine this machine with the amendment of my friend from Yonkers (Mr. Holls), providing for compulsory voting, so that every man can have an electric button in his house, and the only thing necessary for him to do on election morning will be to get up and punch the button and let the thing do the rest.

Mr. Moore — Mr. President, I should think from the conduct of the delegates in this House to-night that they were bent upon celebrating the victories of Vermont and Maine. The hilarity which I see about me, the visiting and the talking among members, look to me as if the delegates either know all about this measure and do not care to discuss it any longer, or else they have remembered what I have remembered all day, that it is the anniversary of one of the most magnificent events that has ever occurred in American history. (Applause.) I refer, Mr. President, to the battle of Lake Champlain and Plattsburg. Ninety years ago there was fought in front of the little town where I live one of the great battles of history. There were three thousand American yeomanry fighting upon the shores of that lake, notwithstanding the assault of fifteen thousand soldiers from England, Wellington's veterans, and upon that lake there were fifteen hundred men fighting upon ships of war. That battle lasted two hours and forty minutes, and it is said in history that the cannonading was heard one hundred miles, and the cannon shots fired there have "been heard around the world." Now, Mr. Chairman, what was that battle fought for? It was simply to protect the rights of American citizens. It was for the purpose of withstanding inroads upon their liberties. I say to you, Mr. Chairman, that this measure, so far as its effect may be upon the future of this State, is as important, in one sense, as that battle. (Applause.) I say to you that gentlemen should consider that this is a measure which affects the rights of every citizen in this State. I say to you that it confers upon the Legisla-

ture, Mr. President, that power which the sovereign, which the legislative power, ought to be allowed to exercise. The arguments here have been made upon the idea that the Legislature has already met; that it has already passed a bill, and it has already adopted some machine. Nothing of that kind ought to be considered here. This proposition, Mr. President, is solely permissible. It allows the Legislature to say whether the people may use these machines or some other method of voting. Mr. Chairman, I in favor of this amendment. (Loud and long-continued applause.)

Mr. Hill — Mr. President, I want to say just one word in reply to the insinuations that were made. This amendment does not contemplate the use of any particular machine. It does not refer to a voting machine at all. It is possible, it is probable, that within the next five or ten years some method other than the present cumbersome and expensive method of voting by ballot may be devised that will meet with general approval, and, if that is so, this provision in the Constitution will permit the Legislature to adopt such method. Now, I ask you, gentlemen, those of you who are not familiar with the tedious and cumbersome method of voting for numerous municipal candidates in addition to county and State candidates, to consider that the cities have some right to such relief as inventive genius may suggest. If it were not for that, I would not blame a countryman to shut his eyes to any improvement in this direction, because the vote in the country districts is necessarily small, but in the large cities, where you have four or five different tickets to count, and there are four or five sets of tickets to canvass, it frequently happens that you have to set up all night long and you realize the necessity or having some improvement in this method. In view of improvements hitherto made it is believed that the inventive genius of the age will yet devise means to accurately canvass votes automatically as rapidly as they are cast. That is the chief reason why this amendment has been proposed. It is not in the interest of any man, set of men ,or corporation. It is simply to empower the Legislature to provide a labor-saving machine or any other improved method which may be adopted throughout the State. The federal provisions for electing Congressmen may easily be made to conform to our prescribed method for electing State officers. Now, if it is the opinion of the members of this Convention that such is not desirable, we can get along without it, and, if any delegate thinks that it is not desirable, he can vote against it. I have acted in perfectly good faith. It is in the interest of honest elections. It is in the interest of good order and in the interest of improvement, and, if you are unwilling to

ask the Legislature of the State of New York to do by you as they ought to do under all circumstances, if you are unwilling to leave to them the decision of the question whether any machine or device for improving the method of voting should be adopted, I shall be perfectly satisfied. I have done my duty. The amendment has been thoroughly considered, and has reached the order of third reading, and, if you disapprove of it, well and good. I think, however, you are shutting the door to all perfection for twenty years, and tying us down to the method of voting by ballot, which everybody admits is cumbersome, is tedious and is unsatisfactory. Why are we not using the old hand-printing press, when we have got the Hoe perfecting press in our office? Why not dispense with our elevators, telephones, electrical appliances and other inventions of daily use in this Capitol? Everything around us is the subject of invention. Why, you might just as well say that the Legislature of the State of New York would be assailed by men inventing new doors for this Capitol. Are we going to shut our eyes to all inventions? Why, think of it, gentlemen. It will be left with the people to say whether or not they want any improvement, and, if so, what improvement, and it does not necessarily follow that it will be a machine, or an envelope method, or any other thing. It simply opens the door for improvement in the next twenty years, if the Legislature, in its wisdom, think such improvement is necessary.

The President *pro tempore* — The time having expired for debate upon this amendment, the Secretary will read the amendment.

Mr. A. H. Green — Mr. President ——

The Secretary read the amendment as follows:

"Section 5 of article 2 of the Constitution is hereby amended so as to read as follows:

"Sec. 5. All elections by the citizens, except for such town officers as may by law be directed to be otherwise chosen, shall be by ballot or by such other method as may be prescribed by law, provided that secrecy in voting be preserved."

The President *pro tempore* — Those in favor of this proposed constitutional amendment will, as their names are called, vote aye; those opposed, no.

The Secretary will call the roll.

Mr. A. H. Green — Mr. President, is the time up?

The President *pro tempore* — The time is up.

The Secretary proceeded to call the roll.

Mr. Abbott — Mr. President, if any member of the Constitutional Convention of 1867 had risen in his place and predicted the invention of the telephone, I would imagine that he would have been received with as much ridicule as those gentlemen who have favored the proposition under discussion here to-night. Now, this proposition is not in favor of any machine. I am not a machine politician. I am not in favor of machine voting. This proposition leaves it to the people and their representatives to say when hereafter in this, the age of progress, any invention shall be made by which the method of voting may be facilitated, and the will of the voter be registered more definitely and more clearly, then the people, represented, as they are, in the Legislature, may adopt that plan. I favor the plan and vote aye.

Mr. Baker — Mr. President, I have been disgusted for several years with the new-fangled methods of voting. I would be most happy to go back to the old-fashioned way of voting. I do not believe in voting by machinery. I, therefore, vote no.

Mr. Cassidy — Mr. President, I would like to ask the introducer of this proposed amendment a question. Does he know whether there is any provision made in the Constitution of the United States as to how Members of Congress and presidential electors shall be elected?

Mr. Hill — Mr. President, there is nothing in the Constitution of the United States prescribing the method of election. Article 1, section 4 of the Constitution of the United States provides that "the times, places and manner of holding elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof; but Congress may at any time, by law, make or alter such regulations, except as to the places of choosing Senators."

Mr. Cassidy — Does the word ballot appear at all?

Mr. Hill — It does in article 12 of the amendments.

Mr. Cassidy — Mr. President, when this matter was up in Committee of the Whole, I opposed it, and the more I have thought of if since, the more I have been convinced that we ought not to abandon the old system of voting. There is a feeling quite prevalent among men now that they are but parts of a system of machinery; that they are mere nothings, nobodies; that they only work as a peg in the wheel, and that all sentiment is out of life. Now, there is quite an amount of sentiment in taking your ballot and placing it in the ballot-box. If some of these marvelous inventions that the imaginations have pictured here could be brought

about, why, the people of this State will avail themselves of all these improvements, and the Legislature, at the proper time, will submit such an amendment as the people desire to vote upon otherwise than by ballot.

The President *pro tempore* — The gentleman's time is up. How does he vote?

Mr. Cassidy — I vote no.

Mr. Dean — Mr. President, I believe that the professional reformers are directing their energies toward effects, rather than causes. I believe that the balloting machine, any balloting machine, takes away from the dignity of American manhood, and I vote no.

Mr. C. A. Fuller — Mr. President, I believe that this proposition should leave off the last line of it providing that secrecy in voting be preserved. I would like to have the Legislature be at liberty to prescribe the method in which voting shall be had, secretly, or openly, by ballot or by machine, as it shall be for the best. This law is permissive. It does not require the adoption of a machine at any time, and certainly no particular kind of a machine. If the people shall become satisfied that that was the most effective way of honestly voting, then the law-making power ought to have the liberty of prescribing that method of voting. Upon the whole, I believe that the provisions of the proposed amendment are an improvement, and I vote aye.

Mr. A. H. Green — Mr. President, when I recollect the various systems of voting that have occurred in my memory, it is interesting to note what changes have come about. We first went to the polls with a simple ballot and dropped it in a wooden box. Then followed the great improvement at an immense expense to the city of New York of the glass ballot-box, and then that was followed with other devices until we have got, as Mr. Tekulsky says, the hen-coop, and all the other complicated devices. I do not think anything very much has been gained by them. But we live in an age of progress. I should like to read a line or two here from a distinguished authority, as follows:

"No people can ever sustain the burden of directly choosing numerous administrative officers. The popular voice should not be called into action, except in selecting a very moderate number of officers, say the chief executive and the Legislature. The fallacy of presidential electors should be abolished. The existing embarrassments under this head are about to be carried to the last measure of complication which perverse ingenuity is supposed to

be capable of devising. The conception called cumulative voting is susceptible of being embodied in forms of innumerable variety. It demands a measure of skill, intelligence, care and attention in the ordinary citizen which Newton or La Place could scarcely have commanded, and brought into efficient action under the pressure of such disturbing influences as are necessarily attendant upon a popular election of the horde annually chosen. Indeed, the pursuits of the gambler would afford the best apprenticeship for the elector under such a system. In respect to all three of these devices, the ballot, the direct choice of administrative officers, and cumulative voting, candid and thoughtful minds can hardly differ. The tendency of each and all of them is undeniably to establish on a permanent basis the trade of politics. The purification of the right of suffrage will be achieved only in proportion to the degree of directness and simplicity with which an open popular vote is polled. An accurate registry, and equally plain and responsible voting, with no complex contrivances between the people and direct accountability of the chief public officials, at proximate elections, present the true expression of the Democratic idea of popular suffrage. The *viva voce* system of voting should be re-established; the voter should qualify his ballot by reading and declaring his vote."

That is the opinion, I may say, of the ablest lawyer that this country has ever produced, a statesman of large experience, the Hon. Charles O'Conor.

Now, I see in the last line here that secrecy in voting should be preserved. It seems that Mr. O'Conor's opinion was not in favor of secrecy in voting. But we have passed that, and all the machinery for securing secrecy in voting has been secured.

The President *pro tempore* — The gentleman's time is up. How does he vote?

Mr. A. H. Green — I vote aye.

Mr. J. I. Green — Mr. President, I desire to explain my vote. I do not believe, Mr. President, that this Convention should provide a pathway for monopolies. I believe that the most effective, the most efficient and the best way for the American people, and, particularly, the people of this State, is to vote by the old ballot which we have used for so many years. Fraud may be committed by design, but these machines, be it the Myers machine or any other machine called into being, will get out of order by accident, and the result of the election in that district will be void and the district thrown out. In the case of fraud committed by the hand,

we have all seen how it is recognized in this body of ours, and especially in the Senate and Assembly of the State of New York. I say, Mr. President, that the best way for the people of this State to do is to keep to the old land-marks, and vote in the old way. I, therefore, vote no.

Mr. Phipps — Mr. President, I desire to explain my vote, and in voting in the affirmative upon this proposition I wish to say that last winter it was my good fortune to call upon and be received by the executive of this State, Governor Flower, at a time when a similar measure for town meetings in towns was in the Legislature, and he then said to me, in conversation upon this subject, that he did hope that this Constitutional Convention would devise some means or plans by which the executive of this State could constitutionally approve of such measures as this. I think this proposition should meet with our hearty approval, and I vote aye.

Mr. Putnam — Mr. President, the time was when I was in favor of the old method of voting. Time was when I lost my veneration for the old familiar way of voting, and the old familiar paper ballot. It is not many months ago, and, Mr. President, believing at some future time the ingenuity of man, which is able to generate the electricity at Niagara Falls without causing that grand cataract to be depleted or destroyed or its magnificence and beauty to be obliterated, will devise within the next twenty years some machine that will cause the people to rejoice and become exceedingly glad because they are able to have their votes properly and honestly recorded. I vote aye.

The President *pro tempore* — This proposed constitutional amendment, having received a majority of the votes of all the members elected to this Convention, is duly passed.

The vote in detail is as follows:

Ayes — Messrs. Abbott, Ackerly, Allaben, Arnold, Barhite, Barnum, Barrow, Becker, Brown, E. A., Brown, E. R., Cady, Carter, Chipp, Jr., Clark, G. W., Clark, H. A., Coleman, Countryman, Davies, Davis, Dickey, Durfee, Floyd, Foote, Forbes, Francis, Frank, Augustus, Fraser, Fuller, C. A., Fuller, O. A., Galinger, Gibney, Gilbert, Goodelle, Green, A. H., Griswold, Hedges, Hill, Hirschberg, Holls, Hotchkiss, Hottenroth, Jenks, Johnson, I. Sam, Johnson, J., Johnston, Kellogg, Lauterbach, Lester, Lewis, C. H., Lewis, M. E., Lyon, Manley, Mantanye, Marshall, McArthur, McDonough, McLaughlin, C. B., McMillan, Moore, Morton, Nichols, Nicoll, O'Brien, Osborn, Parker, Parkhurst, Pashley, Phipps, Pool, Porter, Powell, Pratt, Putnam, Redman, Root,

Springweiler, Steele, A. B., Steele, W. H., Storm, Sullivan, T. A., Tibbetts, Towns, Turner, Vedder, Wellington, Wiggins, Woodward, President — 88.

Noes — Messrs. Baker, Banks, Bigelow, Blake, Bowers, Burr, Bush, Cassidy, Church, Cornwell, Crosby, Danforth, Davenport, Deady, Dean, Deterling, Deyo, Emmet, Faber, Farrell, Frank, Andrew, Gilleran, Goeller, Green, J. I., Hamlin, Hawley, Hecker, Herzberg, Holcomb, Kerwin, Kimmey, Kinkle, Marks, Maybee, McCurdy, McIntyre, McKinstry, Mereness, Meyenborg, Mulqueen, Nostrand, Ohmeis, Parmenter, Peabody, Peck, Rogers, Sandford, Schumaker, Spencer, Sullivan, W., Tekulsky, Titus, Tucker, Veeder, Whitmyer, Williams — 57.

Mr. Cassidy — Mr. President, there are a number of gentlemen who have kept tally sheets, and they have only eighty-five votes in the affirmative on this proposition.

Mr. Bowers — Mr. President, I call for a detailed statement of that vote.

The President *pro tempore* — The Secretary will give a detailed statement of the vote.

The Secretary gave a detailed statement of the vote.

Mr. Tekulsky — I heard the name of Mr. Griswold read off from that roll.

Mr. Schumaker — Yes, and he voted for it, too.

Mr. Tekulsky — I beg your pardon, I did not see him.

The vote in detail, as read by the Secretary, was found to be correct.

The President *pro tempore* — General order No. 52, third reading No. 9, is now in order, and the Secretary will read the title.

The Secretary read the title as follows (O., Nos. 86-429):

"Proposed constitutional amendment to amend article 1, section 17, relating to the appointment of commissioners of codification."

The President *pro tempore* — Do any of the gentlemen desire to use part of the hour in debating this measure?

Mr. Forbes — Mr. President, when this amendment was before the Committee of the Whole it was passed without any other statement than that the matter which is left out was no longer of any force or effect. In other words, that it was obsolete. I am very sorry that Mr. Doty, who introduced the amendment, is not here, having been excused for proper reasons. But, as it is neces-

sary to pass upon this amendment to-night, I will be pardoned for recurring to the reasons which he gave for the proposition. He said that this was on obsolete matter which was burdening the Constitution. Now, what is the actual condition of things? The Legislature in 1846 was directed to establish a code. By those who are in favor of codification that provision in the Constitution has been taken from that time to this as a command that the Legislature should go on continuously and finish this business of codification. Now, our action on this amendment means this (and most of this Convention are lawyers and can understand the matter on presentation): shall we have codes, or shall we not have codes? The codification has not been completed in its entirety. If we strike from the Constitution (and that is what it is proposed to do) the proposition directing codes to be made, then we abandon, to my mind, the principle of codification. We abandon this principle. We, as a State, are the leaders in the principle of codification. We have been followed by other States in the Union and by England. Now, shall we abandon this course simply upon the statement that the matter is obsolete, without any examination of the necessity for it? We have passed a Code of Civil Procedure and a Code of Criminal Procedure and other codes, but that does not indicate that we have finished this work. If we abandon this part of the Constitution, it may be held up to us that we have abandoned the principle of codification, that principle which we have continued to act upon from 1846 to the present time. I care not what the members think as to whether we should codify our laws or not, but let us not abandon codification, if we are in favor of codification. Those gentlemen who are against codification will probably vote in favor of this amendment, but I warn those who are in favor of codification in this State to vote against this amendment.

The President *pro tempore* — Are there any other members who desire to debate this proposed constitutional amendment? No one desiring to discuss this matter further, the Secretary will read the proposed amendment through.

The Secretary read the proposed amendment as follows:

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

"Section 17 of article 1 of the Constitution is hereby amended so as to read as follows:

"Section 1. All the provisions of section 17 of article 1 of the Constitution after the word 'abrogated,' and reading as follows:

'And the Legislature, at its first session after the adoption of this Constitution, shall appoint three commissioners whose duty it shall be to reduce into a written and systematic code the whole body of the laws of this State, or so much and such parts thereof as to the said commissioners shall seem practicable and expedient, and the said commissioners shall specify such alterations and amendments therein as they shall deem proper, and they shall at all times make reports of their proceedings to the Legislature when called upon to do so; and the Legislature shall pass laws regulating the tenure of office, the filling of vacancies therein, and the compensation of the said commissioners, and shall also provide for the publication of the said code, prior to its being presented to the Legislature for adoption,' are hereby abrogated."

The President *pro tempore* — The Secretary will call the roll. Those in favor of the proposed amendment will say aye, and those opposed will say no.

The Secretary called the roll, and the proposed amendment was adopted by the following vote:

Ayes — Messrs. Abbott, Ackerly, Allaben, Arnold, Baker, Banks, Barhite, Barnum, Barrow, Becker, Blake, Bowers, Brown, E. A., Brown, E. R., Burr, Bush, Cady, Cassidy, Chipp, Jr., Church, Clark, G. W., Clark, H. A., Cochran, Coleman, Cornwell, Countryman, Crosby, Danforth, Davenport, Davies, Davis, Deady, Dean, Deterling, Deyo, Dickey, Durfee, Emmet, Faber, Farrell, Floyd, Francis, Frank, Andrew, Frank, Augustus, Fraser, Fuller, C. A., Fuller, O. A., Galinger, Gibney, Giegerich, Gilbert, Gilleran, Goeller, Goodelle, Green, A. H., Green, J. I., Hamlin, Hawley, Hecker, Hedges, Herzberg, Hill, Hirschberg, Holcomb, Holls, Hotchkiss, Hottenroth, Johnson, I. Sam, Johnson, J., Johnston, Kellogg, Kimmey, Kinkel, Lauterbach, Lester, Lewis, C. H., Lewis, M. E., Lincoln, Lyon, Manley, Mantanye, Marshall, Maybee, McArthur, McCurdy, McDonough, McIntyre, McKinstry, McLaughlin, C. B., McMillan, Mereness, Moore, Morton, Nichols, Nostrand, O'Brien, Osborn, Parker, Parkhurst, Pashley, Peck, Phipps, Platzek, Pool, Porter, Pratt, Putnam, Redman, Root, Spencer, Steele, A. B., Steele, W. H., Storm, Sullivan, T. A., Tibbetts, Truax, C. H., Turner, Vedder, Vogt, Wellington, Whitmyer, Wiggins, Woodward — 124.

Noes — Messrs. Fitzgerald, Forbes, Griswold, Jenks, Marks, McClure, Meyenborg, Mulqueen, Parmenter, Peabody, Powell, Schumaker, Titus, Towns, Tucker, Veeder — 17.

The President *pro tempore* — This proposed constitutional amendment, having received the vote of a majority of the members elected to this Convention, is duly passed.

Mr. Marshall — Mr. President, I move that the session of this Convention be extended until eleven o'clock.

The President *pro tempore* — The question is on the motion of Mr. Marshall, that this session be extended until eleven o'clock.

Mr. Gilbert — Mr. President, I call for the ayes and noes on that. I think we have sat here long enough.

The call for the ayes and noes was not sustained.

The President *pro tempore* put the question on the motion of Mr. Marshall, and it was determined in the affirmative by a rising vote — ayes, 68; noes, 61.

Mr. Cochran — Mr. President, I would like to have it noted upon the Journal that the Democrats carried that motion.

Mr. J. Johnson — Mr. President, I move that the next amendment lie on the table until to-morrow morning.

Several members demanded the regular order.

The President *pro tempore* — There is so much doubt about the motion being in order by every parliamentarian, that the Chair will have to put it to vote. Those in favor of laying the next amendment on the table ——

Mr. Choate — As I understand, the motion was not to lay it upon the table, but to lay it upon the table until a particular time.

Mr. Johnson — Until to-morrow morning.

Mr. Choate — I suggest that that is not in order.

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

The President *pro tempore* — Mr. McClure will state his point of order.

Mr. McClure — My point of order is that the rule adopted was that we should proceed with the order of third reading until we had completed it. Now, we may complete this thing to-night. It is improper, I submit, to put any of these amendments over until a special time. I think we have the right to go on with the regular order.

Mr. J. Johnson — I withdraw the motion.

The President *pro tempore* — The motion being withdrawn, the Convention will now consider general order No. 3, third reading No. 10, and the Secretary will read the title.

Te Secretary read the title as follows (O. Nos. 11-418):

"Proposed constitutional amendment, to amend article 3 of the Constitution of the State of New York, relating to legislation."

The President *pro tempore* — The opportunity will now be given to any member of the Convention to discuss this question, and each member may speak for five minutes. Does any member desire to discuss this proposed constitutional amendment?

Mr. J. Johnson — Mr. President, I move that this proposed constitutional amendment be recommitted to the Committee on Legislative Powers and Duties, with instructions to forthwith report the amendment as it now stands, with an additional section, as follows. The section which I propose is the section which was ruled out of order this morning in relation to the way which the Legislature, to which this section relates entirely, shall pass certain bills.

The President *pro tempore* — As many as are in favor of this motion ——

Mr. Veeder — I ask to have this amendment read.

The President *pro tempore* — The amendment will be read. The Secretary will read.

The Secretary proceeded to read the proposed amendment of Mr. Johnson.

Mr. Veeder — I move to suspend the further reading of this amendment. It is well understood.

The President *pro tempore* — The motion before the Convention is to recommit.

Mr. Veeder — But it is being read for information. We now know what it is. I move to suspend the further reading.

The President *pro tempore* — That motion is strictly in order.

The President *pro tempore* put the question on the motion of Mr. Veeder to suspend the further reading of the amendment of Mr. Johnson, and it was determined in the negative.

The President *pro tempore* — The Secretary will proceed with the reading of the amendment.

The Secretary read the amendment as follows:

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

"Section 27. All cities are classified according to the latest State enumeration, as from time to time made, as follows: The first

class includes all cities having a population of two hundred and fifty thousand or more; the second class, all cities having a population of fifty thousand and less than two hundred and fifty thousand; the third class, all other cities. Laws relating to the property, affairs or government of cities, and the several departments thereof, are divided into general and special city laws; general city laws are those which relate to all the cities of one or more classes; special city laws are those which relate to a single city, or to less than all the cities of a class. Special city laws shall not be passed, except in conformity with the provisions of this section. After any bill for a special city law, relating to a city, 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 such city, and within fifteen days thereafter the mayor shall return such bill to the House from which it was sent, with his certificate thereon, stating whether the city has or has not accepted the same.

"In every city of the first class, the mayor, and in every other city, the mayor and the legislative body thereof, concurrently, shall act for such city as to such bill; but the Legislature may provide for the concurrence of the legislative body in cities of the first class. The Legislature shall provide for a public notice and opportunity for a public hearing concerning any such bill in every city to which it relates, before action thereon. Such a bill, if it relates to more than one city, shall be transmitted to the mayor of each city to which it relates, and shall not be deemed accepted, unless accepted as here provided, by every such city. Whenever any such bill is accepted, as herein provided, it shall be subject, as are other bills, to the action of the Governor. Whenever any such bill is returned without the acceptance of the city or cities to which it relates, or is not returned within such fifteen days, it may, nevertheless, again be passed by both branches of the Legislature, and it shall then be subject, as are other bills, to the action of the Governor. If the session of the Legislature at which such bill passed is terminated before it is returned, it shall be transmitted by the mayor to the Governor, and, if accepted and not otherwise, it shall be subject, as other bills then are, to the action of the Governor thereon. In every special city law which has been accepted by the city or cities to which it relates, the title shall be followed by the words 'accepted by the city' or 'cities,' as the case may be; in every such law which is passed without such acceptance, by the words 'passed without the acceptance of the city,' or 'cities,' as the case may be."

Mr. Nicoll — Mr. President, I rise to a point of order. This motion is not germane to the amendment under consideration. It has no relation to it. It cannot be entertained at this time.

The President *pro tempore* — The Chair holds that the gentleman has a right to offer his amendment to any proposed amendment he sees fit.

Mr. Veeder — I suggest that he have it tacked on to the apportionment article. (Laughter.)

Mr. Hottenroth — Mr. President, I rise to a point of order. While this amendment might possibly be tacked on to the apportionment article, I believe a reference to the Committee on Powers and Duties of the Legislature would be eminently improper, and, therefore, I make the point of order that referring it to that committee is entirely out of order.

The President *pro tempore* — The Chair must hold that the gentleman can ask to have his proposition or amendment referred to any committee that he may see fit — to the Committee on Privileges and Elections, if he sees fit.

Mr. Peabody — Mr. President, I move as an amendment that it be referred to the Committee on Education. (Laughter.)

The President *pro tempore* — That motion is out of order.

Mr. J. Johnson — Mr. President, that proposition relates entirely as to how the Legislature can pass certain laws. It amends article 3, which relates to nothing but the way laws can be passed by the Legislature.

The President *pro tempore* — The Chair must rule that the motion to recommit precludes debate on the main question.

The question is on the motion to recommit.

Mr. Veeder — Before the vote is taken, I ask the President to look at rule No. 40, which reads that on the third reading of a proposition no amendment thereto shall be in order without unanimous consent.

The President *pro tempore* — The Chair will have to decide that the motion of the gentleman is out of order, as the third reading of the amendment had not been commenced.

The motion of Mr. Johnson was lost.

The President *pro tempore* — General order No. 3, third reading No. 10. Does any gentleman desire further to discuss this proposed constitutional amendment? If there is no desire on the part

of the Convention to discuss this amendment any further, the Secretary will read the amendment through.

The Secretary read the proposed amendment as follows (O., Nos. 11-418):

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

"Article 3 of the Constitution is hereby amended by adding at the end thereof a new section, to read as follows:

"No provision or enactment shall be embraced in the annual appropriation or supply bill, excepting such as shall relate specifically to some particular appropriation in the bill, and such provision or enactment shall be limited in its operation to such appropriation."

The President *pro tempore* — The Secretary will call the roll. Those in favor will say aye, and those opposed will say no.

The Secretary called the roll, and the amendment was passed by the following vote:

Ayes — Messrs. Abbott, Ackerly, Allaben, Arnold, Baker, Banks, Barhite, Barnum, Barrow, Becker, Blake, Bowers, Brown, E. A., Brown, E. R., Burr, Cady, Cassidy, Clark, G. W., Clark, H. A., Cochran, Cornwell, Countryman, Crosby, Danforth, Davenport, Davis, Deady, Dean, Deterling, Deyo, Dickey, Durfee, Emmet, Faber, Farrell, Fitzgerald, Floyd, Forbes, Francis, Frank, Andrew, Fraser, Fuller, C. A., Galinger, Gibney, Gilbert, Goodelle, Green, A. H., Griswold, Hamlin, Hawley, Hecker, Hedges, Herzberg, Hill, Hirschberg, Holls, Hottenroth, Jenks, Johnson, I. Sam, Johnson, J., Johnston, Kellogg, Kerwin, Kinkel, Lauterbach, Lester, Lewis, C. H., Lincoln, Lyon, Manley Marks, Marshall, Maybee, McCurdy, McDonough, McIntyre, McKinstry, McLaughlin, C. B., McMillan, Mereness, Moore, Morton, Mulqueen, Nichols, O'Brien, Osborn, Parker, Parkhurst, Parmenter, Pashley, Peck, Phipps, Platzek, Pool, Porter, Pratt, Putnam, Redman, Root, Rowley, Schumaker, Steele, A. B., Steele, W. H., Storm, Sullivan, T. A., Tekulsky, Tibbetts, Titus, Towns, Truax, C. H., Turner, Vogt, Wellington, Wiggins, Woodward, President — 119.

Noes — Messrs. Gilleran, Mantanye, Powell — 3.

The President *pro tempore* — This amendment having received a majority of the votes of all the members elected to this Convention, is duly passed.

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

The President *pro tempore* put the question on the motion of Mr. Jenks, and it was determined in the negative by a rising vote — ayes, 57; noes, 70.

The President *pro tempore* — General order No. 32, third reading order No. 11 is now in order. The Secretary will read the title.

The Secretary read the title as follows (O., Nos. 100-400):

" Proposed constitutional amendment to amend section 2 of article 2, prescribing the period of citizenship as a prerequisite to the right to vote."

The President *pro tempore* — This amendment is open to one hour of debate.

Mr. E. A. Brown — Mr. President Mr. Roche was taken sick a few minutes ago, and had to go home, and I ask that out of consideration for him this matter be laid aside until to-morrow morning.

The President *pro tempore* — The motion is strictly in order without debate. Do you move, Mr. Brown, that it lie over?

Mr. E. A. Brown — I do.

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

Mr. Hawley — Mr. President, there is nothing in this amendment, excepting the changing of the word " ten " to " sixty." It does not require the presence of Mr. Roche or anybody else.

Mr. Meyenborg — Mr. President, I send up a resolution.

The President *pro tempore* — The Secretary will read the resolution.

The Secretary read the resolution as follows:

" Resolved, That the amendment be sent back to the committee from which it emanated, with instructions to strike out the word ' male,' on page 3, of line 1, and report the same so amended forthwith." (Laughter.)

The President *pro tempore* put the question on Mr. Meyenborg's resolution, and it was determined in the negative.

Mr. Tekulsky — Mr. President, I desire to strike out the word " thirty," in line 6, and insert the word " ten."

The President *pro tempore* — An amendment on the third reading is not in order.

Mr. Cochran — Mr. President, this amendment was originally presented to the Committee on Suffrage with the word " thirty " in line 4, instead of the word " sixty," and the sub-committee to whom

the bill was then referred by the Committee on Suffrage reported back this amendment, with the word "thirty" changed to "sixty," increasing, in other words, the duration of citizenship from thirty to sixty days. And it is fair to state that that sub-committee reported back sixty days because they understood it met the approval of Mr. Roche, who originally introduced this amendment. Now, Mr. Roche later informed the Committee on Suffrage that he did not favor this change from thirty to sixty days. I do not remember exactly the vote by which this proposed amendment was reported to the Convention, but I do remember that there was a very large minority of the Suffrage Committee opposed to this long duration of citizenship before an American-born citizen should become entitled to the right of suffrage. There seems to be a feeling that there should be some increase, but the minority felt that in the cities, particularly, the extension or increase from ten to thirty days would be sufficient. I have not heard any reason why the change from thirty to sixty days is necessary. The naturalization that occurs in the cities just before an election has been put forth as the reason for the change, but I do not see that there is anything in that. If the amendment was left as originally suggested by Mr. Roche — thirty days — it seems that that would satisfy all who had any fear from this naturalization. I, therefore, move, sir, that this amendment be recommitted to the Committee on Suffrage, with instructions to strike out the word "sixty," in line 4, and substitute in lieu thereof the word "thirty."

Mr. Storm — Mr. President, evidently Mr. Cochran was not present when this matter was considered in Committee of the Whole, otherwise he would be better informed. This substitute was fully discussed in Committee of the Whole and reasons given *pro* and *con*, and finally amended, with Mr. Roche present.

Mr. Countryman — Mr. President, I move to amend the motion of the gentleman from Brooklyn (Mr. Cochran) to recommit, by inserting six months, instead of thirty days, and in lieu of sixty days, as the time prior to the election that the person should be naturalized. Now, the whole difficulty, I submit ——

Mr. Deady — A point of order, Mr. President. This motion is not open to debate.

Mr. Countryman — It has been debated by Mr. Cochran.

Mr. Cochran — But I was very careful ——

Mr. Kellogg — Mr. President, I move that we do now adjourn.

The President *pro tempore* — The question is on the motion to adjourn.

Mr. Cochran — Point of order, Mr. President.

The President *pro tempore* put the question on the motion to adjourn, and it was determined in the affirmative by a rising vote — ayes, 81; noes, 30.

Whereupon the Convention adjourned until Wednesday, September twelfth, at 10 A. M.

Wednesday Morning, September 12, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber, at the Capitol, Albany, N. Y., Wednesday, September 12, 1894, at 10 A. M.

President Choate called the Convention to order.

Prayer was offered by the Rev. R. D. Williamson.

On motion of Mr. Cochran, the reading of the Journal of September 11, 1894, was dispensed with.

Mr. Dickey — Mr. President, I desire to offer the following resolution:

Mr. Bowers — A point of order, Mr. President. We are on the third reading of bills, under a resolution that they should be proceeded with until completed. Under the rules no other business can be entertained.

The President — The Convention can entertain a resolution if it desires. We will hear what it is.

Mr. Dickey (reading) — "Resolved, That the proposed constitutional amendment, general order No. 13, be recommitted to the Committee on Cities, with instructions to amend it, and forthwith report it complete, it retaining its place on the order of third reading, as amended, so it will read as follows:

"The only purpose of this amendment is to exempt cities of less than fifty thousand from the operation of the first section of the cities article."

Mr. Bowers — Mr. President, I make the point of order, and call attention to the resolution, which was expressed, that we should proceed with the third reading of bills until completed. This is directly in violation ——

The President — The Chair does not understand that that deprives the Convention of the power to receive resolutions and pass upon them. I do not see how it does.

Mr. Bowers — If there is an order of business?

The President — It is always in the power of the Convention to suspend an order.

Mr. Bowers — Then a motion should be made to suspend it, and carried. We should have some reasonable interpretation of the rules.

The President — Is it the wish of the Convention to entertain this resolution of Mr. Dickey?

The President put the question on agreeing to entertain the resolution offered by Mr. Dickey, and it was determined in the affirmative.

Mr. Bowers — Mr. President, I make the point of order that you can only change that order of business by a two-thirds vote.

The President — There is no such provision in our rules. There never has been. It may have been a mistake not to have it, but there never has been.

Mr. Bowers — I think it is there, Mr. President.

The President — The Secretary will read the resolution offered by Mr. Dickey.

The Secretary completed the reading of the resolution offered by Mr. Dickey, in the language following (O., I. No. 369, P. No. 451):

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

"Section 1. Except to fill vacancies, all election of city officers, including the supervisors and judicial officers of inferior local courts, 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 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, 1895, whose successors have not then been elected, which, under existing law, will expire with an even-numbered year, or in and before the end of an odd-numbered year, are extended to and including the last day of December following such expiration. The terms of office of all such officers which, under existing law, will expire in an even-numbered year, and before the end thereof, are abridged so as to expire in the end of the year preceding such expiration. This section shall not apply to any city the population of which, according to the latest State enumeration, from time to time made, is less than fifty thousand, nor to elections

of any judicial officers, except judges and justices of inferior local courts."

The President put the question on the adoption of the resolution, as read, and it was determined in the affirmative, by a rising vote, a count having been demanded.

Mr. Blake — Mr. President, I have a resolution to offer.

The Secretary read the resolution offered by Mr. Blake, in the language following:

R. 208.—" Resolved, That the Committee on Printing do investigate and report to this Convention, not later than Thursday noon of this week, the cause of the delay in furnishing to the Convention the printed record of the debates, pursuant to a resolution heretofore adopted by the Convention."

The President put the question on the adoption of the resolution offered by Mr. Blake, and it was determined in the affirmative.

Mr. J. Johnson — Mr. President, I move that the report of the Committee on Cities, which is directed to be made, and which is *pro forma* made, be agreed to, and that that article as amended be ordered to a third reading.

The President put the question on the adoption of the motion offered by Mr. Johnson, and it was determined in the affirmative.

Mr. Foote — The Committee on Revision presents the following report:

The Secretary read: Mr. Foote, from the Committee on Revision and Engrossment, to which was referred the proposed constitutional amendment, introduced by Mr. E. R. Brown (introductory No. 376), reported by the Committee on Legislative Organization and by the Committee of the Whole, entitled, ' Proposed constitutional amendment to article 3, relating to the apportionment of Senate and Assembly districts," reports the same as examined and corrected, and as correctly engrossed.

The President — It will be printed, and is upon the order of third reading. At the close of yesterday's session the question pending at the time of adjournment was on the motion of Mr. Cochran to recommit proposed constitutional amendment (printed No. 400), entitled, to amend section 1 of article 2, prescribing the period of citizenship as a prerequisite to the right to vote, to the committee reporting it, with instructions to report the same forthwith, amended by striking out " sixty," in line 4, section 1, and inserting in lieu thereof the word " thirty."

Mr. Cochran — Mr. President, I might say, sir, that I made that motion last night for the purpose of saving anything which Mr. Roche, the mover of the amendment, desired to say this morning; and as he has no desire to speak to the amendment, I wish to withdraw the motion.

The President — Does any other gentleman desire to be heard on this amendment, 400, before it is read a third time?

Mr. Goodelle — I desire simply to say that this bill, No. 11, makes no change in the present Constitution, except in the second line, which changes the word "ten," as in the present Constitution, to the word "sixty," making it "sixty days" instead of "ten days." This matter, when it was before the Committee on Suffrage, was an agreement, or compromise, on several different propositions. There were propositions to extend the time to six months, to four months and to three months, but by a general consensus of opinion, and by the introducers of the different propositions, it was finally agreed that sixty days would be satisfactory all around, and the proposer of this proposition, whereas his original proposed amendment was thirty days, concurred and agreed upon sixty days. When the matter came before the Committee of the Whole it was quite fully discussed. A motion was then made by Mr. Roche proposing to change sixty to thirty, and by the almost unanimous voice of this Convention, both sides voting for it, it passed the Committee of the Whole precisely in the form that it is in now. I hope, therefore, that this matter will prevail, and without any serious opposition.

The President—Does any other gentleman desire to be heard on this amendment?

Mr. Countryman — I understood last night that this resolution was not debatable.

The President — Mr. Cochran has withdrawn the only motion that there was. The general proposition is debatable for five minutes.

Mr. Countryman — Mr. President, sixty days is better than thirty. Ninety would be better than sixty, and six months or a year would be better still, in my judgment. Now, the entire difficulty, all the scandal which has existed as long as I can remember, and I can remember pretty nearly as long as the President, has arisen from the fact that the present Constitution permitted naturalizations to take place up to within a short period prior to the election. After the nomination of the political parties takes place, and the politicians begin to look over the ground, they begin to hunt up all of the

unnaturalized residents in their localities, and there is an immediate competition between them as to who shall obtain the greater portion of these unnaturalized voters, and procure their naturalization by hook or by crook, before the election. Now, if this naturalization was required to take place at some period prior to any of the nominations, before any of the candidates were presented to the people for election, there would be no difficulty whatever. Hence, I submit that this time should be extended long enough to preclude combinations among the politicians with a view of affecting the particular election which is to take place immediately afterward; and sixty days will not accomplish that purpose. Ordinarily, our State tickets are made up from sixty to ninety days prior to the election, and in presidential years we usually have the national tickets presented to the people three, four or five months prior to the election. I would require, therefore, the period of six months, and if such a time as that were fixed in the Constitution we should have no more scandals about the naturalization of voters prior to elections. Nor is there any injustice in this, Mr. President. We require a man bred and born on American soil, who has lived here for sixty or seventy years, if he has changed his residence and come into this State, from New Jersey on the one side, or Connecticut or Vermont or Massachusetts on the other, we require him to remain in this State a year before he can exercise the elective franchise. Is there any injustice in requiring the naturalized voter to remain upon our soil and within our limits at least six months before he shall exercise this great privilege of American citizenship? We wish, if possible, to do away with the scandal. Let us go to the root of the matter, and accomplish the purpose by making the period long enough to prevent the politicians from getting together, and gathering these men at the polls, or before the courts, a short time prior to the election. I would, therefore, favor a longer period of time than sixty days.

The President — Does the gentleman make a motion to recommit with instructions forthwith to amend by changing sixty days to some longer period?

Mr. Countryman — I will make that proposition.

The President — To what period?

Mr. Countryman — Six months.

The President put the question on agreeing to the motion of Mr. Countryman to recommit the amendment to the Suffrage Committee, with instructions to report forthwith an amendment changing the words "sixty days," in line 4, to "six months."

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

Mr. Tekulsky — Mr. President ——

The President — This is not a debatable motion.

Mr. Tekulsky — Can I amend it and send it back to the committee?

The President— You can amend the motion.

Mr. Tekulsky — I desire to amend it, and make it six years. (Laughter.) We might as well make it six years as six months.

The President — I do not think that Mr. Tekulsky's amendment need to be put. I do not think that he is serious about it.

Mr. Tekulsky — I am very serious, Mr. President. You might just as well make it six years as six months.

The President put the question on the adoption of the amendment offered by Mr. Tekulsky, and it was determined in the negative.

The President — The question is on Mr. Countryman's motion. Mr. Veeder calls for the ayes and noes.

Mr. Veeder — Mr. President, I withdraw that.

The President then put the question on the adoption of the amendment offered by Mr. Countryman, and it was determined in the affirmative by a rising vote — 72 to 53.

The President — Before we proceed further, the Secretary will write in, in place of "sixty days," "six months," as it now stands in line 4. Does any other gentleman desire to be heard on this amendment before it is read a third time?

There being no further debate offered, the Secretary read the proposed amendment.

Mr. C. B. McLaughlin — Mr. President, I move to reconsider the vote just taken, substituting the words "six months" for "thirty days," and upon that I call for the ayes and noes.

Mr. Veeder — I make the point of order, Mr. President, that it is too late.

The President — The point of order is not well taken. The question is on Mr. McLaughlin's motion.

Mr. McLaughlin — I want to say just a word, Mr. President, upon this proposition. It seems to me this is too radical a change from the present Constitution. I ask the attention of this Convention one moment. I may be wrong in it. It seems to me that sixty days is a fair position for all parties interested. We are chang-

ing from ten days to sixty, and to require more than sixty days, I believe, is not a wise policy on the part of this State, and for that reason I move a reconsideration.

Mr. Veeder — Mr. President, I make the point of order that the question is not debatable.

The President — A motion to reconsider is debatable.

Mr. Holls — Mr. President, I make the point of order that the original motion not being debatable, the motion to reconsider is not debatable.

The President — I think Mr. Holls is correct; that it is not debatable.

Mr. Veeder — Do I understand that after deciding the point the Chair reverses its decision that it is debatable?

The President — I am reminded of an existing rule that if the original motion was not debatable, the motion to reconsider is not debatable.

Mr. Veeder — I submit, sir, it was debatable. The gentleman who proposed it debated it, Mr. Countryman. It was debated.

The President — Nobody objected. He did not debate a motion. He made the motion after he had debated the original article.

Mr. Veeder — The main proposition ——

The President — I have decided your point of order.

Mr. Veeder — I am trying to induce the Chair, by reason and respectful consideration, to ——

The President — The gentleman could not influence the Chair. (Laughter.)

Mr. Veeder — I am afraid I will have to agree with the Chair on that point.

The President — The question is on Mr. McLaughlin's motion to reconsider the vote last taken.

Mr. Veeder — I move, Mr. President, to lay that motion to reconsider on the table. On that I call for the ayes and noes.

The call for the ayes and noes was not sustained.

The President put the question on agreeing with the motion of Mr. Veeder.

Mr. Veeder — Tellers, Mr. President.

The President directed a count, and appointed Messrs. McDonough and Cochran as tellers.

A vote was then taken on Mr. Veeder's motion to lay the motion

of Mr. McLaughlin to reconsider upon the table, and it was determined in the affirmative, 68 to 44.

The President — Does any other delegate desire to be heard on this amendment?

Mr. McClure — I only desire to say, sir, that the action taken this morning is an evidence of the disposition of the majority of this Convention. The amendment as proposed went into Committee of the Whole ——

Mr. Veeder — Is there any question before the Convention?

The President — Yes, sir; the original motion is before the Convention.

Mr. McClure — By unanimous report that committee made a recommendation that the time fixed should be sixty days, and yet when a whiff of partisan feeling, illiberal feeling, prevails in this assemblage this morning, immediately after a caucus at the other end of the building has ended, even members of that committee rise here and vote in favor of extending the time to six months. The action of the committee, after due deliberation, seems to have had no effect upon the members in comparison with the effect that the caucus action has had upon them; and here they have a new amendment for six months, and upon that amendment members rise who voted for that, and wish to reconsider it. Let it go, Mr. President; it is an evidence of the disposition, the partisan, the small, the illiberal, the non-intelligent action of this Convention. I am satisfied to have it go out to the people that this body is not willing that those aliens who desire to be naturalized shall be naturalized within a reasonable time, and shall be naturalized having the assistance of the machinery of their respective parties.

Mr. Root — Mr. President, the motion to which the gentleman from New York (Mr. McClure) has referred as an evidence of the illiberality and partisanship of the gentlemen on this side of the chamber, was made by one of the most distinguished Democrats, not only in this Convention, but in the State of New York. (Laughter and applause.) It was following his respected judgment that a majority of this Convention voted to insert in this provision " six months " in the place of " sixty days."

Mr. President, it seems to me that after the long deliberations of the committee which reported this measure, it may be that the gentleman who made the motion has gone too far from the attempt which that committee made to reach a happy and safe mean between the two opposing ideas. The gentleman from Rensselaer

(Mr. Roche) represented one extreme. The gentleman from Albany (Mr. Countryman) represents the other, with six months. Would it not be wise for us to take the safer course which will secure the advantage of preventing the hurried and hasty crowding of naturalizations upon the very time of election, and on the other hand not convey the impression that we wish to interfere with naturalization. Mr. President, with this view, I move that the measure which is now before the Convention be recommitted to the Committee on Suffrage, with instructions to strike out the words "six months" and insert the words "ninety days," and that they report forthwith, the measure keeping its place on the order of third reading.

The President put the question on the adoption of the motion offered by Mr. Root.

Mr. Veeder — Tellers.

The President appointed as tellers Messrs. Cochran and McDonough.

A rising vote was then had upon the motion offered by Mr. Root, and it was determined in the affirmative, 86 to 47.

The President — The Secretary will change it, then, to ninety days, instead of six months.

Mr. Bowers — I move to recommit this measure to the Committee on Suffrage, with instructions to report the same forthwith, striking out the words "ninety days," and making it "ten days."

The President put the question on the adoption of the motion offered by Mr. Bowers, and it was determined in the negative.

Mr. Roche — Mr. President, I move that it be recommitted to the Committee on Suffrage, with instructions to strike out the word "ninety," and substitute the word "thirty" instead.

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

Mr. Blake — I call for the ayes and nays.

Mr. Holcomb — Ayes and noes.

Mr. Schumaker — Ayes and noes on that.

The call for the ayes and noes was sustained.

Mr. Abbott — Mr. President, was not the proposition already passed upon, last night? I raise the point of order that we passed upon that proposition last night.

Mr. Cochran — That was my amendment, and I withdrew it this morning.

The President — Mr. Cochran made the motion last night and

withdrew it this morning. It was not acted upon, and I do not think any such ruling as that should be asked for or made.

The President put the question on the motion of Mr. Roche to recommit the substitute with instructions to substitute "thirty" for "ninety," and the Secretary proceeded to call the roll.

Mr. E. R. Brown — Mr. President, I desire to explain my vote. I was in favor of this measure as originally reported by the committee. The purpose of that measure as reported was not to prevent naturalized citizens from exercising the right of franchise as soon as it was conferred upon them, but for the purpose of taking the naturalization of aliens out of the hands of campaign committees. For the accomplishment of that purpose, the measure, as originally reported, was a desirable one. The motion was made upon this floor by a member of the minority to extend the time from sixty days to six months. That would more than accomplish the purpose. It would deprive citizens who had been naturalized from exercising their rights for an unreasonable length of time. That motion was made by the minority, was carried by the minority, and, having been carried, this House has no choice except to correct by making it ninety, and the extension from sixty to ninety days is directly chargeable to the minority of this House. They cannot escape from it by now making a motion to take away the entire substance of the amendment. I vote no.

Mr. Cochran — Mr. President, in explaining my vote, I desire to say that the gentleman who last spoke (Mr. Brown) is certainly in error when he says that this amendment was carried by the minority. As one of the tellers, I desire to say that that amendment was carried by almost the unanimous vote of the majority of this Convention, and he knows it as well as I do. I vote aye.

Mr. Countryman — Mr. President, there seems to be some considerable confusion as to my political identity. Perhaps it would be fair to all sides that I should give — although it may result in some personal allusion — a little account of my political experience. I was born and bred a Republican. The first ticket I ever voted was a Republican ticket; and I never ceased to vote it until Horace Greeley, as a Democratic candidate, ran for the presidency. From that time down I have never voted a straight ticket (laughter); not even the Democratic ticket upon which I ran and was elected a member to this Convention.

Now, sir, I made this motion without reference to the politicians on either side of this Convention. I came here to act independently upon all the questions to come before this Convention, and I

assumed, in my innocence that other members representing even the great political parties came here to do likewise. But I regret to say that latterly, on both sides, I have witnessed a very determined disposition to practice politics in the deliberations of this assembly. Now, I do not propose to take any part or lot on either side in that respect. I came here to perform my duties, as I understand them, and I do not understand that a foreigner who has come here and finally obtained the rights of citizenship, after he has obtained these rights, is entitled to any greater rights or privileges than an American-born citizen who has always lived upon American soil. (Applause.) If the politicians deem it for their interests to make themselves subservient to this foreign influence for the purpose of capturing the foreign vote at each election, they must take their chances as politicians, and not attempt to control the deliberations of a Constitutional Convention to accomplish any such ulterior purpose. (Applause.) I vote no.

Mr. Dean — Mr. President, the deliberations of this Convention seem to have degenerated into a disgusting scrabble for political points. I, therefore, vote no.

Mr. Griswold — Mr. President, I wish to be excused from voting, and to explain my vote. We have had, almost since the foundation of our government, a period of ten days, by the laws of the United States, after a man became a citizen of this country, during which he was held on probation before he had the rights of a citizen, that is, to vote; and one of the most important rights of citizenship is that of voting. It seems to me entirely contrary to principle that after a man has resided in a place for the requisite length of time, qualified himself as a citizen in the popular and regular manner, to say then that he shall be held in abeyance and be prohibited from exercising the rights of citizenship. If the laws of the United States extended this time, that would be one thing; but here we propose in this Constitutional Convention to keep him still under probation. Now, it seems to me the rule that we have had here since the foundation of the government is the fair rule, one that has been held without objection. Of course, there have been some questions here about naturalization, and it is said that that has been done in haste and within a short period of time before the election. Now, when you extend the period to thirty days, and say that no man's naturalization is worth anything to him, that he shall not have the right to vote during that thirty days preceding election, it seems to me that that is a reasonable time. Attention is not drawn to the question until along toward the approaching election, and if it is

placed at thirty days preceding an election, it seems to me that that is a reasonable and fair time, extending the time as it does twenty days beyond what it has ever been before. When you take a man and adopt him as a citizen, he should be regarded as a citizen; he should have his rights, and not still held in probation. I vote aye.

Mr. Jenks — Mr. President, I regret very much that the leader of the so-called majority should have brought the personal politics of the distinguished mover of this amendment into the Convention. Why, gentlemen, we all know the politics of the eminent ex-judge. The mind of man runneth not to the contrary. Shakespeare himself put into the words of Brutus, " Friends, Romans, countrymen, lend me your ears." As he spoke for liberty, he described Democrats for friends; as he spoke for power, he described the Republicans as Romans; as he spoke for the great Mugwump party, he alluded to the distinguished gentleman himself by name. (Great laughter.) I vote aye.

Mr. J. Johnson — Mr. President, I desire to explain my vote. I regret that the sixty days has been enlarged to ninety. The question now is whether it shall be ninety or ten. I accept ninety, although I should have preferred sixty. Having no choice, I, therefore vote no.

Mr. Kerwin — Mr. President, again do I wish to call the attention of the Convention to the fact that Albany, though, in 1882, represented in the Assembly by bulldozing Democrats, they were conscientious enough to nominate candidates for this Convention who were liberal enough in their ideas to vote continuously with the majority in order to get out a good Constitution. Mr. President, I vote no.

Mr. McKinstry — Mr. President, I did not come down to Albany to drive foreigners away from the Republican party. It was not a creditable spectacle to see Republicans falling over each other in following the lead of a Democrat who proposed a fatal amendment. It was not very creditable to us, however distinguished the gentleman and however much we may esteem him. Mr. Countryman says that the foreigner shall be subjected, after he is a citizen, to the same conditions that we are. He is so subjected, as I understand it. He must have his year's residence in the State, his four months in the county, and his thirty days in the district. Now, sir, there is no sense in requiring any longer period before election than is sufficient for examining naturalization papers. That is all that is decent, and all that is required. This amendment is simply prolonging the period for giving him real citizenship. I say, further,

it is not creditable to our party that we should go back on the Suffrage Committee when they have made a report here, unanimously, and recommended a sensible and proper period, in my estimation. I voted for ninety days in preference to six months. I would vote for sixty days in preference to ninety. But, as between thirty days and ninety, I vote for thirty. I vote aye.

Mr. C. B. McLaughlin — Mr. President, I desire to explain my vote. As this proposition came from the Committee on Suffrage I believe it fairly represented what was for the best interests of this State. The limit of ten days contained in the present Constitution is too short. That is conceded, I believe, by nearly every one who has the best interests of the State at heart. We are then in the heat many times of a political campaign and foreigners are simply rushed into the courts; and without an opportunity on the part of the court in many cases to properly examine their cases, they are passed out of the room full-fledged citizens. I believe that six months is an undue length of time, and it was for that reason that I moved to reconsider that vote; and, Mr. President, I was surprised to find that a distinguished gentleman of the minority, and nearly the whole minority of this Convention, voted to lay my motion on the table for reconsidering the vote of six months that we might have sixty days. While I believe that thirty days is not long enough — I think sixty would be the proper length of time — as between thirty and ninety, I shall vote for ninety. Therefore, I vote no.

Mr. Mereness — Mr. President, I think that sixty days is a proper length of time, as reported by the Suffrage Committee, but as between the ten days involved in this motion ——

Several Voices — Thirty.

Mr. Mereness — I understood Mr. Bowers's motion to be ten days. Well, as between thirty and ninety, I am in favor of ninety. I vote no.

Mr. Roche — Mr. President, the foreigner must be a resident of this country for the full period of five years before he can be admitted to citizenship; and two years before his admission, he must have declared his intention in good faith to become a citizen of this country. There is no distinction under our Constitution between a man who has been a resident of New Jersey, or of Massachusetts, or of Vermont, who moves into this State, and the foreigner. Each one of them must be a resident of this State for the full period of one year before he can vote. Now, when you permit, under the laws of the United States, the foreigner to acquire citizenship, it should

be an admission to citizenship, and all the rights and privileges that go with it. When we insert the period of thirty days in the Constitution, we keep the question fairly and reasonably removed from the heat and temptations of political campaigns. It is all that is in reason required. The minority cannot go very far astray on this point when they have before them the able report that was made upon this subject by Horace Greeley and his Republican associates of the Committee on Suffrage in the Convention of 1867. They unanimously condemned the proposition to make the period sixty days on the ground that it was an invidious distinction; it was a drive at the foreigners, the majority of whom are among our most intelligent citizens, and come here with a strong desire to enjoy the freedom of this country, and with a strong love for its institutions and its laws. Now, under the Constitution of the United States, as I have stated, the foreigner must reside here for five years before he can become a citizen. This proposition of yours for three months will in effect extend the period a year and a half. It is well known that the work of naturalization will not proceed very much in the summer time. The courts are largely not held in the summer time. You, therefore, compel it to be done in the winter and spring, in the months of May and June, and you in effect, as I say, prevent that man from voting that fall, and extend the period into the following year, thus adding to the statutory requirements more than a year, or at least a full year, before that man can enjoy the privileges of citizenship. I say it is unwise and it is illiberal. I am sorry that the provision relative to sixty days was interfered with. It should have been made thirty in the beginning; but ninety days I regard as an illiberal requirement. I, therefore, vote aye.

Mr. Root — When I see the gentleman from Rensselaer (Mr. Roche) rise in his place, as I saw him a few minutes ago, and vote in favor of a six months' term of citizenship before ——

Mr. Roche — Mr. President, that is not so. On the contrary, I voted against the six months citizenship, and I voted against the motion to lay Mr. McLaughlin's motion upon the table. The gentleman is stating what is not true.

The President — Mr. Root has the floor.

Mr. Root — When I see the gentleman vote, as I did see him vote, in favor of a six months' term of citizenship before a naturalized citizen is allowed to vote ——

Mr. Roche — You did not see it.

Mr. Root — I cannot permit my judgment to be swayed by his argument in favor of thirty days.

Vice-President Steele here took the chair.

Mr. Roche — Mr. President, I rise to a question of privilege.

The President *pro tempore* — The gentleman will have to take his seat. Mr. Root has the floor.

Mr. Root — Mr. President, as the vociferation of the gentleman from Rensselaer might have prevented my remarks from being heard, I will repeat, that when I see him, as I saw him this morning, voting in favor of a six months' term of citizenship before a naturalized citizen be allowed to vote, I cannot permit my judgment to be swayed by his arguments in favor of a thirty days' term of citizenship. Therefore, upon this motion to substitute thirty for ninety, I vote no.

Mr. Roche — Mr. President, I rise to a question of privilege.

The President *pro tempore* — The gentleman will state his question of privilege.

Mr. Roche — The gentleman's statement is entirely false; it is entirely untrue. I introduced this amendment first, for thirty days. When it was in Committee of the Whole, I moved to substitute thirty for sixty. I stood there in my seat, and as gentlemen who are near me now know, and as gentlemen who sat over there know, voted against the proposition to make this six months, and Mr. Brown (E. R.) and Mr. Mereness can both testify that when Mr. Countryman spoke in favor of it, I said that it was an unwise and illiberal proposition; and Mr. Phipps, my neighbor over there, knows the same thing. When Mr. McLaughlin moved to reconsider the vote by which that six months was inserted, I voted in favor of his motion. When it was moved to lay his motion upon the table, I voted against the motion to lay Mr. McLaughlin's motion upon the table. My record on this thing has been consistent from the beginning, and it has been all along just the same as it is now, in thorough accord with the motion that I made, that this period of citizenship should be thirty days. And now, as this is a matter which affects my personal character and honor, I desire that some of these gentlemen who know how I voted this morning shall rise in their place and state what the facts are.

Mr. Root — Mr. President, I rise to a question of privilege. In view of Mr. Roche's statement, I am glad to accept his own assertion as against the evidence, or what I considered to be the evidence, of my own eyes. I did not wish to do Mr. Roche any injustice. I accept his statement. I withdraw the remark which I made.

Mr. Roche — I wish to say, Mr. President, that the gentleman did me an injustice, and a great injustice; and what is more, he repeated it; because when he first asserted it, I rose in my place, and with all the force and vigor that I could command, and with every appearance of truthfulness, I said that his statement was untrue, and I repeated it; but he repeated the assertion.

The President *pro tempore* — The Chair is of the opinion that the gentleman has made an honorable and fair apology.

Mr. Schumaker — Mr. President, I want to explain my vote. There has been a great deal of pulling and hauling about on this side of the Convention, and I do not wonder that people here have been misunderstood. I know the feelings of Mr. Roche, of Rensselaer to be opposed to the six months provision, and that he thought it very unwise that it should be put in; but when the distinguished Mugwump from this city threw such a bombshell into the Democratic camp, we became confused, and amazed, and sort of dazed; so I have no doubt that the gentleman saw my friend, who was indignant at the time, stand up and take part in this pulling and hauling and twisting and wriggling of the minority in this House. In the name of heaven, is there any man that wants to be put on record on this side of the Convention as in favor of keeping a foreigner, the naturalized foreigner, six months, sixty days, ninety days, or thirty days from voting, like the coffin of Mahomet between heaven and earth, for such a length of time, when he is entitled to the same rights of citizenship that we all have? Is that American? Is that democratic? Is it civilized? I think not, and I do not think any representative of the great Democratic party will say aye to it. Let us have the ayes and noes, and let the gentleman, whether he be a Mugwump, or a Republican, or a Democrat, express his views here, and let it be put in cold type whether he wants a man who is entitled as a full-fledged citizen to vote, to stand aside for thirty, forty, fifty, or one hundred days.

Mr. A. B. Steele — In explanation of why I vote no on this proposition, and in view of some other votes that I have given, I desire to give briefly these reasons: It is said, Mr. President, that a person who becomes naturalized should not be required to remain any given or any special length of time prior to the time of election. To those who make that assertion I put the question, "Why do you compel a man, an American-born citizen, in moving from another State into this State, to remain a citizen of this State for one whole year before you allow him to vote?" If it is not right to prescribe any length of time of citizenship prior to voting, why do you not

remove the one year, recognize him as an American citizen, and as soon as he moves over into this State, permit him to vote? But you go further. You say it is right there should be a limitation, and you say if a man moves from one county to another, although it may be a very short distance, he must remain in the county four months before he can vote. And then you go a little further. Every town in this State is divided into election districts. Perhaps a street only divides the district. If a man moves from one side of the street to the other, and it is done within thirty days of an election, he is disqualified from voting. If it is wrong to keep a man that is naturalized for some length of time without the right to vote, why do you say that if he happens to move from one district to another, although the registration need not be completed for more than ten days, that he shall be disfranchised? I voted in favor of the six months because I believed it was right, and I believe, on sober second thought, it will be concluded that that is right. If a man, as I stated, who moves from one State to another, an American citizen, is to be required to live in the State a year, why not say that a foreigner shall be a citizen for at least six months before voting? Why should he have more advantage? Why should he be favored more than an American-born citizen? I believe they should all be treated equally. Mr. President, for these reasons I vote no.

Mr. Vedder — Mr. President, I ask to be excused from voting. I suppose that when a foreigner is made a citizen he is made a citizen not only of New York State, but a citizen of the United State. I suppose the distinguished President of this Convention was born in Massachusetts, and when he was twenty-one years of age he was entitled, as a citizen of the United States, to vote in the State of Massachusetts. He moved into New York and he had to remain in New York one year, although a citizen of the United States, standing upon the same footing as a naturalized foreigner; and yet, the foreigner, under our law, could vote in ten days, while the distinguished President of this Convention had to remain in the State of New York, as a resident of the United States, one year. The foreigner had 355 days the start of the President of this Convention when he became a citizen of the State of New York. Thirty days is too short a time. Sixty days is too short a time, and even ninety days is too short a time. The motion of the gentleman from Albany (Mr. Countryman) ought to have prevailed, and the people of the State of New York, I think, would sustain him. There is no reason on earth why a foreigner, when he becomes a citizen of the United States by being naturalized as such, should at once have all the advantages that a man has who was born upon American soil and is

a citizen. I withdraw my request to be excused from voting and vote no.

Mr. Veeder — Mr. President, I desire to explain my vote. My namesake is mistaken about the foreigner, after he is naturalized, having, under the present Constitution, greater rights than an American-born citizen. The provision in the Constitution requiring a person to be an inhabitant of the State applies to all for the period of one year. That is done no doubt to prevent some of these people who live on the borders, in Pennsylvania, from voting in another State as well, which they might be inclined to do if they wanted to increase the majority, the same as they do down in Maine. (Laughter.) Now, sir, I submit that there is no earthly reason why this period of time should be extended longer than the present time stipulated in the Constitution. I, therefore, vote aye.

Mr. Kerwin — I desire to have my vote changed from the negative to the affirmative. (Laughter.)

Mr. Tekulsky — Mr. President, I desire to know how I am recorded.

The Secretary — Mr. Tekulsky is not recorded.

Mr. Tekulsky — Then I desire to explain my vote, Mr. President. It is no surprise to me that the knownothingism of the Republican party has started to show itself here this morning; no surprise at all. It has been the cry of the party for the last twenty-five years to compel a foreigner to reside in this country twenty-one years before voting, so that he might be equal to the child that has been in this country from the moment that he was born until his majority. That is not the policy of this government. The United States have not been founded upon any such principle. This government was started from foreign elements.

Its greatness is owing to the fact that it has its gates open and free for all to enter and to become good and true American citizens. Whoever, with common sense, will say that a child fifteen or sixteen years of age has as much sense as a man who is twenty-one? When he is twenty-one he becomes a man. At that time he assumes the obligation of becoming a citizen of the United States. He then is entitled to vote. A foreigner comes here. He swears allegiance to the government; he lives here for five long years; he must be a man of good moral character before he becomes a citizen, and then the moment he becomes a citizen of the United States he should be entitled to register and vote. I, therefore, vote aye.

The Secretary, having completed the calling of the roll, the following result appeared:

Ayes — Messrs. Banks, Blake, Bowers, Burr, Campbell, Chipp, Jr., Cochran, Crimmins, Davenport, Deady, Deyo, Durnin, Emmet, Farrell, Fitzgerald, Forbes, Gibney, Giegerich, Gilleran, Green, A. H., Green, J. I., Herzberg, Holcomb, Hottenroth, Jenks, Kerwin, Kimmey, Marks, Maybee, McClure, McCurdy, McDonough, McKinstry, McLaughlin, J. W., Meyenborg, Nicoll, Ohmeis, Osborn, Parmenter, Peabody, Peck, Platzek, Roche, Rogers, Rowley, Sandford, Schumaker, Smith, Tekulsky, Titus, Towns, Truax, C. H., Tucker, Veeder, Williams — 56.

Noes — Messrs. Abbott, Acker, Ackerly, Allaben, Arnold, Baker, Barhite, Barnum, Barrow, Becker, Bigelow, Brown, E. A., Brown, E. R., Cady, Carter, Cassidy, Church, Clark, G. W., Clark, H. A., Coleman, Cornwell, Countryman, Crosby, Davies, Davis, Dean, Deterling, Dickey, Doty, Durfee, Faber, Floyd, Foot, Francis, Frank, Andrew, Frank, Augustus, Fraser, Fuller, C. A., Fuller, O. A., Galinger, Gilbert, Goodelle, Hamlin, Hawley, Hecker, Hedges, Hill, Hirschberg, Holls, Hotchkiss, Johnson, I Sam, Johnson, J., Johnston, Kellogg, Kinkel, Kurth, Lauterbach, Lester, Lewis, C. H., Lewis, M. E., Lincoln, Lyon, Manley, Mantanye, Marshall, McArthur, McIntyre, McLaughlin, C. B., McMillan, Mereness, Moore, Morton, Nichols, Nostrand, O'Brien, Parker, Parkhurst, Pashley Phipps, Pool, Porter, Powell, Pratt, Putnam, Redman, Root, Spencer, Springweiler, Steele, A. B., Steele, W. H., Storm, Sullivan, T. A., Tibbetts, Turner, Vedder, Vogt, Wellington, Whitmyer, Wiggins, Woodward, President — 103.

The President *pro tempore* — The motion is lost, and the time under the rule having expired for debate, the question now occurs upon the final passage of this proposed constitutional amendment.

Mr. Davis — Mr. President, I move that the privileges of the floor be extended to the Hon. Harvey J. Hurd, of Erie.

The President *pro tempore* — If there is no objection the privilege will be extended. It is extended.

The Secretary read the proposed amendment in the language following:

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

"Section 1 of article 2 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 ninety 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."

The President *pro tempore* put the question on agreeing to the final passage of the amendment as read.

Mr. Veeder — Mr. President, I desire information. Did the Secretary read the proposition "thirty days?"

The Secretary — "Ninety."

The Secretary proceeded to call the roll.

Mr. Becker — Mr. President, I desire to explain my vote. It strikes me that our friends who resorted to voting for six months and for or against various other amendments, for the purpose of placing the majority of this Convention at a disadvantage with the naturalized citizens of this State, have signally failed of their purpose. They remind me very forcibly of the gentleman who was said by one of the distinguished judges of the Court of Appeals, in a certain case, to have "blundered into bigamy when attempting seduction." As a matter of fact a very large mass of the voters in some of the cities of this State and elsewhere, who are ignorant, are recruited from the citizens who may or may not be justly entitled to be naturalized, but who are brought up in hordes, without opportunity for question or examination under the statutes of this State and made citizens shortly before election. Even under thirty days that would be impossible. With regard to the ninety days, it seems to me that that is a very much more advantageous period than either thirty or sixty. The times when this naturalization, this fraudulent naturalization, this paid naturalization, if I may use that expression, is most largely attempted, is in the presidential elections. Now, it is a well-known fact that it is the custom of both political parties to make their nominations in the months of June and July, four months before election, the result of which is that the bringing up of this period to ninety days at least brings

it within thirty days after the time when these nominations are made that the naturalization period can commence. I would prefer to have it four months so as to put it entirely out of the power of these campaign committees, in which I think both parties to a certain extent do wrong in naturalizing citizens rapidly and without examination as to their qualifications. But ninety days is a great deal better than thirty days, and I earnestly hope that this amendment will not only be carried here, but will prevail amongst the people, as I believe that it will. I vote aye.

The Secretary having completed the calling of the roll, the following result appeared:

Ayes — Messrs. Abbott, Acker, Ackerly, Allaben, Arnold, Baker, Barhite, Barnum, Barrow, Becker, Bigelow, Brown, E. A., Brown, E. R., Cady, Carter, Cassidy, Church, Clark, G. W., Clark, H. A., Cornwell, Countryman, Crosby, Davies, Davis, Dean, Deterling, Dickey, Doty, Durfee, Faber, Floyd, Foote, Francis, Frank, Andrew, Frank, Augustus, Fraser, Fuller, C. A., Fuller, O. A., Galinger, Gilbert, Goodelle, Hamlin, Hawley, Hecker, Hedges, Hill, Hirschberg, Holls, Hotchkiss, Johnson, I. Sam, Johnson, J., Johnston, Kellogg, Kinkel, Kurth, Lauterbach, Lester, Lewis, C. H., Lewis, M. E., Lincoln, Lyon, Manley, Mantanye, Marshall, Maybee, McArthur, McDonough, McIntyre, McKinstry, McLaughlin, C. B., McMillan, Mereness, Moore, Morton, Nichols, Nostrand, O'Brien, Parker, Pashley, Phipps, Pool, Porter, Powell, Pratt, Putnam, Redman, Root, Spencer, Springweiler, Steele, A. B., Storm, Sullivan, T. A., Tibbetts, Turner, Vedder, Vogt, Wellington, Whitmyer, Wiggins, Woodward, President — 102.

Noes — Messrs. Banks, Blake, Bowers, Burr, Bush, Chipp, Jr., Cochran, Crimmins, Danforth, Davenport, Deady, Deyo, Durnin, Emmet, Farrell, Fitzgerald, Forbes, Gibney, Giegerich, Gilleran, Green, A. H., Green, J. I., Griswold, Herzberg, Holcomb, Hottenroth, Jenks, Kerwin, Kimmey, Marks, McClure, McLaughlin, J. W., Meyenborg, Nicoll, Ohmeis, Osborn, Parmenter, Peabody, Peck, Platzek, Roche, Rogers, Rowley, Sandford, Smith, Sullivan, W., Titus, Towns, Truax, C. H., Tucker, Veeder, Williams — 54.

The President *pro tempore* — General order No. 65, third reading No. 12.

The Secretary read the title, as follows:

"The proposed constitutional amendment to amend article 10, section 6, relating to time when the Legislature shall assemble."

The President *pro tempore* — Does any member wish to use a part of the time for the discussion of this proposition? If no one desires to discuss it, the Secretary will read the proposed amendment through.

The Secretary read the proposed amendment, as follows (O., I. No. 385, P. 444):

"Proposed constitutional amendment to amend section 6 of article 10, in relation to the time when the Legislature shall assemble.

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

"Section 6 of article 10 of the Constitution is hereby amended so as to read as follows:

"Sec. 6. The political year and legislative term shall begin on the first day of January; and the Legislature shall, every year, assemble on the first Wednesday (Tuesday) in January (unless a different day shall be appointed by law)."

The President *pro tempore* — The amendment having received three several readings, the question is now upon its final passage. The Clerk will call the roll.

The Secretary called the roll, and the amendment was adopted by the following vote:

Ayes — Messrs. Abbott, Acker, Ackerly, Allaben, Arnold, Baker, Banks, Barhite, Barnum, Barrow, Bigelow, Brown, E. A., Cady, Carter Cassidy, Chipp, Jr., Church, Clark, G. W., Clark, H. A., Cochran, Coleman, Cornwell, Countryman, Crimmins, Crosby, Davenport, Davies, Davis, Deady, Deterling, Dickey, Doty, Emmet, Faber, Fitzgerald, Floyd, Forbes, Francis, Frank, Andrew, Frank, Augustus, Fraser, Fuller, C. A., Fuller, O. A., Galinger, Gibney, Giegerich, Gilbert, Gilleran, Goodelle, Green, A. H., Green, J. I., Griswold, Hamlin, Hecker, Hedges, Herzberg, Hill, Hirschberg, Holls, Hottenroth, Jenks, Johnson, I. Sam, Johnson, J., Johnston, Kellogg, Kerwin, Kimmey, Kinkel, Kurth, Lauterbach, Lester, Lewis, C. H., Lewis, M. E., Lincoln, Lyon, Manley, Marks, Maybee, McClure, McCurdy, McDonough, McIntyre, McKinstry, McLaughlin, C. B., McLaughlin, J. W., Mereness, Moore, Morton, Nichols, Nostrand, Osborn, Parker, Parkhurst, Parmenter, Pashley, Peck, Phipps, Platzek, Pool, Porter, Powell, Pratt, Redman, Roche, Rogers, Root, Sandford, Schumaker, Spencer, Springweiler, Steele, A. B., Steele, W. H.,

Storm, Sullivan, T. A., Tekulsky, Tibbetts, Titus, Truax, C. H., Turner, Vedder, Vogt, Wellington, Whitmyer, President — 123.

Noes — Messrs. Bowers, Dean, Durnin, Holcomb, Marshall, Meyenborg, Ohmeis, Towns — 7.

The President *pro tempore* — This amendment, having received a majority of the votes of all the delegates to this Convention, is duly passed. General order No. 17, third reading No. 13.

The Secretary read the title as follows (O., Nos. 47-384):

"Proposed constitutional amendment, to amend article 1, against public officers riding on passes.

The President *pro tempore* — This amendment has but one hour allotted to it for discussion. Do any delegates desire to discuss it?

Mr. E. R. Brown — Mr. President, I move an amendment purely verbal in its nature, as follows: "In line 5 change the word 'and' in each case to 'or,' and in line 8 change the word 'nor' to 'or.'" I move to recommit the proposed amendment to the Railroad Committee with instructions to make those changes forthwith, and report the same back to the Convention.

The President *pro tempore* put the question upon the motion to recommit the amendment to the Railroad Committee with instructions to amend the same as stated and report forthwith, and it was determined in the affirmative.

The President *pro tempore* — If there is to be no discussion upon this proposed amendment, the Secretary will read the amendment through.

Mr. Choate — I have not had time to write out an amendment which I propose to offer, but I will state what it is. I doubt the effectiveness of this article, as to whether it will accomplish the desired object, and I move to recommit it to the committee with instructions to report forthwith an amendment which shall, in substance, require every railroad company in its annual report to give the names of all parties to whom free passes, free transportation, franking privileges or discrimination in passenger rates has been allowed.

The President *pro tempore* — The gentleman from New York (Mr. Choate) will be kind enough to write out his amendment and send it to the Secretary's desk.

Mr. McKinstry — Mr. President, before I left home to come to this Convention a gentleman said to me that if I found anything here "that those pesky corporations wanted," I should vote "agin

'em." Now, sir, I do not know of any amendment that has been proposed in this Convention which is so acceptable to the various corporations of this State as this amendment. I have wondered why this amendment was proposed. As I understand it, it emanates from Watertown. I was told in private conversation that a certain judge up there tried a case in which a railroad company was interested, and he decided the case in favor of the company, and the same evening when the plaintiff got on the train and started for home the judge was on that train and produced a pass, and the plaintiff, therefore, felt that the judge had made his decision in consequence of that pass. So this amendment was evidently produced mainly for that reason. Mr. President, I listened to the discussion on the judiciary article and I imbibed the idea that our judges were a superior set of beings; that they must not be elected very frequently, for fear that they might be contaminated in the pool of politics; that they must be removed as far as possible from the pursuits of other men, and that at the age of seventy years they must be granted a pension, when they are deprived of their offices, for fear that they might suddenly become as other men are. Now, we are told that we must have our organic law changed for the sake of beating a sense of propriety into their heads. If that is what you are after, say so; make your amendment read that any judge of a court of record in this State, or any member of the Legislature who accepts a pass, shall be subject to this penalty; but this amendment is a drag-net, which proposes to take in every petty officer in every city and village of the State, school trustees, town clerks, pound-keepers, path-masters, notaries public, if any one of them travels on a railroad pass or has a franking privilege from a telephone company, he is made guilty of a misdemeanor. I say it is the most ridiculous proposition that has been brought before this body and I shall vote against it.

Mr. Mereness — Mr. President, the fact that this amendment is so broad in its operation is, I think, the most commendable feature of it. I am very glad that it is so broad that it will take in every officer who is in the habit of riding on a railroad pass. It is a very good provision. I think it ought to be broad enough to include every official in the State, and, if, as my friend from Chautauqua says, the corporations want it, I think that we ought to put it into the Constitution, because, if the corporations are in favor of it, I am very sure that the great majority of the people of the State will be in favor of it, and, therefore, it will give this proposed Constitution

a great impetus and will send it through with an almost unanimous voice.

Mr. Bigelow — Mr. President, I think very favorably of the amendment proposed by Mr. Choate, and I only wish that that was all we had to vote on. It is what I had hoped some of the committees would have reported to the Convention as an amendment. If you will publish or require to be published the names of all who receive favors of this sort from corporations, you give to the public all the information it is entitled to; you give the public the opportunity of judging whether its public officers are likely to have been acting under an improper influence in the discharge of their public duty. But I do not like the idea of making it a crime for a corporation to give, or the recipient to accept, a favor or a compliment or a kindness. If gentlemen supposed that by legislation you are going to prevent persons who wish to corrupt others from doing so and from corrupting those who are willing to be corrupted, I only tell you that you are magnifying your office by your imagination. You cannot do it. If you say that the corporations shall not give to a legislator or a judge a railroad pass, you say that they give the pass for a corrupt motive. It will not stop corrupting. What we want to know is, are our public officers under any undue influence, and then we will judge for ourselves how much weight we are to give to what they do while acting under that influence. I think that if the amendment of Mr. Choate were adopted, it would be a wise measure which we could pass, and leave the rest entirely out.

There is another thing about this. When you say that a legislator shall not be corrupted by a pass, and that any one giving a pass or any one receiving a pass is guilty of a misdemeanor, you imply practically that in any other form by which they are corruptible they are at liberty to be corrupted; you make any other form of inducement to corruption perfectly just; in a certain sense you legalize corruption. I am opposed to this measure entirely as it stands, but I shall vote for the amendment of Mr. Choate.

Mr. Cassidy — Mr. President, I move to recommit this to the Committee on Legislative Powers, with directions to report forthwith the following amendment: in line 10, after the word "misdemeanor," add the words, "and punishable by imprisonment for life." It seems to me, sir, that we ought not to put in the word "misdemeanor" here without describing what punishment shall follow. It is the first time we have the word misdemeanor in the Constitution. We generally look for that term in the Penal Code. Inasmuch as we have not so far in our deliberations discriminated between the Constitution and the Civil and Penal Codes, it seems to

me we ought to put in enough out of the Penal Code so as to render this amendment effective. Perhaps it would be wise to change the word misdemeanor to felony. It seems to me that then this article would be rendered more effective. There has been a great decadence in the morality and virtue of the people of this State, and it is because we have never attempted before in our Constitution to make men virtuous that this thing has occurred. I think we ought to lose no opportunity to make men honest, and if it is possible to legislate morality and virtue into a people by putting a provision into the Constitution requiring it. I am most heartily in favor of the plan.

Mr. Kellogg — Mr. President, I move to amend the amendment of the gentleman from Schuyler (Mr. Cassidy) by adding thereto the words: "And that he be compelled to walk all the rest of his natural life."

Mr. Powell — Mr. President, it occurred to me when we occupied the greater part of a day in discussing this proposed amendment that this Convention was bringing its dignity down to about the lowest point that was conceivable. When we get so low that we propose to introduce the consideration of railroad passes into the Constitution of the State, I think it is about time for us to adjourn and go to our respective homes and see if we cannot find something more important to engage our mental activities. Gentlemen will remember on that afternoon what a magnificent outburst of civic virtue we had. I confess, sir, that with a railroad pass in my pocket, like the publican who went up into the temple of old, I stood afar off in the presence of these phariseed protestations and bowed my head and smote my breast when I realized what a miserable sinner I was, and in order to test the sincerity of this Convention, I drew a resolution that afternoon for the purpose of presenting it at the evening session. It occurred to me that if railway passes were such dangerous things for judges and legislators and State officials to have that they must be equally dangerous to the members of this Convention, and, laboring under the suspicion that there might possibly be in this Convention other sinners like myself, I offered at the evening session a resolution providing that any member of this Convention who should thereafter ride upon a railroad pass should forfeit his per diem during the rest of the session of this body. But, sir, to my amazement, this Convention, which only a few hours before had expressed its detestation and fear of railway passes, instead of honestly taking its own medicine and purging itself of this dangerous article, voted unanimously to lay my resolution on the table, and it has laid there ever since. Now, sir, we have managed to pass this awful peril ——

Mr. Dickey (interposing) — Mr. President, I rise to a question of privilege. I want to state that on the occasion referred to by the gentleman, I voted against laying his motion on the table.

Mr. Powell — Then I think that you and I were the only persons who did vote against laying it on the table. I suggest that since we have passed through this danger and remain to-day an absolutely incorruptible body, that we may safely trust the judges and the members of the Legislature and the officers of this State, and leave this picayune, two-penny, ha'penny business out of our Constitution.

Mr. Choate — Mr. President, I move to recommit to the committee which originally reported this amendment, to report forthwith the following amendment:

"Every railroad, transportation, telegraph and telephone company shall annually report to the Legislature the names of all public officers or persons elected or appointed to public office under the laws of this State, to whom it has granted any such free passes, free transportation, franking privileges or discrimination hereby prohibited."

The President *pro tempore* — The Chair would state to the gentleman who offered this last amendment that there is an amendment to an amendment which precedes it *seriatim*.

Mr. Choate — They were offered *seriatim* but not seriously.

Mr. Bigelow — Would it be in order to offer that as a substitute for the other?

The President *pro tempore* — If it is designed as a substitute.

Mr. Bigelow — If so, I would make that motion.

The President *pro tempore* — The gentleman (Mr. Choate) has control over his amendment. Mr. Cassidy's amendment is in order first, and Mr. Kellogg's amendment to Mr. Cassidy's amendment next. The Secretary will read the amendment and then the amendment to the amendment.

The Secretary read Mr. Cassidy's amendment as follows:

"In line 10, after the word 'misdemeanor,' add the words 'and punishable by imprisonment for life.'"

Also Mr. Kellogg's amendment to the amendment, as follows:

"And that he be compelled to walk all the rest of his natural life."

Mr. Meyenborg — Mr. President, I wish to say a few words on this amendment. I think we have had too many statutory enactments engrafted in the laws already.

The President *pro tempore* — If the gentleman desires to debate the amendment, the Chair will inform him that the amendment is not debatable.

Mr. Meyenborg — I am not intending to debate it, sir. I am speaking upon the amendment.

The President *pro tempore* — That is not debatable now. If the gentleman will wait until the question is put, he will then be in order. The question is upon the amendment of Mr. Cassidy, as amended by Mr. Kellogg.

Mr. Bowers — Mr. President, did I understand the Chair to say that we were about to vote upon the amendment?

The President *pro tempore* — Upon the motion to recommit.

Mr. Bowers — I thought so.

The President *pro tempore* then put the question on the amendment offered by Mr. Kellogg to Mr. Cassidy's amendment, and it was lost.

The President *pro tempore* then put the question on the amendment of Mr. Cassidy. A count was called for, and the amendment was lost by a vote of 45 in favor of it and 56 against.

The President *pro tempore* — The question is now upon the amendment of Mr. Choate, which the Secretary will read again for the information of the Convention.

The Secretary then read Mr. Choate's amendment as follows:

"Every railroad, transportation, telegraph and telephone company shall annually report to the Legislature the names of all public officers or persons elected or appointed to public office under the laws of this State, to whom it has granted any such free passes, free transportation, franking privileges, or discrimination hereby prohibited."

Mr. Bigelow — I move, as an amendment, that the amendment of Mr. Choate shall be regarded as a substitute for the article proposed.

The President *pro tempore* — That is not proper, as every amendment must stand on its own merits.

Mr. Bigelow — Then I will put it this way: that the amendment offered by Mr. Choate shall stand, and that we strike out the other printed part of the amendment.

Mr. Hotchkiss — Mr. President, is this motion debatable?

The President *pro tempore* — No, sir; it is not debatable.

Mr. Bigelow — I understand that my motion which I have just made is in order, Mr. President?

The President *pro tempore* — It is in order.

Mr. C. B. McLaughlin — Is this amendment offered by Mr. Choate debatable?

The President *pro tempore* — After the question is put, debate will be in order. Debate is not in order until after the question is put to the Convention.

Mr. McLaughlin — It seems to me, Mr. President, that Mr. Choate's proposition kills the whole matter.

The President *pro tempore* — The Chair will state that the original proposed constitutional amendment is debatable for one hour.

Mr. McLaughlin — Very well, sir. Then I will state that I am in favor of the proposed constitutional amendment, and I am opposed to the proposition of Mr. Choate for the reason that, in my judgment, it kills this measure. The amendment offered by Mr. Choate requires these corporations to file a statement of the passes which they grant to public officers. Now, that assumes upon its face their right to grant passes. The proposition, as reported by the Committee of the Whole, provides that no public officer shall receive a pass, and it makes it a misdemeanor if they do receive a pass. Now, that, followed by the amendment of Mr. Choate requiring the corporations to file a list of passes granted, makes the two provisions inconsistent, if it does not concede to them the right to grant passes. For that reason, it seems to me, sir, that Mr. Choate's amendment should be voted down. If it is offered as a substitute, that is another proposition.

Mr. Hotchkiss — Mr. President, not only is the amendment suggested by Mr. Choate subject to the criticism which the gentleman from Essex has just passed upon it, but in my judgment, it is also subject to the further criticism that it would be entirely ineffective because of the facility with which it could be avoided. As the amendment reads, it simply requires that common carriers shall, in their annual reports, indicate the public officers to whom they have granted passes. We would find that there would be no public officers mentioned by name, to whom passes had been granted, but we would find that the gentleman from Cayuga, for instance, who may be representing the county in the Legislature at that time, would be riding on a pass issued to "John Brown," and the report of the railroad company would show a pass issued to John Brown. I am surprised that a gentleman so astute as the

President of this Convention should propose an amendment which it would require but a very limited intelligence to see that there are twenty different ways in which it could be beaten.

Mr. Nicoll — Mr. President, there is another objection to the amendment proposed by President Choate, and that is this: the corporations to file with the Secretary of State the names of the officials to whom they have granted passes will be placed in this position: having granted the passes to the officers who are forbidden to receive them under the penalty of a misdemeanor, the officer of the corporation who granted the pass would be guilty of the offense of having aided and abetted the public officers in the commission of the offense, and this provision that he should file with the Secretary of State a list of the passes granted, would, therefore, be a compulsory declaration of his own guilt expressed to the Secretary of State. Now, of course, it would be improper to put any such provision as that in the Constitution. We ought to follow the invariable practice in respect to all bribery amendments. This, of course, is an amendment, directed against a petty species of bribery or blackmail on the part of public officers. I do not believe that this proposition ought to be left out of this Constitutional Convention, and ejected from our deliberations by buncombe resolutions or the amusing speeches made by gentlemen who have passes in their pockets and want to continue the business of allowing public officials to hold similar passes. I was told when I advocated this measure in the first instance that it had no chance of passing because so many members of this Convention had passes in their pockets, and we have seen that some gentlemen all unabashed, rise on the floor of this Convention and glory in the fact that they are riding to and fro at the expense of the State. Mr. President, they are welcome to all the glory they can derive from that situation, in this or in any other deliberative body. We all know that this is a great evil, petty and disgraceful as it is. What right has any man, the moment he gets into a public office, to accept a pass? Why should he ride free? Why should he not pay his fare out of his salary as every other man has to pay his out of his salary, or out of his own private means? We all know that the Legislature will never deal with this subject. We know that if we remit it back to the Legislature it will simply be saying that the pass system shall continue for all time. Therefore, it seems to me that this amendment ought to be incorporated in the Constitution. Other States similarly situated have had the same experience, and they have put it into their Constitutions. Why should we not do the same? We should follow the analogy of the bribery act, and

we should put the offense where it properly belongs, on the public officer receiving the pass, and we should leave the corporations as our witnesses to be called against the public officer, in case he is found violating the provision. You cannot add to it the provision of Mr. Choate, because you cannot or ought not to put into the Constitution a provision which shall compel a party to give evidence against himself, as that proposition would undoubtedly do. The amendment as it has come from the Committee on Revision seems to be in satisfactory shape. Will public officers thereafter cease riding on passes? No, they will not. You can put into the Constitution all the provisions as to bribery that you please. We have in the Constitution at the present time, the most drastic provisions against bribery, denouncing it in all of its forms as a felony. But, does not bribery exist? Of course it does, and very few men are ever punished for it. And public officers will ride on passes. But this provision will do some good; it will have some effect, and it is our duty to incorporate it in the organic law of this State, in the hope that, while we know as practical men that it will not eradicate the evil, it will at least lessen the evil to the advantage of the body politic.

Mr. E. R. Brown — Mr. President, in relation to this proposition I supposed I had taken all of the time of this Convention that was necessary. This matter was fully considered in Committee of the Whole. Not one voice was raised against the proposition. I showed upon this floor that this evil had been stamped out in various other countries. Not one of the gentlemen, who now come forward when driven into the corner upon this proposition in opposition to it, dare stand here and argue against it. This morning the gentleman with the drooping countenance, from Chautauqua (Mr. McKinstry), who has reported here that he learned that I introduced this amendment on account of some petty personal experience of my own, told me at the time that it was under consideration that he could not vote for it because he was himself a beneficiary of the evil practice. And we have the joyful gentleman from Schuyler (Mr. Cassidy), coming in here to belittle this amendment which tends to increase civic virtue. Is he riding on a pass, too? And we have the gentleman from Otsego (Mr. Kellogg), with his voice soaring through these corridors, that he, too, would desire to have all public officers who violate this provision made to walk for the remainder of their days. Then we have the clerical gentleman from Kings (Mr. Powell), who made no proposition when this was up before the Convention before, except a petty proposition not affecting the Constitution in any particular — attempting to kill the

measure. Mr. President, this Convention may not adopt this amendment. This Convention may be dominated by the men who have passes and who have not sufficient public spirit to enable them to rise above that circumstance, but I do not believe it. I believe that most of the gentlemen upon this floor who ride on passes have that manhood and independence and sense of duty which will enable them to act upon this question as their common sense and judgment dictates, that they should act for all future time. Why, sir, if this amendment is rejected, what will be the announcement to the people of this State? That this Convention has been controlled, not in the interests of the people of the State for the purpose of securing greater freedom and independence on the part of judges and legislators and assessors, and other public officers, but that it has been dominated by the petty feeling of private interests. Now, are we willing to go to the people of this State in that position? I am not, and I do not believe that this Convention is.

Mr. Durfee — Mr. President, it seems to me that this matter is one that deserves and ought to receive the serious consideration of this Convention. The granting of passes and the use of passes by men holding public office has become a crying evil, and it cannot be defended upon any good principle. The officers of corporations are trustees for their stockholders. They have no right to grant free transportation to any one unless they receive a corresponding benefit. If they receive a corresponding benefit how do they receive it? By the prostitution of the public functions which these officers are sworn to discharge. It is no laughing matter, sir, nor by any means a small one. It has come to my knowledge that men connected with public life, in times past, have procured passes, not only for themselves, but for their friends in large numbers, and that they have even turned out passes to pay their own private indebtedness. I cannot do otherwise than indorse most heartily the sentiments which have been expressed by the gentleman from New York, Mr. Nicoll, and by the gentleman from Jefferson, Mr. Brown, on this subject. It is a subject which demands our attention and it is a subject which the people of this State are looking to this Convention to deal with, and we shall be recreant to our trust here unless we do deal with it, and in such a way as shall, to the utmost of our power at least, put a stop to this reprehensible practice.

Mr. McKinstry — Mr. President, I rise to a question of privilege. I did say to Mr. Brown that I thought no man should vote for this amendment without first returning the pass he had in his pocket. I say so yet. So far as the case at Watertown is concerned, I did

not get my information from Mr. Brown in reference to the action of Judge Kennedy there. I did not know before that Mr. Brown was the attorney in that case. I have seen a great deal of attorneys running to the Legislature after getting beaten in a lawsuit, but I did not suppose that Mr. Brown was engaged in that sort of business. Now, sir, I will be glad to vote for Mr. Choate's amendment as a substitute, and I will vote for an amendment forbidding judges and legislators accepting free passes, but there is no necessity for carrying with the proposition this prohibition and penalty affecting every little petty official in the State.

Mr. Choate — I differ from my learned friend from New York, Mr. Nicoll, on a subject like this with the very greatest hesitation and distrust, because he knows more in five minutes about the matters in reference to criminal law than I would know by a whole year of study; but, sir, it does seem to me that the amendment that I offer will make this section 20 more effectual, and is not open to the criticism he made. I call attention to the fact that this section 20, as proposed, imposes no penalty upon any corporation and directs nothing whatever against the company who issues the pass to the public officer. The public officer is made guilty of a misdemeanor, and it is his office only that is subject to forfeiture for a violation of the prohibition. It seems to me directly to aid and it is not requiring a corporation to confess its own crime or misdemeanor for it to report the names to the Legislature of public officers to whom it has granted passes. It is not a misdemeanor in a company to issue a pass.

Mr. Nicoll — But the company would be aiding and abetting the public officer in his offense, and would be a principal in the offense of the public officer.

Mr. Choate — No penalties are imposed upon the corporation.

Mr. Nicoll — No; but he would still participate in the offense of the public officer, because, in a misdemeanor, any person who aids, or directs, or encourages, or assists or contributes to the perpetration of the offense becomes a principal in the offense.

Mr. Choate — That may be so, but I still believe that this will be an added precaution and will give great efficacy to the act. I know Mr. Hotchkiss says they will evade it. You cannot pass any provision of the Constitution that cannot be evaded. I do not believe, however, that the companies in this State, who do so large a business in passes, will be guilty of such a measure.

Mr. Dean — Mr. President, this pass question has been referred to as being petty. It may be that the legitimate use of a pass

by a member of the Legislature, in going to and fro between his home and the Capitol once a week, may not be a very serious matter, and may not, in itself, call for a constitutional amendment; but I know from personal experience that Members of the Assembly have repeatedly been returned by the use of New York Central Railroad passes. I know of one town in particular, within the past three years — a town which casts less than one hundred Republican votes — where twenty round-trip passes from Buffalo to New York were distributed within a week of the time of the caucuses and for the express purpose of controlling a caucus which was, in itself, controlling in the district. Now, I say that when a member of the Legislature is chosen by means of the distribution of railroad passes, the matter has risen to such a dignity that it becomes us, as members of this Constitutional Convention, to take some action which will prevent it in the future.

Mr. Storm —Mr. President, the time limit being about up, and the discussion of this amendment being still unfinished, I move you, sir, that the time be extended until one o'clock.

The President *pro tempore* put the question on the motion to extend the time of debate on this amendment to one o'clock, and it was lost.

Mr. Root — Mr. President, we have stringent provisions in the Constitution against bribery. We have abundant evidence that the granting of passes now practically comes very near to bribery, for when a corporation gives to a member of the Legislature thousands of dollars' worth of passes to be used not only by himself, but parceled out among his constituents, it certainly comes perilously near the thing that we prohibit in express terms. I do not think this is a small matter. I think it is a great one, and I think it is the duty of this Convention to extend the prohibition so that it will include and, so far as we are able, prevent evasion of the long-standing prohibition. I think it would be a public misfortune, from the standpoint of official honesty, to have this amendment defeated.

Mr. Abbott — Mr. President, I heartily agree with the remarks of Mr. Root. I believe this is a very serious matter, and that it should be considered, as it is intended to be, in the interest of preventing bribery. I move that the matter be recommitted to the committee with instructions to report forthwith, striking out the word "misdemeanor" in line 10, and inserting the word "felony" in lieu thereof.

The President *pro tempore* — That motion will be in order after Mr. Choate's amendment is decided.

Mr. Hottenroth — Mr. President, I desire to make a motion to recommit, but before doing so I wish to preface it with a few remarks. It is difficult to see how the mere giving of a pass to a public officer, for his own use, can affect his discretion in voting on questions that involve public interests. Now, we expected to hear, from the Committee on Legislative Organization, a report providing for an amendment for the payment of legislators' and public officers' transportation to and from the seat of their duty. It seems to me that if this amendment is carried through, there should be some provision for the free transportation of members of the Legislature, and such other public officers as deserve it. I, therefore, move to recommit with instructions to add at the end of the proposed amendment, the words: "The Legislature shall provide, by law, for the free transportation of public officers."

Mr. Acker — Mr. President, I rise to a point of order. There is a motion already before the House, and this cannot be entertained until that is disposed of.

The President *pro tempore* — The Chair decides that the point of order is well taken.

Mr. J. I. Green — Mr. President, in view of the remarks of gentlemen who are in favor of this measure, and, as I understand, there are a number who desire to speak against it, I beg leave to renew the motion made by Mr. Storm, that the time of this discussion be extended until one o'clock.

The President *pro tempore* — Debate having intervened since Mr. Storm's motion, the motion of Mr. Green is in order.

The President *pro tempore* put the motion of Mr. Green that the time for the consideration of this amendment be extended to one o'clock, and it was decided in the affirmative.

The President *pro tempore* — The time within which to consider this amendment is extended to one o'clock.

Mr. J. I. Green — Mr. President, experience has taught us that men cannot be made honest by legislation. Now, sir, I am one of those culprits, like the gentleman from Kings (Mr. Powell), that sits in this chamber with a pass in his pocket, but I defy any delegate to look at the votes cast by us in this Convention, and say that our action has been against the interests of the people of this State. I am here to protect the interests of the people, so far as I have the power. I am opposed to gratifying political venality. I believe in the integrity of the public. I have not heard as yet, that the corporations are averse to issuing these passes, and I have not heard it asserted that the issuance of these passes has

gained a single vote for any measure that the corporation wanted put through. I believe that the issuance of passes is a simple act of courtesy on the part of these corporations. I would like to know from the gentlemen who have arisen and deliberately attacked the delegates who happened to have passes, how many times in their lives, while they held public office, they have ridden on passes? I sincerely hope this amendment will not prevail. It is incorporating in the Constitution an article which should find no place in it. When the cry is raised "Corporations," let the people of the State look with astonishment to see what is done. Unfortunately, sir, I have no corporate interests; but I desire to go on record as saying that the corporations of this State, given life by the laws of this State, have as much right to live under our laws and as much right to claim their protection, as any individual within the confines of the State, and when we come here and attack them, simply to curry political favor, I say it is entirely wrong. There are a great many delegates in this Convention who, it is true, have passes, and I am satisfied that their votes on all questions affecting the interests of the people will compare favorably with those of any other delegates in this Convention. I hope the Constitution will not be disgraced by engrafting into it a provision which will make it a misdemeanor for a man to accept the courtesy of a railroad pass.

Mr. Storm — Mr. President, I would like to ask Mr. Green how it happens that he has a pass, and that I have not?

Mr. Green — I am perfectly willing to answer the gentleman's question, if the Chair thinks it is proper.

Mr. Veeder — Mr. President, I object to this.

The President *pro tempore* — The Chair hardly thinks the question in order.

Mr. Storm — Well, I will excuse the answer. I am happy to say that for once, I am on a par with our President, for I have never experienced the sensation of riding on a free pass, and therein he and I are equal. Why haven't I a pass? I have been told that I could get a pass if I would go after it. I have not gone after it. Therein lies the point. They want you to come after it so as to recognize you and have you acknowledge the favor, and then they've got you. It has been charged here that this amendment has been offered for a personal spite from Watertown against some judge. I do not care where it comes from, the measure is a good one and it should be adopted by this Convention. Gentlemen say that they are able to vote fairly, even if they have passes, but if a man wants to be fair and acknowledges he has a pass in his

pocket, I do not think the way to show his fairness is to get up on this floor and talk against this measure.

Mr. Dean — Mr. President, I want to give notice that I shall move a call of the House at three o'clock to-day.

Mr. Griswold — Mr. President, is it in order to speak on the main question?

The President *pro tempore* — It is.

Mr. Griswold — I wish to say that I never have received a pass from a railroad company in my life; that I owe no railroad company anything, and no railroad company owes me anything. Now, this proposition seems to stand in a somewhat remarkable position. Here is a proposition that the railroad companies shall be prohibited from granting passes. It is probably pretty well known that for many years powerful railroad corporations have been in the habit of granting passes where they thought they would do the most good. Those passes have gone into the hands of judges in this State, and they have gone into the hands of members of the Legislature, until the railroad corporations have got perhaps all the legislation they want, and now their cry to this Constitutional Convention is: "Protect us from the men that demand passes." They have been for years bribing the judges and members of the Legislature by giving them passes, and now they want to be protected. I was told by a member of the Committee on Railroads that a communication was sent here from some officer of the Pennsylvania Railroad Company, asking this Convention to put a stop to the granting of passes. What in the world has an officer of the Pennsylvania railroad to do with sending a communication to a Constitutiontl Convention of the State of New York? Of course, that communication undoubtedly was inspired by some one of our great railroad corporations. If Chauncey Depew or Ashbel Green had framed this amendment it could not have been a better one in the interest of the railroad companies. Now, with the various propositions that have been made here, I submit that if you can get a measure that will be to a certain extent effectual, it will be somewhat in this line, namely, that these corporations holding franchises in the State of New York, and who have been for years granting free passes, shall grant free transportation to the judges of the Court of Appeals, and the Supreme Court judges, and the members of the Legislature, for those are all the persons of whom the people appear to have any suspicion in this regard. I offer that, and ask that it be referred to the com-

mittee and reported as a substitute in place of the proposed amendment.

Mr. Acker — Mr. President, I make the same point of order that I raised a few moments ago, that there is an amendment already before the Convention, and this cannot be received until that is disposed of.

The President *pro tempore* — The point of order is well taken.

Mr. Choate — Mr. President, after consultation with Mr. Nicoll on this subject, I desire to withdraw the amendment that I made and, instead, to move to recommit to the committee from which this originated, with instructions to forthwith amend by adding the following, instead of what I proposed before:

"No person or officer or agent of a corporation, giving any such free pass, free transportation, franking privilege or discrimination hereby prohibited, shall be privileged from testifying in relation thereto, and he shall not be liable to civil or criminal prosecution therefor if he shall testify to the giving of the same."

This covers the objection which Mr. Nicoll made, and is, perhaps, the most effectual restraint that we can accomplish.

The President *pro tempore* — The motion of the gentleman from New York (Mr. Choate), not having been amended, it remains within his hands to withdraw it, which he now does, and this substitute which he now offers is in order. The Secretary will please read it for the information of the Convention.

The Secretary read the substitute offered by Mr. Choate, as follows:

"No person or officer or agent of a corporation giving any such free pass, free transportation, franking privilege or discrimination hereby prohibited shall be privileged from testifying in relation thereto, and he shall not be liable to civil or criminal prosecution therefor if he shall testify to the giving of the same."

Mr. Bigelow — Is that an addition to the original amendment?

The President *pro tempore* — It is a substitute for Mr. Choate's amendment to the proposed amendment, Mr. Choate having withdrawn the previous one.

Mr. Choate — I withdrew it because Mr. Nicoll pointed out to me that the corporation giving the pass would, under the Penal Code, be liable criminally for aiding and abetting in the committing of a misdemeanor, and that it ought not to be required to testify against itself.

Mr. Goodelle — May I ask the gentleman who offers this sub-

stitute (Mr. Choate) why it is that corporations are exempted from any punishment for the giving of passes, while the individual who accepts the pass is punished? This article seems to be drawn wholly in the interests of the corporations. If we are to have consistency here, and it is intended to prevent bribery, why is the corporation who gives the bribe exempted, while the person receiving it is punished?

Mr. Choate — I was only intent upon making this as effectual as possible in order to prevent the using or receiving or asking by public officials of a free pass. I certainly had no thought of acting in the interest of any corporations, and I think the suggestion might well have been left unexpressed by my friend Mr. Goodelle. If anybody thinks this will be made more acceptable by including a prohibition against a corporation from issuing these free passes, I shall be very glad to concur in it. My object in changing the amendment was the suggestion pointed out by my distinguished friend who knows the entire body of all the branches of the law on this subject, that perhaps there was a fatal flaw in it. I believe Mr. Nicoll is now attempting to do just what Mr. Goodelle asks for, namely, to include the corporations in the prohibition against issuing passes. If I have sufficiently answered Mr. Goodelle's question, I hope he will retract his suggestion that I was acting at all in the interest of the corporations.

Mr. Goodelle — I hope the President of this Convention (Mr. Choate) did not understand me to make any reflection upon him. I certainly did not intend any such thing. It only occurred to me while the substitute was being presented, that it would not be a proper thing to put it in such a shape as that, but that it should be provided that corporations who gave free passes should forfeit their charters, and not leave the penalty all to fall upon the recipients of the passes. I disclaim any intention of reflecting upon the distinguished President of this Convention, by any remarks that I made.

Mr. Blake — Mr. President, the reflection occurs to me, after listening to this discussion, what a lovely thing it is to walk in virtue's ways. This Convention has climbed to a very lofty summit, and if it is to sit for two or three months longer, no one can conceive to what sublime heights it may ascend. It is a curious sight to witness this magnificent outburst of feeling against corporations on the part of distinguished lawyers of this body, none of whom have probably ever represented a corporation, and to whom I suppose the sight of a pass would be sufficient to throw them into hysterics. I remember reading of a prayer meeting where

everybody prayed for almost everything they could think of until at last an old lady got up and said: "Is there no one here to pray for the poor devil?" There seems to be no one here so poor as to do reverence to a corporation. I regard this as buncombe, pure and simple, if you will pardon me the unparliamentary expression. De we no longer trust the honor of the men we elect to the Legislature, and the judges that we put upon the bench, lest they may fall under the wiles of the corporations of this State? I have never got a dollar from a corporation in my life, and I never expect to, but when I listened to all this eloquence and this tirade of indignation against corporations, I could not help wondering how much of it was sincere. I do not wish to cast any reflections upon anybody who has spoken here, but it seems to me that we ought not to write into the fundamental law of the State such a stultification as this is, that we cannot trust the public officials of the State and particularly the representatives for whom we vote, fearful lest a pass presented to any of them by the corporations will corruptly influence them, and make them vote against the interests of the people. I suppose there are very few here who hold passes, but I do not believe that the fact that we hold passes would influence us in the slightest degree upon any of the questions that may come up here. It seems to me that this measure is entirely unnecessary and uncalled for.

Mr. Tekulsky — Mr. President, I desire to offer an amendment to the substitute offered by Mr. Choate, by adding, in line 9, after the word "another," the words: "'Nor shall any person or persons hereafter treat another;" and at the end of Mr. Choate's amendment, add, "and all persons receiving a treat shall be exempt from punishment upon giving the desired information."

The President *pro tempore* — The Chair is of opinion that until this matter is properly disposed of, no other amendment is in order.

Mr. Tekulsky — This is an amendment to the proposition.

The President *pro tempore* — Your proposition would destroy the whole object of the amendment for the reason that so few would vote for it thus amended.

Mr. Tekulsky — I cannot understand why. It only adds to it.

Mr. Nicoll — Mr. President, after hearing the remarks of Mr. Goodelle and his criticism upon Mr. Choate's proposed amendment, I have, in analogy to the article on bribery in the present Constitution, provided an amendment to Mr. Choate's proposition, which is as follows:

"Any corporation, or officer or agent thereof, who shall offer or promise to a public officer, or person elected or appointed to a public office, any such free pass, free transportation, franking privilege, or discrimination, shall also be deemed guilty of a misdemeanor, and shall be liable to punishment, except as herein provided."

Then will follow the provision now in Mr. Choate's proposition, to the effect that testifying against the public officer shall excuse the corporation or its agent, or officer, from punishment under this provision. The bribery provisions of the present Constitution, which were adopted by the Constitution of 1867, and which were passed upon and approved by the people in 1874, and which have been construed time and again by the highest courts in this State, seem to me to be the safest guide for us to follow in making this change. I, therefore, move to recommit the proposition.

Mr. Choate — I accept that, if I may be permitted to do so.

The President *pro tempore* — Then it becomes part of the amendment.

Mr. Goodelle — I would like to know of the gentlemen whether they would not be willing to put it so that it shall provide that, if the corporations violate the prohibition, the Attorney-General shall take steps to forfeit their charters?

Mr. Nicoll — I do not think the gentleman from Onondaga need to have any apprehensions that the corporations will suffer less than the persons receiving the passes.

Mr. Hottenroth offered an amendment, but the time having arrived, recess was taken until three o'clock P. M.

AFTERNOON SESSION.

Wednesday Afternoon, September 12, 1894.

The Constitutional Convention of the State of New York met pursuant to recess, in the Assembly Chamber, in the Capitol, at Albany, N. Y., Wednesday, September 12, 1894, at 3 P. M.

Vice-President Steele called the Convention to order.

The President *pro tempore* — The Committee on Revision offers the following report.

Mr. Jenks — Mr. President, I ask the privileges of the floor for the Honorable Michael Ryan, of Brooklyn.

The President *pro tempore* put the question on granting the

privileges of the floor to the Honorable Michael Ryan, and it was determined in the affirmative.

Mr. Foote, from the Committee on Revision and Engrossment, to which was referred the proposed constitutional amendment introduced by the Special Committee on State Forest Preservation (introductory No. 393), reported by said committee, and by the Committee of the Whole, entitled "proposed constitutional amendment to amend the Constitution relative to the forest preserves," reports the same as examined and corrected, and as correctly engrossed.

Mr. Foote, from the same committee, to which was referred the proposed constitutional amendment, introduced by W. H. Nichols (introductory No. 253), reported by the Committee on Suffrage and by the Committee of the Whole, entitled "proposed constitutional amendment to amend section 4 of article 2 of the Constitution, relative to registration of voters," reports the same as examined and corrected, and as correctly engrossed.

Mr. Wright Holcomb — Mr. President, I ask the privileges of the floor for the Honorable Augustus T. Docharty, of New York.

The President *pro tempore* put the question of granting the privileges of the floor to Honorable Augustus T. Docharty, and it was decided in the affirmative.

The President *pro tempore* — The question now before the Convention is upon the amendment of Mr. Choate. The Secretary will read the amendment for the information of the Convention.

The Secretary read the same as follows:

"Any corporation, or officer, or agent thereof, who shall offer or promise to a public officer or person elected or appointed to a public office, any such free pass, free transportation, franking privilege or discrimination, shall also be deemed guilty of a misdemeanor, and liable to punishment, except as herein provided. No person, or officer, or agent of a corporation giving any such free pass, free transportation, franking privilege, or discrimination hereby prohibited, shall be privileged from testifying in relation thereto, and he shall not be liable to civil or criminal prosecution therefor, if he shall testify to the giving of the same."

The President *pro tempore* — The question before the House is the resolution as read by the Secretary. That is now properly in order to be voted upon by the Convention.

Mr. Tekulsky — Mr. President, I desire to renew my amendment to the amendment of Mr. Choate, which I sent up this morning.

The President *pro tempore* — The Secretary will read it.

The Secretary read Mr. Tekulsky's amendment as follows:

In line 9, after the word "another," insert the words: "Nor shall any person or persons hereafter treat another," and at the end of Mr. Choate's amendment add the words: "All persons receiving a treat shall be exempt from punishment upon giving the desired information."

The President *pro tempore* — The Chair will state that that amendment having been brought up and having been thoroughly acted upon in Committee of the Whole, and this body being a Constitutional Convention of the State of New York, its business is of too serious a character to admit of entertaining an amendment of that kind, and the Chair is, therefore, obliged to declare it out of order, and thinks the mover of it will agree with the Chair in so ruling.

Mr. Tekulsky — I do not agree with you. I think it is a very good measure, and I think it is in its proper place.

The President *pro tempore* — You can appeal from the decision of the Chair.

Mr. Tekulsky — I do not desire to do that, but I think it ought to have a fair chance in this Convention.

The President *pro tempore* — The Chair thinks that it may be as properly tacked on to the bill on apportionment.

Mr. Holcomb — Mr. President, I desire to offer the following amendment to Mr. Choate's amendment, viz.: Add at the end of Mr. Choate's proposed amendment, the following: "And every corporation covered by this amendment shall report annually, on January first, to the Secretary of State, in writing, whether it has issued any pass, and, if so, to whom the same shall have been issued."

The President *pro tempore* — That amendment can now only be received by the unanimous consent, inasmuch as the time for debate and the time of introducing amendments has elapsed.

Mr. Holcomb — I ask unanimous consent that it may be added to the amendment proposed by Mr. Choate, so that the people may be advised every year whether any passes have been issued by the corporations.

The President *pro tempore* — Is unanimous consent given?

Mr. E. R. Brown — I object.

The President *pro tempore* — Objection being made, the amend-

ment cannot be received. There is an amendment which was offered by Mr. Abbott within the time, which the Secretary will read.

The Secretary read Mr. Abbott's amendment as follows:

Strike out the word "misdemeanor," in line 10, and insert the word "felony" instead.

The President *pro tempore* — That not being an amendment to the amendment of Mr. Choate, as amended by Mr. Nicoll, but a separate amendment, it may be offered later.

Mr. Abbott — Mr. President, at the suggestion of a good many gentlemen in whose good judgment I have great confidence, I will withdraw that amendment.

The President *pro tempore* — That amendment being withdrawn, the question now recurs upon Mr. Choate's proposed amendment as amended by Mr. Nicoll.

The President *pro tempore* put the question on the amendment proposed by Mr. Choate, as amended by Mr. Nicoll, and it was determined in the affirmative.

The President *pro tempore* — The amendment is adopted. There is another proposed amendment which was offered by Mr. Hottenroth in due time, and the Secretary will read it.

The Secretary read Mr. Hottenroth's amendment as follows:

Add at the end of the section the words: "The Legislature shall provide by law for the free transportation of public officers."

Mr. Veeder — Mr. President, I have an amendment ——

The President *pro tempore* — This amendment is not debatable.

Mr. Veeder — Is not an amendment to that amendment in order?

The President *pro tempore* — Not without unanimous consent.

Mr. Veeder —I ask unanimous consent to introduce an amendment to that.

Mr. E. R. Brown — I object.

The President *pro tempore* — The question is upon the amendment of Mr. Hottenroth.

The President *pro tempore* put the question on the amendment offered by Mr. Hottenroth, and it was determined in the negative.

Mr. Goodelle — Mr. President, what has become of Mr. Nicoll's amendment?

The President *pro tempore* — It was accepted by Mr. Choate, incorporated in his amendment and adopted.

Mr. Veeder — Mr. President, am I now in order to offer an amendment?

The President *pro tempore* — The time for the offering of amendments has expired, and no further amendments are, therefore, in order. The time for debate having closed, the Secretary will read this proposed constitutional amendment through.

The Secretary read the proposed constitutional amendment, as amended, as follows:

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

"Add at the end of article 1 the words following:

"No public officer or person elected or appointed to a public office shall make use of, or by himself, or in conjunction with another, accept or request for himself or for another, any free pass, free transportation, franking privilege, or discrimination in passenger rates from any company or corporation. Any person who violates the provisions of this section shall forfeit his office at the suit of the Attorney-General.

"Any corporation, or officer, or agent thereof, who shall offer or promise to a public officer, or person elected or appointed to a public office, any such free pass, free transportation, franking privilege or discrimination, shall also be deemed guilty of a misdemeanor, and liable to punishment, except as herein provided. No person, or officer, or agent of a corporation giving any such free pass, free transportation, franking privilege or discrimination hereby prohibited, shall be privileged from testifying in relation thereto, and he shall not be liable to civil or criminal prosecution therefor, if he shall testify to the giving of the same."

The President *pro tempore* — This proposed constitutional amendment having had three several readings, the question is now upon its final passage.

The President *pro tempore* put the question on the adoption of this amendment, and the Secretary proceeded to call the roll.

Mr. Bigelow — Mr. President, as I propose to vote against this amendment, after the remarks that have been made here this morning on one or two occasions, I deem it necessary to purge myself of any suspicion of being unduly influenced by any corporation in my vote, and to say that I am not the owner, unfortunately, of any railroad stocks, bonds, or other securities in the State of New York, and that I have no pass or franking privilege of any description from any sort of corporation in the world. I vote no.

Mr. Cassidy — Mr. President, I do not care to pose in this Convention for buncombe, nor am I seeking the clap-trap praise that may come to some who may care to vote for this proposition. I do not believe that this ought to be put into the Constitution. True, we have put into the Constitution some portions of the Civil Code, and I suppose that what we have already adopted would be very lonely indeed if we did not put this in as a part of the Criminal Code for a counterpart to it. But, sir, I do not believe that we ought to pander to every miserable sentiment that finds its existence in our body politic. It may be true that the pass system is abused, but I do not believe it will better matters any by placing this amendment in the Constitution. We cannot make men more honest or more virtuous by such a provision as this inserted in the Constitution. I think it would have been more wise if we had provided that any corporation who tried to bribe public officials in this way should forfeit its charter. I do not think we should seek to punish the official who receives a bribe of this character, and allow the corporation who gives it to go free. I vote no.

Mr. Crosby — Mr. President, I desire to explain my vote. Entirely independent of the question whether or not the system of issuing passes is abused, it seems to me that we are encroaching upon the powers of the Legislature in this matter. No argument has been made here showing dishonesty on the part of the Legislature of the State of New York, or any improper influence by reason of the issuance of passes to members of the Legislature, or other officers. We tolerate discrimination by permitting the issuance of mileage books, giving those that have them means of procuring two-third rates, while others, that have not the means at their disposal to purchase mileage books, are compelled to pay full fare upon the railroads. If we are to legislate transportation, we should pass an amendment against such a discrimination. I believe the matter is entirely safe in the hands of the Legislature. I am opposed to putting into our Constitution, or asking the people to put there, that which rightfully belongs to the legislative part of our government. If we are to create a crime here and another there by the propositions that we offer to the people, let us embody it in the Penal Code, and put into the Constitution of the State of New York a list of the crimes that we deem violations of good order and against the peace of society, and prescribe the proper punishment for them, but do not let us have in the Penal Code one crime designated, and in the Constitution another crime designated. I vote no.

Mr. Davis — I desire to explain my vote. I do not look with favor upon this proposition. I believe it would be very unwise to insert in the Constitution of the State of New York anything which might prohibit the disposition of the property belonging to any man. When you say to a corporation that it has no right to give its property to whom it sees fit, or to an individual who may run a ferry-boat, that he has no right to carry a passenger free, I think that you are trespassing upon the rights, not only of the corporations, but of individuals. Some of the members of this Convention have stated that they are seeking to purify all members of the Legislature, as well as all elective officers of the State. From that standpoint, I believe this is a mistake. Purification ought to start at the ballot-box. Others say that it will be a protection to the railroads, protecting them from being buncoed and blackmailed. If there are any such ideas in the minds of the members of this Convention, I think they ought to have been presented before this time, and in perhaps a different manner. The matter of issuing passes with railroads is, to my mind, a matter of business. In nine times out of ten the individual receiving a pass takes a seat in the parlor car or a berth in the sleeper, and thereby, in many instances, pays to the railroad a sum equivalent to the value of his transportation. I vote no.

Mr. Deady — Mr. President, I believe this is a mere piece of legislation not founded upon reason or logic, and one which has no place in the Constitution. With the words uttered last night on the floor of this Convention by one whom we all admire, fresh in mind, I would like to have our worthy President, when he comes to explain his vote, reconcile his recommendation of this proposition with his words then. I vote aye.

Mr. O. A. Fuller — Mr. President, I wish to explain my vote. I have always had, and still have, great faith in the American people, and, notwithstanding the scurrilous attacks which have been made upon the floor of this Convention against our judges and our legislators, I still have faith in them, and I do not believe that any member of this Convention has a right, by his voice or act, to say that they are bribe-takers, which you would say if you put this amendment into the Constitution. I do not believe this would check bribery at all, because a man who would vote contrary to the dictates of his conscience, simply because he had a railroad pass in his pocket, could be purchased for ten cents. I should be ashamed to go home and look our judges and our legislators in the face if this amendment were put into the Constitution. I, therefore, vote no.

Mr. Goodelle — Mr. President, I was opposed to the proposition originally before this Convention, but the proposition, as amended, I shall support. I do it, however, with a great deal of reluctance, because, in my judgment, it is far too sweeping in its effects. I have in mind some instances where I believe the giving of passes has exercised wrong. But I do not believe we should go to the extent quite that this does. I believe that a pass should not be given where it will exert a wrongful influence. This, however, being the only provision that seems to be before the Convention on the subject, I shall be compelled to support it. I must say that I think the criticisms made upon this floor as to our legislators and judges have been altogether too broad. I think the work of this Convention will not be strengthened by the frequent attacks made upon the Legislature and our distrust of it. I vote aye.

Mr. J. I. Green — I desire to explain my vote. By passing this amendment this Convention will place the stamp of disapproval upon every public officer in the State who has accepted the courtesy of a pass from any railroad corporation, and thereby we, by implication, accuse him of the prostitution of his office. I cannot give myself up to such an act as that. I again reiterate that the extension of this courtesy to a public officer does not have one thing to do with influencing such officer unduly in the performance of his public duty. I, therefore, vote no.

Mr. Griswold — Mr. President, I desire to explain my vote. I think, instead of having this complicated provision, that if the Convention had made a simple provision compelling railroad corporations, who have their charters from this State, to grant passes to the judges of the Court of Appeals and the Supreme Court, and members of the Legislature, it would have been perfectly right and proper. There would have been nothing extraordinary in compelling the railroads to do that, because they have been giving those passes heretofore, as a compliment, as they claim, or to secure favorable influence — whichever it was. Now, let them do the same thing, and then, after that, let the railroads take charge of their own property and do what they see fit with it. If a railroad company wants to give an attorney a pass, in consideration of some services rendered to it, I think it ought to be permitted to do so. That would have been the best plan, instead of adopting this complicated sort of provision. However, as the best thing I can do, I vote aye.

Mr. Schumaker — You vote against what you have been talking?

Mr. Griswold — I know it, but I vote aye.

Mr. Hamlin — Mr. President, I do not entirely agree with my friend from Onondaga, who supports this simply as a matter of principle. I believe the more stringent the amendment is the better it will be. I believe the pass system has become a great nuisance in this State. It started in, perhaps, as an act of courtesy, but it has become what should be made a misdemeanor. The history of the most distinguished man that ever sat on the English bench, Sir Francis Bacon, illustrates the point I want to make. His defense was the same as that put forward here by the gentlemen who are voting in opposition to this amendment, when he was charged with receiving one hundred pounds. He said: "I received the money, but it did not affect my judgment in any case." Gentlemen, what has been the judgment upon Francis Bacon? It is that he was the wisest, the brightest, the meanest of mankind. I trust my associates in this Convention will not place themselves in the same category. Why, sir, what is a pass? A pass is either a gratuity, or else it is a reward for services. If it be a gratuity, then gentlemen who accept passes are accepting alms from the stockholders of the corporation who issues the pass. If it be a reward for services, then, gentlemen, you ought to be guilty of a misdemeanor. Sir, I think the time has come when the judges of this State should be placed on the same level as Francis Bacon. Does it make any difference whether a man receives an annual pass worth five hundred dollars or one hundred pounds in gold from a suitor? I vote aye.

Mr. Mantanye — Mr. President, I desire to explain my vote upon this very strange proposition. It seems to me that the delegates here assembled lose sight of the extent of this amendment, which makes it a crime for every person who may hold any office, either by election or appointment, to travel on a free pass, or to have a free frank from any telegraph or telephone company. This would apply, as has been stated, to a notary public, and to a pathmaster in some back district, and to all persons who happen to hold any office, even if it is an office where their actions could not possibly be influenced by the pass in any way. They may be stockholders, and may hold their passes by reason of that fact, and this amendment is so broad that it might even cover persons who purchase commutation books, because they are getting transportation at reduced rates. It covers any one who holds an elective or appointive office, no matter whether he can be influenced by it or not, and it is a wrong. If it could be applied merely to State officers and legislators, there would be more reason in it; and still, I see no reason for putting into the Constitution that the people of

the State of New York believe that their legislators and State officers are naturally criminal, and are to be restrained from taking bribes. I think it is an insult to our people, and to the public servants, to put such an amendment as this into the Constitution. It cannot have any good effect. When I see the attorneys here of railroad corporations, and people that I know hold passes, voting and working in favor of this proposition, it satisfies me that it must be in the interest of the corporations. Crimes of every nature are forbidden, and still crimes are committed, and we all know that he who commits a crime is in the absolute power of the person who holds the evidence of his guilt. This provision would not, perhaps, always have the effect of preventing a pass from being accepted. It allows the corporation to offer the bribe without liability on its part, providing it is willing to turn State's evidence against the man who gives way to the temptation, and, therefore, the corporation would have the man who may have fallen by their seductive influence, in their power, and would compel him to act for them as he would not otherwise do. For the reasons I have stated, Mr. President, I vote no.

Mr. McKinstry — Mr. President, I think it is due to myself to say that probably no delegate here will be less affected by this amendment than I shall be. I have always had, and I can always get, any reasonable amount of transportation in my own line of business, paying in newspaper advertising. If this amendment referred to judges of the courts and legislators, and even town assessors, and you might put in jurors, as they are mentioned in Mr. Brown's original amendment, I think there would be some sense in it. As it stands, I do not think it ought to go into the Constitution of the State of New York. Any judge who would sit on a case in which a corporation was interested, with a pass in his pocket, ought not to be allowed to wait for a constitutional amendment to reach him. He ought to be impeached. The amendment is drawn in the most offensive manner. It takes in thousands of petty officials throughout the State who have nothing in the world to do with the relations between corporations and the public, and it seems to me the chief benefit to be derived from it will inure to the corporations and not to the people at large. Therefore, I vote no.

Mr. Mereness — Mr. President, I simply want to say that, notwithstanding the fact that editors are not to be barred from receiving passes, I shall vote aye.

Mr. Moore — I desire to explain my vote. If the words "freight

rates" had been put in, providing against discrimination in that respect I should have been very much more in favor of this measure. If we are going to be general reformers in this Constitutional Convention, and leave nothing for the Legislature to do in regulating the morals of the community, and saying what the railroad companies shall or shall not do with their own property, I think we might just as well go the whole length and put in all the corporations in the State; but, as I cannot get that in, I will take the half loaf which the committee have seen fit to give, and I will vote aye.

Mr. O'Brien — I feel it necessary to explain my vote, in view of the position which I have heretofore taken in this Convention. I have unanimously voted against everything which I regarded as legislation. The reason why I shall vote in favor of this amendment is because it is a restriction upon the legislators themselves, and is one which they could hardly be expected to impose in and of themselves. As it must be, therefore, imposed by some power from without, I shall vote aye.

Mr. Powell — Mr. President, under the rule, I ask the privilege of explaining my vote. I have the utmost respect for the gentleman who introduced this amendment, and it is with regret that I shall vote against it, but I know that he has been sincere in introducing it, and I have such high regard for the judgment of many of the gentlemen who support this amendment that I dislike exceedingly to differ from them; yet it seems to me that this matter is not of sufficient dignity and importance to warrant its introduction into the Constitution of the great State of New York. If a man is incorruptible — and there are such men, even in these degenerate days — such a man will not be influenced by the mere courtesy of the extension of a pass over a transportation line. I vote no.

Mr. Storm — Mr. President, I notice that the proposed amendment is already bearing good fruit. We are already stretching our consciences to a fine point. I wish to state that I do not want the impression to prevail, owing to the remarks I made this morning about my not having a pass, that that is the ground upon which I am in favor of this amendment. I have always been opposed to receiving passes. I still have it unexplained why the discrimination is made of giving passes to some and not to my humble self. I asked the question of Mr. J. I. Green, and I did not press it, but I suppose his answer would have been that I am green. We are told here that we ought to apply to the Legislature. We have

been told that time and again. But what is the use, when, as soon as the Legislature meets, the railroad company always furnishes the members with passes. That stifles them in a moment. A gentleman says here that he will be ashamed to go home and face his people if we pass such an amendment as this. I, on the other hand, will be proud to go home and tell my people that we have done something for the people which the people are very much interested in. Another gentleman excused himself on the ground of freight rates. I would inform him that there is another amendment pending in regard to freight rates, and there was an attempt made to infuse that into this amendment, but it was not germane. I, therefore, vote aye.

Mr. Tibbetts — I desire to explain my vote. I am surprised that those gentlemen who have been telling us that we should not put matter into the Constitution that is purely a matter of legislation, are willing now, not only to put legislation in the Constitution, but are willing to go so far as to put special legislation in. This matter is certainly brought within that purview. If it is bribery under the general bribery law of this State then it is a crime, and you cannot make it more of a crime by putting it into the Constitution of the State. If the bribery law does not cover it, then a bribery law should be enacted by the Legislature to cover it. You should not take a special species of bribery and elevate it to the dignity of declaring it a crime under the State Constitution. I vote no.

Mr. Woodward — Mr. President, I was inclined to vote against this amendment, but when I came to consider the railroads which have been suffering so greatly from the free pass system that occasionally a railroad went by the board and was thrown into the hands of a receiver, that I thought it was necessary that I should vote for this, so that I might save something for these poor railroads. Besides, we want to carry this Constitution, and the railroads employ a great many men, and if we do a little favor to the railroads, perhaps they will turn in and help us to carry this Constitution. I vote aye.

The President *pro tempore* — The Secretary will now call the absentees.

Mr. Blake — Mr. President, it is just possible that my mind is not sufficiently large to grasp, in all its magnificent proportions and grandeur, this problem, as it presents itself to the more enlightened minds of the distinguished lawyers and statesmen that are here, including the graduates of seminaries; but, sir, as I view it,

with my limited light and capacity, this is a pretty small matter, and is unworthy to take a place in our deliberations, and much more unworthy to have a place in the fundamental law of this State. If I thought that any public official in this State could be corruptly influenced by a pass, insignificant and vicious as this measure is, I would vote to place it in the Constitution; but, as I believe that if there be any mischief existing at the present time in this behalf, that the Legislature is competent to correct it, and that it is undignified for this body to place such a measure in the organic law of the State, I shall vote no.

Mr. E. A. Brown — I desire to explain my vote. I consider this proposed amendment legislation pure and simple. It is a matter entirely within the power of the Legislature, and it should be remitted to the Legislature for its action. I do not believe it has any place in the Constitution. I do not believe that it is for us to say that there are no honest men in the great army of officials of the State of New York. I have too much confidence in the judges of our courts and in the executive officers of the State, and in all the other officers who have been elected by the votes of the people, to give my vote towards placing in the organic law of the State, this amendment. I, therefore, vote no.

Mr. Cornwell — Mr. President, I desire to explain my vote. The hearing and debates before the Railroad Committee of this Convention, of which I have the honor to be a member, have convinced my mind beyond a shadow of a doubt that the system of free passes as practiced by the railroad companies of this State, has grown to be a positive evil and a damage to the people in many ways. It has been charged, and shown to my satisfaction, that railroad passes have influenced the action of persons occupying high official positions in the State, including not only members of the Legislature, but even judges of the Supreme Court. If this in any respect be true, then there remains but one course for this Convention to pursue, and that is to correct the evil so far as lies in its power. It has been stated, and, I believe, successfully proved, that the action of the Legislature of this State for many years past, has been systematically controlled by the railroad companies in efforts that have been made in the interest of the people, affecting discrimination in freight rates. If this be true, and the means employed in any degree is free passes, then in that case this Convention should vote as one man for this measure. The interests of the people should be paramount to every other consideration. I vote aye.

Mr. Kellogg — Mr. President, as I am not riding on a free pass, it cannot be said that my vote for that reason has been influenced. I am glad a brief period of time has elapsed so that I have been able to recover from the manner in which I was paralyzed by the gentleman from Jefferson. Just where his ears were when he said I was soaring around through these corridors against his proposed amendment, I have not been able to discover. I can only justify his assertion upon the assumption that he was soaring in clouds of eloquence, with his sweet and seductive smile and lordly bow, which it is not possible for any member of this Convention to imitate. I am compelled to concede that I do not possess as much virtue as the gentleman from Jefferson, because it would not be possible to possess any — he has it all. I assure him that the little jesting amendment which I offered was not in the spirit of the lion who meets the lion in mortal combat, but simply as the molehill approaches the majestic mountain, looking down in magnificence upon the busy world below. It is possible that my mind is not broad enough to comprehend this constitutional amendment, but it seems to me, sir, that it is nothing more or less than peanut politics. As I stated, I have not ridden on a pass, and I have no railroad stock of any description, and, therefore, I am not influenced in my vote, but I am not in favor of putting into the Constitution and the organic law of the State of New York, the Penal Code, and I, therefore, vote no.

Mr. E. R. Brown — Mr. President, I desire to withdraw any remarks that I made that were offensive to the gentleman.

Mr. Vedder — Mr. President, from what has been said upon the floor of this Convention during this debate to-day, it appears that the evil complained of, and which it is desired to remedy, is aimed entirely at the judges and at the members of the Legislature. A few days since, the courts of this State were eulogized to the skies, as being not only the admiration of the State of New York, but of the United States. I do not know so much about judges as I do about members of the Legislature, and I have found by association with the latter that they are made of about the same clay that members of this Convention are made of; that they are neither worse nor better than the ordinary run of men; and I believe if there was a very great crying evil, if this pass business were a burning shame, that members of the Legislature would be apt to find it out as soon as any one, and the people would know it as quickly as this Convention, and would take means for its suppression, by electing to the Legislature men who would place upon the statute books laws preventing corporations from issuing passes. You

might just as well have put into this proposition a provision that no railroad president or director should give a dinner to any public official, because dinners are dangerous things. If my friend, Mr. Depew, as president of the New York Central road, should invite a member of the Legislature or a judge of this State to take dinner with him, why, he would be the veriest slave of Mr. Depew, if Mr. Depew wanted to use him for any improper purpose, which I never heard that he wanted to use any man for. Now, my vote will not affect this proposition in the least, because it has passed already, but I stand upon principle, and I cannot vote to put a matter which is purely legislative into the Constitution, and dignify it by making for it a place there. The remarks made by the distinguished President of this Convention when he took the chair have been often quoted, and I quote from them now. He said: "Gentlemen, you must not touch the Constitution with any rude or sacrilegious hand." In consequence of that speech, made by the President of this Convention, I vote no.

The amendment was adopted by the following vote:

Ayes — Messrs. Abbott, Acker, Ackerly, Arnold, Baker, Banks, Barnum, Barrow, Becker, Brown, E. R., Burr, Cady, Carter, Chipp, Jr., Clark, H. A., Cochran, Coleman, Cornwell, Countryman, Davenport, Deady, Dean, Dickey, Doty, Durfee, Emmet, Floyd, Foote, Francis, Fraser, Fuller, C. A., Gibney, Giegerich, Gilleran, Goeller, Goodelle, Green, A. H., Griswold, Hamlin, Hill, Hirschberg, Holls, Hotchkiss, Hottenroth, Johnson, I. Sam, Johnson, J., Kimmey, Lester, Lewis, C. H., Lyon, Manley, Marks, Marshall, Maybee, McArthur, McClure, McCurdy, McDonough, McIntyre, McLaughlin, C. B., Mereness, Moore, Morton, Nichols, Nicoll, Nostrand, O'Brien, Ohmeis, Osborn, Parker, Parkhurst, Parmenter, Peck, Platzek, Roche, Rogers, Root, Rowley, Schumaker, Spencer, Springweiler, Steele, A. B., Steele, W. H., Storm, Sullivan, T. A., Titus, Towns, Truax, C. H., Tucker, Vogt, Wellington, Whitmyer, Williams, Woodward, President — 96.

Noes — Messrs. Bigelow, Blake, Bowers, Brown, E. A., Cassidy, Church, Clark, G. W., Crimmins, Crosby, Danforth, Davies, Davis, Deterling, Durnin, Faber, Farrell, Forbes, Frank, Andrew, Fuller, O. A., Galinger, Green, J. I., Hawley, Hecker, Hedges, Herzberg, Jenks, Kellogg, Kinkel, Mantanye, McKinstry, McLaughlin, J. W., McMillan, Pashley, Phipps, Pool, Porter, Powell, Putnam, Redman, Sandford, Tibbetts, Turner, Vedder, Veeder — 44.

Mr. Foote — Mr. President, I present the report of the Committee on Revision and Engrossment.

The President *pro tempore* — The Clerk will read the report of the Committee on Revision and Engrossment.

The Secretary read the following report:

Mr. Foote, from the Committee on Revision and Engrossment, to which was referred the proposed constitutional amendment, introduced by Mr. Lauterbach (introductory No. 35), reported by the Committee on Governor and Other State Officers, and by the Committee of the Whole, entitled, "Proposed constitutional amendment to amend section 1 of article 4 and sections 1 and 2 of article 5 of the Constitution, in regard to the terms of office, powers and duties of the Governor," etc., reports the same as examined and corrected, and as correctly engrossed.

The President *pro tempore* — The next thing in order will be general order No. 25, third reading No. 14. The Secretary will read the title.

The Secretary read as follows (O., I. No. 117, P. No. 392):

"Proposed constitutional amendment, to amend article 3 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 President *pro tempore* — There is one hour for debate upon this proposed amendment. Does any delegate desire to speak upon it?

Mr. Dickey — Mr. President, the proposed amendment is in favor of labor, particularly of women, of this State; therefore, I am strongly in favor of it. The labor organizations of this State, men, have been able by organization, by application at two different sessions of the Legislature, to drive from the State prisons the making of articles that would interfere with their work, so that the men prisoners are now engaged in manufacturing articles that principally belong to women, such as underwear, overalls, shirts and that kind of articles, so that the prisons, as they are now run, are in great competition with the women workers of the State. My own city of Newburg, essentially a manufacturing city, has at least fifteen hundred women working in overall and shirt factories, and I am told that the goods manufactured in the State prisons, made by the convicts, men convicts, are sold in the market at a less price than they can make and sell them for. I tried to get the members of this Convention to vote to give the women of the State of New York, including the women workers of my own

home, the right to vote so that they might protect themselves and have the power of the ballot to keep their wages up. We are not successful in doing that, and I hope those of you who voted against granting them that boon will now vote to protect them in this matter and keep the prisoners of the State prisons from competing with their labor, so that prison labor shall not compete with free labor, so that their wages may be kept up. It used to be in our place that there was a head of the family. The man was the wage-earner alone. Nowadays, the girls of his household earn as much, or more, than the head of the family. It is their money that is distributed among the merchants. They dress well, they live in contented and happy homes, they have musical instruments, and their condition is in every way better, but if they are to have such competition as this, they will not do as well as they have been doing, and I earnestly ask the attention of all friends of labor, and particularly the friends of women, that they vote for this proposed amendment.

The President *pro tempore* — Does any other gentleman wish to speak? No other gentleman of the Convention desiring to debate this proposition, the Secretary will read the amendment through.

The Secretary then read the amendment as follows (O., I. No. 117, P. No. 392):

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

"Article 3 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; and on and after January first, in the year one thousand eight hundred and ninety-seven, 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, firm, association or corporation.

"This section shall not be construed to prevent the Legislature from providing that convicts may work for, and that the products of their labor may be disposed of to, the State, or any political division thereof, or for or to any public institution owned or managed and controlled by the State, or any political division thereof.

The President *pro tempore* — The Secretary will call the roll.

The Secretary then proceeded to call the roll.

Mr. Bowers — Mr. President, I desire to explain my vote. I was very little acquainted with the matter when it came up before in Committee of the Whole, and I considered it proper that it should pass to a third reading, as I could thereafter acquaint myself with the provisions and with the condition of legislation upon the subject. I, therefore, voted to recommit. I have learned since investigating the subject that this is one of the cases in which the Legislature has performed its duty. It has passed acts in the very direction of this proposed constitutional amendment, so that while the expenditures of the State prisons in 1884 were in the neighborhood of $400,000, the earnings were a little more. To-day the expenditures are in the neighborhood of $500,000 and the earnings a matter of $40,000 or $50,000. It seems to me that it is the clear duty of this Convention to interfere even with legislative matters, where the Legislature has failed for a long period to perform its duty, but where the Legislature has so well performed its duty, as it has apparently performed it in this case, and is continuing in the performance of such duty, it would seem wise and just to leave the Legislature to continue in that work, and not for us by enactment in the Constitution to interfere with the ordinary work of the Legislature, and for these reasons I feel it my duty to vote no.

Mr. Cornwell — Mr. President, I desire to explain my vote. I believe this measure to be the very worst that has been introduced before this Convention. A few years ago the State prisons of this State were self-supporting. The Legislature has been tinkering with this question year after year, catering to every ism in the State. What is the result? A great tax, year after year, to be paid by the citizens of this State — the overburdened taxpayers. Mr. President, I withdraw my excuse, and vote no.

Mr. Dean — Mr. President, I have labored with myself long and earnestly in an endeavor to see my way clear to support this proposition. It has been stated that it was in the interests of labor. If it is in the interests of labor, it is class legislation, and, therefore, improperly suggested as a constitutional amendment, and I, therefore, vote no.

Mr. C. A. Fuller — Mr. President, I desire to explain my vote. It is quite the fashion here, when a person does not desire to support a proposition, that he objects to it that it is legislative; that it is matter that should be referred to the Legislature, and that we should not deal with it here. I do not, however, very much like

to imitate that method. I believe that it is our privilege, and proper here, to make such an instrument as shall provide for us a Constitution that we believe for the best interests of the people of the State. Other States do it. If we examine the Constitutions of other States and other countries, we find in them many provisions that might be said would be proper matter for a Legislature to take cognizance of. Now, in regard to this question, it is a proposition that a vast army of the people of our State desire to have put into the organic law, and it seems to me that it is not wise to ignore the well-considered desires of a great body of people. They have considered this matter, and seen wherein the present condition of things is adverse to their interests. They allege, and that too pretty conclusively, that the output of our prisons comes into conflict and competition with their labor, to their great disadvantage. I believe it has been shown conclusively that the output of our prisons may be so disposed of to the inmates and other institutions of the State as to absorb the labor in the prisons, so that they shall not come into competition with outside and honest labor. I believe that this request is legitimate and fair and wholesome, and I trust that this amendment, in the interest of honest outside labor, will prevail. I vote aye.

Mr. Gilbert — Mr. President, I wish to say a word in connection with my vote. I am in perfect and entire sympathy with the objects sought by this proposed amendment. If there is anything which commands my sympathy and my co-operation, it is any well-advised measure for promoting the welfare of the laborer. This present convict contract problem is a very complicated one. It is a very difficult one to work out successfully. I do not feel that I am competent to say just how it should be worked out. I think it is a matter that is to be wrought out by experience and observation and by the most exact knowledge which can be brought to bear upon the subject. I think it is a matter that should be left to the Legislature to work out with a careful, sincere and thorough-going effort to so adjust the labor within prison walls that it shall produce the least possible injury to the free labor outside of it. The prisoner must work. The prisoner must produce something. There must be some kind and degree of competition. How to reduce that to the minimum is a difficult problem, and to its solution I wish I had the power to invoke the best thought and most earnest effort of the public men of the State of New York. I must, under the circumstances, Mr. President, withhold my support from this proposition. I dare not put it into the Constitution as a fixed law of the State, and I must, therefore, vote in the negative.

Mr. Griswold — Mr. Chairman, I wish to explain my vote. I have before said something upon the subject of this proposed amendment. I wish that I could see my way clear to vote in accordance with the feelings and wishes of quite a number of my friends — political friends and personal friends, I suppose — but having again examined the subject in the report of the Superintendent of State Prisons, I am only more confirmed in the opinion that I have heretofore had, that in the first place, the individuals and persons whom this measure is intended to aid and be of use to, I believe it can be of no use to at all, and, according to the argument that is made in favor of the proposition, it must be condemned. It is said that if some of the articles of common manufacture, boots, shoes, hats, clothes, are manufactured in the State prisons, and they are put upon the market, as was stated here, they would immediately reduce the price of those articles fifty per cent. Assuming that to be so, the only result would be that it reduces the price of those articles that are required by the working people, whom the advocates of this measure propose to aid by it. Is there any doubt about that? I am in favor of their having these articles cheaply if they can, just as I am in favor of their having, with their large families, their cheap sugar, their cheap fuel, their cheap food, their cheap clothes, to keep the man and his family. Let them be made cheaper for the working people that use them. But I do not believe that argument. On the other hand, I do not believe it would ever affect trade at all. It is imaginary. Here are the taxpayers of the State. And what are they doing with the foreign laborer brought in here? They send their children to school, they provide for them; they provide for the poor, the old, the decrepit. That is what the taxpayers of this State are doing, and paying out millions in doing it, and here are certain men thrown upon the hands of the taxpayers of the State, some ten to twenty thousand of them, and the taxpayers are bound to take care of them, and they should have their earnings ——

The President *pro tempore* — The gentleman's time has expired. How does the gentleman vote?

Mr. Griswold — I vote no.

Mr. Kerwin — Mr. President, at last we see the hand of monopoly and the effect of a powerful lobby, who have been in this Assembly chamber ever since this bill was put on the order of third reading. Mr. President, I do not propose to stand here to-day and attack the majority for the defeat of this measure and excuse the minority. The minority of this Convention have from

time to time posed as the friends of labor. Where are they to-day, and how are they voting? (Applause.) They give us their consent to send this amendment to the order of third reading. Mr. President, I do not stand on this floor as a politician; I stand here in behalf of the labor organizations that sent me here. Nor am I obligated in any way to any political party, but I hate the cowardice of members of the minority who arise from their seats in this chamber and leave it sooner than go on record on this measure. But, Mr. President, the labor people in the coming fall election will well know those who left the hall to-day and refused to vote, and will remember their State ticket. (Applause.) Mr. President, I do not alone attack the minority. I know the people of the majority who have not alone said they were favorable to the measure. but came along and encouraged us in our work, and said in 1893, "you elected a Democratic Assembly on a platform of abolition of prison labor? What did they give you?" They told us it was a constitutional enactment, and the people who said, by a vote of 400,000, "abolish this system," now, these same people come to us to-day. Where are those people to-day. They have been kind enough to rise from their seats and walk out of the chamber. Defeat it, Mr. President, defeat it! I know it is going to be defeated, and the Constitution of this State will receive from the working people at large every vote that it cast against it. I vote aye.

Mr. Lauterbach — I desire to explain my vote, not because of the suggestion that the vote of the laboring man will be cast in favor of one party or against the other, but because of the intrinsic merits of the proposition that is here presented, I shall vote in favor of the proposition. I think that the great State of New York can be engaged in better business than in competing with the honest labor while using convict labor in order to save, perhaps, in some slight degree, the expenditure that would be entailed in caring for the criminals, and taking a much larger amount than that which was saved from the pockets and from the backs of the poor. Sweating would be impossible in New York were it not for the fact that convict labor has fixed the price for the lower grade of labor so low that it is impossible for the honest man and the honest woman to compete with it. I think it is uncharitable, unfair and unjust that this State should keep itself in competition with labor that is struggling to maintain itself, and whether the laboring man votes with the party with which I am affiliated or against the party with which I am affiliated is immaterial. I am not voting as I shall vote for the purpose of catching a vote, but

because I feel that no measure has been presented to this Convention so full of justice and of merit as that which says that the State, with all its wealth and strength and power, shall not enter into business competition with its lowliest and humblest citizens, who are endeavoring to support themselves by the sweat of their brow. Never have I voted in favor of a proposition with more earnestness and more feeling that I have voted in the right direction, than when I vote in favor of this amendment. I vote aye.

Mr. Lester — Mr. President, if this is a measure in the interest of labor, then it appeals to me, for I am a laborer, and the daily hours of my labor are not always limited to ten. But, sir, there is a grave doubt in my mind whether the passage of this amendment will advance the best interests of the laboring classes of the State of New York. If I were sure that it would, I would heartily support it. But, sir, I think that even under the existing conditions, it may have an effect quite the contrary of that which is expected of it; and, sir, in the course of the next twenty years, with all the changes in the conditions of this State which may reasonably be expected, it seems to me more than doubtful if an amendment of this kind, although it may be for the advantage of the present, will prove a continuing advantage in the future, and with the belief that measures involving the industries of the State ought always to be where they may be changed when necessities demand it, I feel constrained to vote no.

Mr. Lyon — Mr. President, I agree entirely with the remarks of Mr. Lester. Further, I believe that it is the duty that society owes to itself to provide these men in prisons with some trade, so that when they leave they may have some way of supporting themselves other than by crime. I believe, however, that this should be so done as to in the least possible manner and extent interfere with free labor. I, therefore, vote no.

Mr. Mantanye — Mr. President, I desire to explain my vote upon this question. It seems to me that this provision is one which should be in the Constitution. It is not a matter entirely of legislation, or which should be left entirely to legislation. Where matters affect more entirely the rights of individuals as between each other or as between individuals and the State, like the propositions which we have had in relation to treating and receiving dinners and railroad passes, that seemed to be more a subject of legislation. But this matter, which bears entirely upon the government of the institutions of the State itself, its prisons and reformatories, which should be regulated as other State institutions and departments

are regulated, is surely a proper matter for constitutional provision. It has been suggested that there is something in this proposed amendment which is to stop the work of employment of prisoners confined in penitentiaries or prisons, as if they were to be allowed to remain idle. But such is not the case, for this provision requires that they shall be kept at hard labor, and there are directions enough in which that labor may be applied without putting it in competition with that of our industrious and honest population. Statistics show that there are over eighty thousand people in the State in the care of the various charitable institutions. They are to be clothed, and there are various supplies to be manufactured for their use and for their comfort. We have all of our public buildings, State and county buildings, alms-houses, reformatories, and the like, which are to be furnished throughout. Furniture is to be manufactured, heating apparatus, and all of the various articles of furniture. To all of these things, and to many others, the labor of these convicts can be directed. The various subdivisions of the State have many ways of utilizing the work and the product of the labor of these persons, and should have the profit of the labor, rather than to sell it for a song to a contractor, who would sell back the product at an exorbitant profit. It may be now said, since the so-called tariff bill has passed Congress and become a law, that both parties are equally pledged for the protection of our industries and the work of our laboring classes from the pauper, cheap labor of foreign countries, and that being a principle which is acknowledged to be just by all the people, it would seem to be a contravention of that principle if we were here at home to contract and farm out the labor of our criminals and put it in competition with this honest labor. There is no need of doing this; it should not be done, and honest labor should not be made to compete either with the pauper labor of foreign countries or the criminal labor of our own country and State. For these reasons, with many others of a similar nature, I am satisfied that it is in the interest of the State, it is due to this large body of our citizens who make up the industry of the country and have a right to be considered and heard upon this question, that a provision of this kind should be put into the Constitution to regulate the work to be done in these public reformatories and penal institutions. The claim here set forth is not a mere experiment; it is the result of the experience and the study of penologists and those having the interests of the State and the laborer as well at heart for at least a quarter of a century, during which time various propositions have been made and tried to be enforced to this end. For these reasons, I feel that it is proper that

this provision should go into the Constitution, and I, therefore, vote aye.

Mr. McArthur — Mr. President, of all the words in my political dictionary, the dearest one to me is the word protection. I have been a Republican all my life, and I think I can say something that at least no man can exceed when I say that I never voted in my life for a Democrat, from President down, or up, just as you may look at it. The rallying cry of the party that I take pride in belonging to, during all my political remembrance, has been the cry of protection to honest American labor.

Now, sir, that is the only question that is embodied in this proposition. It is simply a question between the honest labor on the outside and the pauper labor on the inside of the State institutions. Now, what is there to this? It is a simple proposition in business. Supposing that you have your buildings, your plants and your employes furnished to you, for what price can you sell your products? That is all there is to it. Now, if the State, with its buildings furnished to it, with its plants and with the employes, is to enter into competition with the man on the outside who has to build his building, has to furnish his plant and has to hire his workmen, why, it is about time that the State adopt the socialistic idea and go into business by wholesale. Mr. President, I voted for this amendment in the committee, and I shall vote for it here. I vote aye.

Mr. McDonough — Mr. President, I desire to say a word in regard to this measure. It is not a party measure. It is not in the interest of any political party or any political organization; it is in the interest of society, it is in the interest of the people of the State. We find much fault with the unrest that is abroad, particularly amongst the working people. When they come here and ask for a reasonable measure, a proper measure, I think some attention ought to be paid to them. This measure is just, right and proper. Surely the State of New York can afford to treat its citizens as fairly as England treats hers. There is not a dollar's worth of goods made in an English prison and sold outside of it; the prisoners are working for the government. In France, there is not a dollar's worth of goods made in the prisons and sold outside; the prisoners are working for the government. This is what we propose here. In New York, whence come so many of the men that are running away to-day, there are 800 men on Blackwell's Island working every day, and they are not selling one dollar's worth of goods outside, and they are under the superintendence of Mr. Pilsbury, who was once the Superintendent of the Prisons of this State,

and he assured me that all the prisoners could be kept busy, and very busy, working for the institutions of the State. Now, we ask you to save money for the State, and you will save money by this system; because the State will receive the benefit of this system. It does not receive it now. I will tell you where it goes. By accident or some other means there crept into the report of the Prison Superintendent for 1877 the amount of commissions that were paid for selling goods, and there were paid for selling goods $39,930, and I say, with the man that got that money, this, our present system is the best on earth. There was a deficiency of $477,000 last year, and $477,000 would keep any State prison in idleness. But we do not propose to keep them in idleness ——

The President *pro tempore* — The gentleman's time has expired. How do you vote?

Mr. McDonough — I vote aye.

Mr. McIntyre — Mr. Chairman, I have seen no reason for changing my vote since this passed in Committee of the Whole. In fact, I see great reason for thinking I voted right then. A great many vote wrong. They either now vote against it or leave the hall. I do not know of any reason why they should leave the hall unless they want to vote contrary to what they did the other day. Now, I do not stand for any organization of any kind. I am not sent here by the labor organizations, neither am I here for any monopoly. I am here to represent the people of the State of New York, and I say when we come here and undertake to dictate to the officials of the State in all the *minutiae* of what they have to do, we are going too far. I am one of the kind who believes prisoners should be kept at work all the time, and endeavor by working them to get something out of them; and I believe that if every person in this great State would do the work they have to do there would be less labor organizations and less people kept in idleness. I think we should vote down this amendment. I think the Superintendent of State Prisons has the power, and he ought to have the common sense, to do the business properly. If he does not, let us have a new man in his place; let us have some competent superintendent over every man in the State prisons that labors, and there will be plenty of work for the people outside. We should not be carried away by such clap-trap as this by labor organizations. I vote no.

Mr. McKinstry — I vote heartily and I vote aye. I think it is a most righteous amendment.

Mr. McMillan — Mr. President, I am certainly surprised at the vote this proposed amendment is receiving at the hands of this

Convention. I have given the matter very little attention, because I supposed it was being taken care of by those gentlemen who have made this subject a study, which I have not. But I do know enough about this subject to know that it is one of the most important that can come before this Convention for consideration. It is one that is above the question of labor; it is one that appeals to humanity, and I want to say to the members of this Convention that they will make a mistake, and not political, but to themselves, if they vote down this proposition. The condition in which this subject stands to-day, to state it briefly, is this: that the poor unfortunates who are the criminals in this State are obliged to labor, and that labor is sold in the public market substantially, and they are driven at one end, and compelled to perform labor, and for the lowest price put upon it at the other, and the contractor is to receive the benefit of it. Now, it is to do away with that abuse that this amendment is aimed.

There is another consideration of this question, and that is whether or not the criminal as soon as he becomes the ward of the State should be abused in this way. Take it in various institutions. As one of the gentlemen who has spoken said, they should be given some trade. In many of the institutions of this State a particular trade has been plied to the exclusion of any other industry — and I speak of the brush industry — and driven it entirely out of this State. Therefore, when these men are turned out, the boys who have been sent there, and who have learned to make brushes and nothing else, are sent out to the world, there is not a single place in the State of New York where they can find employment. This is an abuse which ought to be corrected. It never has been corrected in the Legislature and something should be done here. I vote aye.

Mr. Powell — Mr. President, it is impossible for us, judging of various propositions and facts in life, to avoid comparing them with each other. This Convention a few moments ago decided that railroad passes are a proper subject for constitutional law. I now hear the view taken by the gentleman who proposed this amendment that the manner in which work should be conducted in our State prisons, where thousands and tens of thousands are confined, is not a proper subject for constitutional law. I fail to see how such conclusions are reached. The most that was shown in connection with railroad passes was that the application for them was a nuisance to corporations. But wherever railroad corporations have found a nuisance we have changed the Constitution of the State. Now here is a state of facts which has ruined

magnificent industries, thrown thousands of men out of employment in the world, filled homes with hunger and want, and shall this constitutional body refuse to right the wrong? I hope, sir, that it will not refuse to do justice in this matter, and I, therefore, vote aye.

Mr. Roche — Mr. President, I desire to explain my vote. I am opposed to the State of New York being allowed, with its enormous wealth and resources, to set up large manufacturing establishments for the purpose of competing with its own artisans and tradesmen, who are the strength of the State in times of peace, as well as in the days of war. I come from a locality which has felt the injurious effects of prison labor in competition with honest labor. I have seen the hollow-ware industry of Troy, West Troy and Green Island, in fact, of this country, wiped out and the business confined entirely to two prisons, that of Auburn, in this State, and that of Columbus, in Ohio. We have seen the brushmaking industry paralyzed, and the business of shirt and collar and cuff making seriously threatened a few years ago by the whole force of Clinton prison being set to work at the manufacture and laundering of shirts, collars and cuffs, and it cost the State for the support of the prisoners confined the sum of 9.3 cents per day per man. The products of such cheap labor put upon the market affect the prices of the goods turned out in private manufactories, and inevitably tend to lower the wages of the respectable men and women who work therein. We are asked whether or not we shall put in our Constitution a provision that will effectually prevent the State of New York from carrying on that kind of business and competing with its own citizens — the honest men and women of the State. There should be no hesitation in the matter.

Now, Mr. Chairman, the question is asked: "What will these prisoners be set to doing, if we do not allow them to enter into all kinds of industries and make all sorts of goods?" Why, it appears here in Document No. 59, that there are in the various institutions of the State something like 90,000 persons. This proposition will not prevent the prisoners from being set to work to make goods for themselves, or for the inmates of these institutions, or any articles needed in the institutions. Inasmuch, also, as the law of last year authorizes the prisoners to be set at work for the reconstruction of public roads within thirty miles of the prisons, set them to work in that direction. Let them commence with the public roads throughout the State, which are a discredit to the civilization and progress of the State in this the last decade of the nineteenth century. Under the amendment, the Legislature is given two years in which to devise plans for the employment of

the prisoners. I hope, Mr. President, that those who claim to be friends of the working masses of the State, the great body of intelligent mechanics, artisans and laborers, who have been compelled to come to the Legislature year after year to secure protection in their labor, that their families might have decent living, that they might have the means of educating their children — I hope that they will do something in order to make that protection secure through the most ample constitutional provisions. The hatmakers had to knock at the doors of the Legislature. The printers had to do it — likewise the stove industry. It should not be left in the power of unfriendly or interested persons on the prison committees of the Legislature, or a prison ring, to allow this crushing and unfair competition to go on. The question is of much greater importance than the mere saving of a few dollars and cents. I hope, therefore, the amendment will be adopted. I vote aye.

Mr. Root — Mr. President, I was much opposed to this amendment. I thought it was, as some gentlemen declared it to be, a scheme to catch votes. I thought it was an amendment promoted in the interest of a class of our citizens, and in both of those views it was repulsive to me. But I was absent from this hall during the arguments of Mr. McDonough in favor of it, and I thought it was my duty before voting to ask him the grounds upon which he favored it, and he has brought to me various reports, printed documents, statements of facts and statistics, which I have carefully examined, and I have come to the conclusion that this amendment declares a principle which ought to be asserted, and that it ought to be inserted in our Constitution. (Applause.) I find, sir, among many other authorities, that Dr. Wines and Professor Theodore W. Dwight, Commissioners of the Prison Association of New York, say: "Upon the whole, it is our settled conviction that the contract system of convict labor, added to the system of political appointments, which necessarily involves a low grade of official qualification and constant changes in the prison staff, renders nugatory, to a great extent, the whole theory of our penitentiary system. Inspection may correct isolated abuses; philanthropy may relieve isolated cases of distress, and religion may effect isolated moral cures, but genuine, radical, comprehensive, systematic improvement is impossible."

And they say also, sir, that the only process by which our State prisons can be removed from the arena of politics, whereby a safe basis can be secured for a change in the labor system, is an amendment of the Constitution, and to the attainment of that end the strenuous efforts of all good citizens should be directed. I find,

sir, that this proposed amendment declares as the rule of action for the people of this State the system which is in vogue in England, in France, and which is advocated by these gentlemen, which I believe to be right, and, therefore, I vote aye. (Applause.)

Mr. Titus — I ask to be excused from voting, and I will briefly state my reasons. The laboring people in this State, the wage-earners in this State, have for the last seven years looked forward and hoped to receive some encouragement from this Convention. It has been said here that the law requires the convicts to be kept at work. Very true; but in our prisons the convict has been kept at work for the benefit of the contractor and to the detriment of the honest wage-earners of our State. I will ask the delegates of this Convention if they will put the honest laborers and wage-earners of this State in competition with the prison labor? Will you drive the poor women of our State to work and make a shirt for three cents? So in the iron-ware and willow-ware trade of this State. Their industry is entirely gone from the market. I will say to the delegates here that of all the amendments before the Convention, near and dear to the people of this State, this is the nearest and dearest, and I ask you, as men, belonging to the brotherhood of man, that you will sustain this amendment. I vote aye.

Mr. Veeder — Mr. President, I desire to explain my vote on this proposition, and say that I regard this proposition as a species of legislation and that it has no place in our organic law. I insist that no man in this room or on this floor has more regard for labor or for the success of the laboring class than I. I know all about them, and my personal experience, my association all my life has been with the laboring class, but I submit that with all our sympathy for them, with all our regard for them, true friendship for them is not to encourage a species of constitutional amendment of this kind. It belongs to the Legislature. This State is organized with three branches of government, the executive, the legislative and judicial, and for this Convention to usurp their powers I submit is wholly irregular.

Now, sir, the Legislature has not refused this relief to these men. The mistaken policy of a few years ago has been corrected to a large extent. There is no intention that prison labor shall overcome honest labor. The gentleman says "put them on the roads." Is not that competition with honest labor? To put them on any public work, is not that competition with honest labor? How can we mend this thing in any other way than by submitting it, from time to time, as necessity requires, to the Legislature?

Now, I desire to call the attention of this Convention to an act of the Legislature, chapter 130 of the Laws of 1892, which provides as follows:

"No prisoner in any of the State prisons, penitentiaries or reformatories in this State shall be employed in making or finishing fur or wool hats, or in making or laundering shirts, collars or cuffs, or in setting type or printing, except in setting type for or printing printed matter for use in the prison, penitentiary or reformatory in which the same is printed, and no products of any labor in the trade of printing or typesetting of any prisoner in such prison, reformatory or penitentiary shall be put upon the market for sale or sold; but nothing in this act shall prevent the printing within a prison, penitentiary or reformatory of the official reports of the prison, penitentiary or reformatory, in which the same are printed, respectively, or making or finishing of fur or wool hats, or the making or laundering of shirts, collars or cuffs for use in such prison, penitentiary or reformatory, or for use in any of the public institutions of the State."

Now, the Legislature has taken its position on this subject, and, if any other labor is infringed upon, apply there, the true place to apply. The laboring men have their remedy. They have a voice in the election of Senators and Assemblymen. They can control their elections. Why, they threaten now to control the State because we won't do this, against reason and right. I vote no.

Mr. Choate — Mr. President, I desire to explain my vote. I voted against this measure after hearing all of Mr. McDonough's argument, all of the arguments that were presented so faithfully by the friends of this proposition in Committee of the Whole, and I propose still to vote against it, because nothing that they have said convinced me that it was right or proper. I have been strongly urged to vote for it upon the ground that thereby votes could be got for other measures pending before this Convention. I scorn to vote on any such ground as that. (Applause.) I have been urged to vote for it on the ground that it would gain votes for the party to which I belong. I detest any such argument as that. (Renewed applause.)

Mr. President, the welfare and the good government of our prisons and our State prisons is one of the highest interests of the whole people of this State. It is far greater than that of any small class. It is still an undeveloped science, the science of prison management and the relations of prison labor to outside labor, and I say it would be a very great wrong to tie the hands of the government of this State for the next fifty years or the next twenty

years so that it cannot, according to the best results of modern science, conduct the government of its prisons and the relations inside of prisons to those outside, and, therefore, I vote no, as I did before.

Mr. Barhite — Mr. President, I ask that rule 63 be enforced, that every member within the bar of the Convention be required to vote, unless excused.

Mr. Burr — Mr. President, I was absent when my name was called, entertaining some visitors, and I desire to vote aye.

Mr. Cassidy — Mr. President, if any considerations of personal friendship or of party policy could induce me to vote for a measure to which I did not subscribe, I certainly would vote for this measure. But, Mr. President, I do not approve of this measure. Many of the advocates of this measure are warm personal friends of mine, and I should like to vote for it, if I believed it to be right, but I cannot see how the laboring people are to be benefited by the adoption of this amendment. We are told that the prisoners could be put at other work. But, then, there would be competition in that work. And it is like a farmer trying to save the wheat that he has stored up for the year, to use out of one bin and not out of two. He would use twice as much out of one bin as he would taking it out of two. We are told that there is an unrest among working people that must, in some manner, be satisfied by this Convention; but, Mr. President, when the people cry for bread we ought not to give them a stone. I do not believe that the working people are to be benefited at all by this measure. I must, therefore, vote no.

Mr. Augustus Frank — Mr. President, I wish to cast my vote on this question, as I have endeavored to do on all others, irrespective of party feelings or personal feeling in any way. I feel that just at this time, over the whole land, is a spirit, as has been said by Mr. Cassidy, of unrest among the laboring people, and particularly so in this State in regard to prison labor, as to the best mode of disposing of it in the interest of the laboring men of the State at large. Now, this proposed amendment gives the State two years, from January next until 1897, to settle this question, and I have felt that during that time, in some manner, in some way that might be devised, we would satisfy all parties in this State in regard to this labor question. I vote aye.

Mr. Galinger — Mr. President, I never dodge a vote. I was necessarily absent on the first roll-call. I want to say this, that where contractors can get men at sixty cents a day in the prisons,

it necessarily comes in competition with outside labor, and laborers cannot be profitably employed. I, therefore, vote aye.

Mr. Goeller — Mr. President, I desire to explain my vote. I was present, and I might say I heard the speech of the gentleman from Albany (Mr. Kerwin), and I am desirous of saying that no lack of manhood, or cowardice, or political consideration will actuate me to dodge a vote. But I am subject to failings, and an accident may overtake me in not being present when the vote is being taken, or I may fail to hear my name called. I have considered this matter, and I am of the opinion that the labor within prison walls ought not to compete with the labor of people outside of prison walls, and for that reason I have resolved to vote aye, and vote aye.

Mr. Lincoln — Mr. President, a few years ago, while occupying another official position, I had occasion to examine this question somewhat and to vote upon the proposition involved, for another purpose. I believe in the principle embraced in this proposed amendment. I believe that it may do good to incorporate it in our fundamental laws. At least, it is an experiment, and I am willing to see it tried, and for that purpose I vote aye.

Mr. McClure — Mr. President, I believe that this matter is, in itself, not a subject of legislative action. The kind of labor that is performed in the States prisons is limited; it is peculiar in its nature. The passage of an amendment like this and fixing it in the Constitution is a discrimination, it seems to me, in favor of the kind of labor that is done in States prisons. I have the courage, Mr. President, of voting according to my conviction. I sympathize with labor, but I do not believe in violating any rules of procedure such as I have affirmed here on this floor should be followed out in other matters, by making of this Constitutional Convention a Legislature. I think, inasmuch as the Legislature, as shown by Mr. Veeder, has shown its disposition to protect the laboring people of this State, inasmuch as the Legislature is elected in part by the laboring people of this State, inasmuch as I have not lost all confidence in the Legislature and propose to relegate to it affairs affecting the vital interests of the State, including forest preserves, I am inclined not to burden the Constitution with this proposition, but to leave the relief of the workingmen to the legislative body, I vote no.

Mr. Moore — Mr. President, I desire to explain my vote. There is no man in this Convention who has a greater admiration for the President of it than I have, for his talents, for his ability,

for his urbanity, for his knowledge. But, Mr. President, on this question I must humbly beg to differ with him. I believe he is wrong in principle and I know he is wrong in politics. (Laughter and applause.)

Mr. President, this Convention is pretty near to the reckoning time. The judges are going to come up to this Convention by and by, and say: "What are you going to do for us?" and the Convention can cheerfully say to them, "$400,000." Then the corporations are going to come along and say: "And what have you not done for us, and what have you done for us?" and the Convention will answer in no uncertain terms. And last and not least, Mr. President, will come the people of this State and say: "What have you done for us?" and this measure, Mr. President, in my judgment, setting all politics aside, covers a principle which enables us, if passed, to do something for the laboring men in this State. They have not come to this Convention in force; they have not come and insisted upon this and that and the other thing being done; they have simply asked that we pass a measure here that prison labor shall not interfere with their earnings, and I want to warn this Convention not to defeat this proposition, not so much that it will defeat your Constitution, but because it is right in morals, right in honesty and right in politics. I vote aye.

Mr. Nicoll — I desire to explain my vote. I have had considerable experience with the working classes and labor organizations in this State during the past ten years. During that time I have been more or less in public office and brought face to face with many of the questions relating to the laboring classes — the workingmen — and with their organizations. I think I know them pretty well. I have been counsel for some of their organizations at different times and have learned to respect their intelligence and their manhood, and I want to say this one thing on their behalf, that the laboring men of this State and the working organizations have more respect for the men who have the courage of their convictions and who oppose them on principle than they have for those who surrender their convictions for the purpose of getting their votes. (Applause.) Now, I have convictions upon this subject which I do not propose to surrender for the purpose of getting votes. We are brought face to face with this great question, and we are asked to incorporate in the Constitution of this State a hard and fast rule in relation to the government of our prisons and their attitude in relation to the working classes, which we can never change. The laws of this State at the present time afford ample protection for the

working classes in this regard. The expenses of our State prisons have increased and the product of our State prisons to-day practically amounts to little or nothing. This is nothing in the world but a matter of legislation. The legislators themselves are elevated by the votes of the working classes. It seems to me that experience forbids the hazardous attempt to put this into the Constitution of this State, and I vote no. (Applause.)

Mr. Ohmeis's name was called by the Secretary and he did not vote.

Mr. Goeller — Mr. President, Mr. Ohmeis has asked me to ask that he be excused.

Mr. Choate — Mr. President, I move that Mr. Ohmeis be excused from voting.

The question being put on the motion of Mr. Choate to excuse Mr. Ohmeis from voting, by a rising vote of thirty-six in the affirmative and fifty in the negative, the motion was lost and the Secretary again called his name.

Mr. Ohmeis — I vote no.

Mr. Vedder — Mr. President, I ask to be excused from voting and will briefly state my reasons. I believe that what our distinguished President said in relation to our votes here is exactly right, and sounds the true doctrine. If I understood what he said it was that no vote should be cast here for party or against party, but only for those things which a member believed would be for the best interests and welfare and happiness and prosperity of the people of the State of New York. I understand, Mr. President, that this is the most highly manufacturing State there is in the Union and that the price of an article which is manufactured is determined by the lowest price at which it can be made and sold; that the reason why the workingmen are opposed to the State working its prisoners along those lines that the manufactories of this State were built for fixes the lowest possible price for the manufactured article and thereby injures the manufacturer. This country is to-day at the lowest point industrially that it has been for years and the cause of it has been the attempt on the part of the last Congress to put the well-paid labor of this country in competition with the poor-paid labor of England and other foreign countries. We, as a people, ought to be opposed to that, and if we oppose England fixing the price of American labor we ought to be opposed to the State prisons of this State fixing the price of free American labor. (Great applause.) The attempt on the part of this last Congress, as I say, to put the working people of this country upon a level with others

has made our industries noiseless, our chimneys smokeless and our furnaces fireless, until we rely now to-day upon Providence simply and the next congressional election ——

The President *pro tempore* — The gentleman's time has expired. How does the gentleman vote?

Mr. Vedder — I vote aye.

Mr. Kerwin — Mr. President, before announcing the vote, I again call for the ayes and noes under rule 63, and ask the President to enforce the same, which reads as follows:

"When less than a quorum vote on any subject under consideration by the Convention, it shall be in order, on motion, to close the bar of the Convention, whereupon the roll of members shall be called by the Secretary, and if it is ascertained that a quorum is present, either by answering to their names or by their presence in the Convention, the yeas and nays shall again be ordered by the President, and if any member present refuses to vote, such refusal shall be deemed a contempt, and the member or members so offending shall be cited before the Committee on Privileges and Elections, which, after inquiry, shall report to the Convention for such action as the facts shall seem to warrant, and unless purged, the Convention may order the Sergeant-at-Arms to remove said member or members without the bar of the Convention, and all privileges of membership shall be refused the person or persons so offending until the contempt be duly purged."

Mr. President, I ask for the ayes and noes.

The President *pro tempore* — The gentleman is out of order. The rule does not apply. Mr. Ohmeis desires to change his vote, I understand. The Secretary will call his name.

The Secretary then called the name of Mr. Ohmeis.

Mr. Ohmeis — Mr. President, I voted no. I take my vote back and vote aye. (Great applause.)

The roll-call being concluded, the proposed amendment to amend article 3 of the Constitution, relating to the employment of prisoners, was adopted by the following vote:

Ayes — Messrs. Acker, Ackerly, Arnold, Barhite, Barnum, Becker, Blake, Burr, Campbell, Carter, Chipp, Jr., Clark, G. W., Coleman, Crosby, Davies, Davis, Deterling, Deyo, Dickey, Durnin, Faber, Floyd, Forbes, Francis, Frank, Andrew, Frank, Augustus, Fraser, Fuller, C. A., Fuller, O. A., Galinger, Gibney, Giegerich, Gilleran, Goeller, Green, A. H., Green, J. I., Hecker, Hedges, Herzberg, Hill, Hirschberg, Holls, Jenks, Johnson, I. Sam,

Johnson, J., Kellogg, Kerwin, Kimmey, Kinkel, Kurth, Lauterbach, Lincoln, Mantanye, Marks, McArthur, McDonough, McKinstry, McMillan, Meyenborg, Moore, Morton, Nostrand, Ohmeis, Parker, Parmenter, Pashley, Phipps, Porter, Powell, Putnam, Redman, Roche, Rogers, Root, Smith, Springweiler, Storm, Sullivan, T. A., Tekulsky, Tibbetts, Titus, Towns, Truax, C. H., Tucker, Turner, Vedder, Vogt, Whitmyer, Wiggins, Williams, Woodward — 91.

Noes — Messrs. Abbott, Baker, Barrow, Bigelow, Bowers, Brown, E. A., Brown, E. R., Cady, Cassidy, Church, Clark, H. A., Cornwell, Countryman, Crimmins, Danforth, Davenport, Deady, Dean, Doty, Emmet, Foote, Gilbert, Goodelle, Griswold, Hamlin, Hawley, Lester, Lewis, C. H., Lyon, Manley, Marshall, Maybee, McClure, McCurdy, McIntyre, McLaughlin, C. B., McLaughlin, J. W., Mereness, Nichols, Nicoll, Osborn, Parkhurst, Pool, Pratt, Rowley, Sandford, Spencer, Steele, W. H., Veeder, Wellington, President — 51.

The President *pro tempore* — The amendment being passed, and the time having arrived for the Convention to take its usual recess, before doing so the Secretary has some announcements which he will make.

The Secretary announced meetings of the Committees on Privileges and Elections and on Contingent Expenses, at 7.30 P. M., in the Assembly parlor.

The Convention then took a recess until eight o'clock P. M.

EVENING SESSION.

Wednesday Evening, September 12, 1894.

The Constitutional Convention of the State of New York met pursuant to recess, at the Capitol, Albany, N. Y., Wednesday, September 12, 1894, at 8 P. M.

President Choate called the Convention to order.

Mr. Barhite — Mr. President, Mr. M. E. Lewis was taken suddenly ill to-day and obliged to go home. I ask that he may be excused until his recovery.

Granted.

Mr. J. Johnson — Mr. President, the Committee on Cities presents the following repot.

The President — Will the Convention receive a report now presented by the Committee on Cities?

Mr. Holcomb — I object, Mr. President.

The President put the question on receiving the report from the Committee on Cities, and it was determined in the affirmative.

The President — The report will be read by the Secretary.

Mr. Veeder — I rise to a point of order. There is not a quorum. If you are going to rush things through in this way we will take advantage of anything we have left.

The President — The Secretary will read the report while the quorum is gathering.

The Secretary read: Mr. Johnson, from the Committee on Cities, reports the proposed constitutional amendment (printed No. 461), entitled "proposed constitutional amendment to amend ——

Mr. Veeder — I wish to apologize, Mr. President. This is an old familiar matter, and I withdraw my point of order.

The President — It need not alarm any member. The Secretary will read it.

The Secretary (resuming) — "To amend article 8 of the Constitution by the addition of a new section, reports in favor of the passage of the same."

Mr. Root — Mr. President, I move that the Convention agree to the report of the committee, which sends this to general orders and to Committee of the Whole.

The President put the question on the adoption of the motion offered by Mr. Root, and appointed as tellers Messrs. Acker and Cochran, a count having been called for, and the question was determined in the affirmative.

The President — The amendment will now be read a second time by title.

The Secretary read: "Proposed constitutional amendment to amend article 8 of the Constitution by the addition of a new section." (Printed No. 461, introduced as O., I. No. 394, P. No. 464.)

The President — Referred to the Committee of the Whole.

Mr. Root — Mr. President, I move that this be made a special order immediately after the report of the Committee on Charities.

The President proceeded to state the question.

Mr. Veeder — I demand tellers on that. It takes a two-thirds vote.

The President — Mr. Veeder never was more correct. The same gentlemen will act as tellers.

Mr. Root — I call attention to the fact that the rule has been changed. It requires only a majority vote to make a special order.

The President — That is so.

Mr. Bowers — But, Mr. President, a point of order. We are proceeding under a resolution to go on with the regular call on third reading.

The President — Yes, sir; the Chair has so decided, has adhered to it several times and will adhere to it, unless overruled by the Convention. Mr. Veeder is reminded that the two-thirds rule has been changed.

The President again proceeded to state the question on the motion of Mr. Root.

Mr. Bowers — A point of information! Have we any rules left of any kind?

The President — Sufficient for the purpose of the Convention. (Laughter.)

The President put the question on the motion of Mr. Root making the article a special order to be announced by the Chair immediately after the report of the Committee on Charities, and it was determined in the affirmative by a two-thirds vote.

Mr. Cochran — Mr. President, so that we may have this matter settled — if I recollect, this rule was not changed. I understood it was another rule that was changed — I want to take exception to that. I do not understand that the rule relative to general orders was ever changed.

Mr. Holcomb — Can we know what the vote was?

Mr. J. Johnson — Mr. President, I desire to make a statement preliminary to a motion. General order No. 9 (O., Nos. 6-339), the first one read, that had the third reading, contains a provision apparently contradictory to the first section of the article separating the elections. It provides that the terms of office of the county officers of New York and Kings shall be three years. In order to save the possibility of error, as this is the last parliamentary opportunity, I move that that be reconsidered, and that the motion to reconsider lie on the table.

The President put the question on agreeing to the motion to lay on the table, and it was determined in the affirmative.

Mr. Holcomb — I did not hear the vote announced on the original proposition before Mr. Johnson made his motion.

The President — The Chair announced that it was evidently carried by two-thirds.

Mr. Holcomb — Cannot we know how many there were in favor and how many against?

The President — I do not think you can now.

Mr. Holcomb — I asked for it at the time; I think we ought to have the right to know.

The President — The next matter on the order of third reading is (O., I. No. 258, P. No. 317) general order No. 8, introduced by Mr. Lauterbach. The Secretary will read the title.

The Secretary read the title of the proposed amendment in the language following: "Proposed constitutional amendment to amend article 2 of the Constitution, relative to suffrage."

Mr. Jenks — Are amendments now in order?

The President — Not amendments exactly, but motions to recommit with instructions to amend.

Mr. Jenks — I move to reconsider and recommit, with instructions to the committee to report forthwith the following amendment ——

The Secretary will read it.

The Secretary read: Page 1, line 5, insert after the word "ballots," the words "at the polls," and after the word "voters," in line 5, page 1, strike out the words "at the polls."

Mr. Jenks — Mr. President, I know that perhaps debate is not in order ——

The President — You can debate the general proposition.

Mr. Jenks — I only want to explain the purpose of this. The present amendment reads as follows: "All * * * officers charged with the duty of distributing ballots to voters at the polls." My amendment simply takes the words " at the polls " and inserts them after the word "ballots," — "distributing ballots at the polls to voters." The evident intention of that article is not "voters at the polls," but "distributing ballots at the polls to voters." That is the only change I make in the article.

The President put the question on the adoption of the amendment offered by Mr. Jenks, and it was determined in the affirmative.

Mr. Roche — Mr. President, I desire to offer an amendment.

The Secretary read: Mr. Roche moves to recommit to the Committee on Suffrage, with instructions to strike out lines 4 and 5, page 2, and insert the following instead: "This section shall not

apply to town meetings, or to village elections in villages of less than 5,000 inhabitants."

Mr. Roche — Mr. President, we voted the other evening, when a registration article was in committee, not to require registration in villages of less than 5,000 inhabitants. Now, this provision, which contemplates equality of representation in elections between the two principal political parties, contains a provision that it shall not apply to village elections at all. There are something like three hundred and fifty villages in the State of New York. There are, I believe, thirty of these which contain more than five thousand inhabitants, some of them numbering from eight thousand to ten thousand, twelve thousand and sixteen thousand inhabitants, some of them being candidates for creation into cities. Many of them are exceedingly important places, the population growing; and if this principle of equality of representation in election boards is a good thing, and I believe it is, I believe it ought to be secured by constitutional enactment. It seems to me that it is only proper that it should be extended to places which have a population of five thousand and upwards, and whose elections certainly are of an important character. I do not think it is wise, Mr. President, to restrict this principle, so that it shall not apply to populous villages, and villages that are growing, whose elections, as I have said, are of an important character. Take, for instance, the village of Lansingburg, adjoining the city of Troy, which has a population, I believe, of from twelve thousand to fifteen thousand. If that principle is good, as applied to Troy, as I believe it is, then it seems to me it is equally good as to such an important village as that one whose inhabitants are increasing in number. I do not think it is wise that we should make such a marked distinction as this amendment in its present form would make between county and city elections and elections in the important villages of the State.

Mr. A. B. Steele — Mr. President, I would like to ask the gentleman a question, and that is, if his amendment prevails, how are we to know when a village has near five thousand inhabitants; how are we going to know or determine whether the act will apply to a village or not? For instance, the village I live in, at the last census, had not over five thousand population. There is no doubt but that there is more than that number now. Would it apply to that village or not?

Mr. Roche — Then I will insert, Mr. President, with the consent of the Convention, "according to the last State or federal enumeration." You do not propose to have another State enumeration

until 1905, and a great many of these villages, whose population is now quite close to five thousand — it is altogether likely that if an enumeration was taken to-day it would appear that they had upwards of five thousand inhabitants —certainly are likely to have that population before the next enumeration, twelve years hence. I think it is only fair, therefore, that we should have the benefit of this constitutional provision applied to such villages as by the next national or United States census are brought within the provision.

Mr. Goodelle — Mr. President, there does not seem to be anything in the act prohibiting villages from having bi-partisan election boards, if they desire, and it does not seem to me profitable to change the act in that respect. I hope it will not be done.

Mr. Nichols — Mr. President, it seems to me that it must necessarily follow if this proposition prevails that the officers who supervise village elections must be changed and become a board of registration. It does not seem to me that that is at all necessary, and I believe that the provisions of law now applicable to village elections ought to be left just as is contemplated by the proposition in its present form.

Mr. Dickey — Mr. President, as elections are conducted now in many of the villages of this State, the trustees are the election officers, and, of course, they are elected sometimes from one party, sometimes from the other, and sometimes without regard to party. They are made up of people without regard to whether they may be Republicans, Democrats, Prohibitionists, Mugwumps or what not; and in that way this proposed amendment could not at all be affected, because it would require partisanship in localities and village elections where there is none now. Either it would do that or require expensive additional election officers, large in number, and, therefore, this amendment is in my opinion not a proper one and should be voted down.

Mr. Morton — Mr. President, I would like to ask the attention of the chairman of this committee to what seems to me to be a great defect in section 6. It is well known to him and perhaps to all the members of the Convention that boards of election in many parts of the State are now non-partisan; that is to say, that the parties are represented by equal numbers in these boards. It would appear to me from the reading of this section that this non-partisan character is confined merely to the distribution of ballots to the voters at the polls, whereas we all know that other very important responsibilities rest upon those officers, whose duty it is to prepare and provide these ballots at the polls. I would suggest

that the defect might be remedied, according to my view of it, by inserting in the fourth line, after the word "of," the words "providing or," and by striking out in the fifth line the word "to," and inserting the words "for the use of;" so that it would read as follows: "All laws creating, regulating or affecting boards or officers charged with the duty of registering voters or of providing or distributing ballots for the use of voters at the polls."

Mr. Goodelle — May I suggest that the clerk provide the ballots. The county clerk provides the ballots, the registry board has nothing to do with that Mr. Morton.

Mr. Morton — Well, certainly, whatever the practice may be in the counties of the State, where it is the duty, by law, of the county clerk to procure the ballots ——

Mr. Barrow — Not in the villages he doesn't.

Mr. Morton — Certainly, in the great cities of the State, New York and Brooklyn, where the boards of commissioners are vested with the duty of furnishing these ballots, it is a matter of very grave consideration; and it seems to me that this language needs some revision in order to cover such cases.

The Secretary again read the amendment proposed by Mr. Roche.

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

The Secretary read the amendment proposed by Mr. Morton.

Mr. Morton — Mr. President, I am assured by those in whom I have great confidence that the last clause in this section reading: "Existing laws on this subject shall continue until the Legislature shall otherwise provide," would cover the objection that I raised, and, I, therefore, withdraw the amendment.

The President — Is there any further discussion upon this constitutional amendment?

Mr. Forbes — Mr. President, it seems to me that this will deprive any minority of a representation, and that in a way which cannot be changed for many years. We may have other parties coming up, and are we, as a Constitutional Convention, to say that there shall only be two great parties in this great State for the next twenty years, two parties which shall take part in the election machinery? I think we ought to pause and consider the question before we vote on this proposed amendment.

Mr. J. Johnson — I beg leave to remind the gentleman that something like this was originally in the article in relation to cities, and the statement was made that if this were made general it would

be entirely acceptable. I think the principle, the language, the phrase, everything in this proposed amendment, was fully agreed to by all parties at the time it was before the committee.

Mr. McClure — Mr. President, I would like to ask some one who has given this matter sufficient attention to be able to do it, to give some explanation as to why it is this representation of the two political parties at an election is not to apply to villages of five thousand inhabitants and over. We passed in Committee of the Whole, the other evening, Mr. Nichols's proposition which exempted personal registration in villages where the inhabitants were less than five thousand. Now, here is a proposition that this equal representation on the boards shall not apply to villages at all. I would like to ask, so as to be able to vote intelligently upon this, why it is that there is to be no equality of representation on this board in villages, even though the inhabitants of the particular village may aggregate ten thousand? Why is it that there is to be equal representation in cities and no equal representation in villages? If Mr. Goodelle or some one else ——

The President — Perhaps Mr. Lauterbach, who introduced this and knows it all, may be able to explain.

Mr. Lauterbach — What I do not know about it is known fully to Mr. Lincoln, and as he knows it all you can readily judge how much I know. (Laughter.)

Mr. Lincoln — Well, Mr. President, that puts a great responsibility on me. I suppose the plan is to exempt villages from the operation of the provisions of this amendment, for the reason that in villages the village elections are conducted by trustees elected under the village charters, sometimes by districts and sometimes upon a general ticket.

Mr. McClure — May I ask the gentleman a question? Is it not often a fact that those village trustees are entirely members of one political party?

Mr. Lincoln — That may possibly be.

Mr. McClure — Then another question, Mr. President. Why should the election in cities be conducted under the direction of representatives of the two political parties, and the election in villages, where the inhabitants exceed five thousand in number, be conducted under the direction of trustees, all of one political party?

Mr. Lincoln — There is no question of principle about it. It is an arbitrary rule, in any event.

Mr. McClure — And you propose to have that arbitrary rule continued in force and effect?

Mr. Lincoln — We are undertaking here to make an arbitrary rule. Town elections are governed by town boards, and village elections by village boards; and this is intended, as I understand, to reach the general election in the fall, which we term a general November election, when separate officers have to be provided and are provided for the entire State.

Mr. Vedder — Mr. President ——

Mr. McClure — I do not yield the floor unless you want to answer some part of the question I ask.

Mr. Vedder — I do wish to answer it.

Mr. McClure — Very well, I would be very glad to have you answer it. Mr. Lincoln did not.

Mr. Lincoln — You think I did not answer it?

Mr. McClure — You did not give any reason why one political party should have control of the elections in villages, the inhabitants in which exceed five thousand in number.

Mr. Vedder — I will give a reason if the gentleman will permit.

The President — Will Mr. McClure yield the floor?

Mr. McClure — I yield, so that he may answer the question.

The President — Mr. McClure yields the floor to anybody that knows more about it than he does.

Mr. Vedder — The amendment of Mr. Nichols applies to elections which affect the whole of the State, elections which are had in the fall, called popular or general elections, where the election affects the whole State. This only applies to town meetings, or village elections, which affect nobody on earth but the people in the towns. They are for the election of a supervisor, some constables and some justices of the peace. It is home rule pure and simple; that is all. The other, that you are asking about affects the whole people; this, only one locality and nothing but that locality. That is the reason of the distinction, and it is a distinction that is very broad and very plain. In one case under this act of Mr. Lauterbach the exemptions affect only the people of that particular town, in just their local affairs, home rule pure and simple. The other affects all the people of the State.

Mr. Schumaker — I want to ask a question of the gentleman.

The President — Will Mr. Vedder allow a question?

Mr. Vedder — I was answering a question, but I will answer another if I can.

Mr. Schumaker — As I understand this, it is in relation to spring elections only. Is not that so?

Mr. Vedder — Yes, sir.

Mr. Schumaker — That is all. Nothing to do with the fall elections?

Mr. Vedder — Not at all.

Mr. McClure — Now, Mr. President, Mr. Vedder is entirely wrong with reference to Mr. Nichols's amendment. It does not apply to State elections at all specifically; it applies to elections generally.

Mr. Marshall — General elections?

Mr. McClure — Elections generally.

Mr. Marshall — No, no; general elections.

Mr. McClure — It does not say "general elections." Now, so that there may be no dispute, even on the part of the Solons of this Assembly, I will read it ——

Mr. Schumaker — In the country towns, at a general election in the spring, they elect inspectors for the fall elections, and those inspectors are of both parties as I understand the Revised Statutes. The electors for the fall elections are elected in the spring.

Mr. McClure — We are talking now, Mr. President, about village elections, and Mr. Marshall and Mr. Vedder to the contrary notwithstanding, I assert that Mr. Nichols's amendment providing that there shall not be required personal registration in villages where the inhabitants number less than five thousand does not apply specifically to any particular election at all, but it applies to all elections; and it was provided there that this requirement of personal registration should not apply in cases where the inhabitants did not exceed five thousand in number. Now, here is a case relating to village elections, and I am informed by a gentleman sitting in front of me that he resides in a village of over six thousand inhabitants where the inspectors of election are the trustees, sometimes perhaps retaining themselves in office and acting as inspectors of elections, in charge of it, all of one particular party. Mr. Roche's amendment would have cured this objection, and inasmuch as that amendment has been defeated I am opposed to this provision. It is another discrimination against the cities and in favor of the villages, no matter how large the number of inhabitants therein. Now, Mr. President, I am opposed to this dis-

crimination and I shall not be able to vote for this amendment, inasmuch as in village elections the board of inspectors of election is not to be made up in each case of the representatives of the two political parties.

Mr. A. B. Steele — It seems to me, Mr. President, that there could be a further suggestion made in answer to the inquiry of Mr. McClure. First, in reference to town meetings, the elections of that kind. The inspectors of election are justices of the peace, whose term of office is for four years. One is elected each year. Therefore, the inspectors of election at the town meetings are elected in four different years and almost invariably there are some of one party and some of another. There are but few towns, judging, at least, from the towns in my vicinity, where they are all of one political party. I think in my immediate town there are two Democratic justices and two Republican justices. Therefore, the inspectors of election at town meetings are equally divided. Now, when you come to the next question, village elections, under the act of 1870, a part of the trustees are elected in one year and a part in another, and those trustees act as inspectors of election.

Mr. McClure — Sometimes they are of the same party.

Mr. Steele — Sometimes, but usually, or very frequently, they are of both parties.

The President — Will Mr. Steele allow the Chair to ask a question?

Mr. Steele — Yes, sir.

The President — Whether villages as such ever vote at general elections?

Mr. Steele — No, sir! they do not. Village elections are in the spring of the year and general elections are in the fall of the year, and as I was about to say, if they should have, as inspector of election, a trustee who did not do fairly, who did not do his duty, he never would be re-elected; never would act as an inspector but once. Then, a little further; village elections are usually in the interest of the people and there is but very little politics in them, but very little. It is village interests, or in the case of a town it is more town interests, than it is political interests.

Mr. Barrow — I move to recommit to the committee with instructions to report forthwith an amendment as follows: After the word "the" and before the word "general," in line 7, insert the word "next;" so that it will read "at the next general election preceding."

Mr. Lauterbach — I accept that amendment.

The President put the question on the adoption of the amendment offered by Mr. Barrow, and it was determined in the affirmative.

Mr. Barrow — That should be after the word "election."

The President — "General election next preceding."

Mr. Barrow — That is it.

The President — Is there any further discussion upon this constitutional amendment? If not the Secretary will read the same for the third time.

The Secretary read the proposed amendment, in the language following (O., I. No. 358, P. No. 317):

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

"Sec. 6. All laws, creating, regulating or affecting boards or officers charged with the duty of registering voters, or of distributing ballots at the polls to voters, or of receiving, recording or counting votes at elections, shall secure equal representation of the two political parties which, at the general election next 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, 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 Legislature shall otherwise provide.

"This section shall not apply to town meetings, or to village elections."

The President — This constitutional amendment having now been read a third time, the vote upon its final passage will be taken.

The President put the question on the final passage of the amendment proposed, and the Secretary proceeded to call the roll.

Mr. Dean — This proposed amendment is so cheap and so nasty, in my estimation, it so far outrages every principle upon which American institutions are founded, that I vote no.

Mr. McClure — I proposed to vote for the first part of this amendment, but I cannot countenance the discrimination that is made; and I have no confidence in the kind of inspectors of election that prevails in the vicinity where my friend, Mr. Steele, comes from, particularly when I remember that he recounted here, when the judiciary article was under consideration, that one of the

justices of the peace who forms one of the inspectors of election up there was so honest that he had his office with his partner, who was a lawyer, and had all the cases that were heard; he was on one side, and the case was decidedly generally in favor of the partner. There is not a recommendation in all that to me to countenance the last provisions of this amendment. I think there ought to be a division between the parties in the inspectors of election at village elections. I know enough about village elections, being a native of a village and a resident therein from my boyhood, to know that important questions arise and that party lines are always drawn; and, therefore, I do not like the discrimination that appears to prevail here generally in favor of country people and country voter, as if all the virtues were in the country people, and they could not commit any wrong politically, and all the vices were in the cities. Therefore, I vote no.

The Secretary having completed the calling of the roll, the following result appeared:

Ayes — Messrs. Abbott, Acker, Ackerly, Allaben, Arnold, Baker, Banks, Barhite, Barnum, Barrow, Becker, Blake, Brown, E. A., Burr, Cady, Carter, Cassidy, Church, Clark, G. W., Clark, H. A., Cochran, Coleman, Cookinham, Cornwell, Countryman, Crosby, Danforth, Davenport, Davies, Davis, Deady, Dickey, Doty, Emmet, Faber, Farrell, Floyd, Foote, Francis, Fraser, Fuller, C. A., Fuller, O. A., Galinger, Gibney, Giegerich, Gilbert, Gilleran, Goodelle, Green, A. H., Green, J. I., Hamlin, Hawley, Hedges, Hill, Hirschberg, Holls, Hotchkiss, Jenks, Johnson, I. Sam, Johnson, J., Kerwin, Kimmey, Kinkel, Kurth, Lauterbach, Lester, Lewis, C. H., Lyon, Manley, Mantanye, Marks, Marshall, McArthur, McIntyre, McKinstry, McLaughlin, C. B., McLaughlin, J. W., McMillan, Mereness, Moore, Morton, Nichols, Nicoll, Nostrand, O'Brien, Ohmeis, Osborn, Parker, Parkhurst, Pashley, Peabody, Phipps, Platzek, Pool, Porter, Powell, Pratt, Putnam, Redman, Roche, Root, Sandford, Schumaker, Springweiler, Steele, A. B., Steele, W. H., Storm, Sullivan, T. A., Sullivan, W., Tibbetts, Titus, Truax, C. H., Tucker, Turner, Vedder, Vogt, Wellington, Whitmyer, Wiggins, Williams, Woodward, President — 123.

Noes — Messrs. Chipp, Jr., Dean, Forbes, Maybee, McClure, McCurdy, Meyenborg, Parmenter, Veeder — 9.

The President *pro tempore* — The next matter on the order of third reading is (O., I. No. 388, P. No. 439) general order No. 61, third reading 16, in reference to education.

Mr. Holls — Mr. President, I move that this article on education be laid upon the table for the present, for the reason that it is considered best to discuss it in connection with the charities article, to be brought up after the charities article has been passed to the order of third reading. As I understand the rules, if this motion to lay on the table is carried, a motion to take it from the table and consider it in third reading would be in order at any time.

Mr. Vedder — I would suggest that it be "laid aside." If it were laid on the table we might have trouble in getting it up.

The President — The Chair will call attention to the rule of the Convention by which we are so strictly bound, rule 37. (Laughter.) "The third reading of proposed constitutional amendments shall take place in the order in which they have been ordered to a third reading, unless the Convention, by a vote of two-thirds of the members present, direct otherwise, or the proposed constitutional amendment to be read is laid on the table." The Chair is under the impression that the safer course will be to take a two-thirds vote.

Mr. Vedder — The rule is all right. If we should lay it on the table it would require a vote to take it from the table. I see I am being watched by the able parliamentarians on this side. (Laughter.) Now, if laid aside, it retains its place and the mover can call it up for third reading.

Mr. Holls — I will change my motion, subject to the opinion of the Chair, however, as to the parliamentary effect.

Mr. Vedder — The procedure is that the introducer, or the father, of an amendment, asks, when it comes up, that it be laid aside, and it is always done without any vote.

Mr. Bowers — I beg leave to suggest that the Chair might be able to decide these questions as well as they can be decided from the floor, and the rule having been read, and the Chair having stated that this particular rule is still in force, I make the point of order that the motion of the gentleman as amended by Mr. Vedder, is out of order.

Mr. Vedder — It is not anything of the kind. The rule is all right ——

Mr. Bowers — Point of order.

Mr. Vedder — I am rising to a point of order. I wish to state my point of order, Mr. President; it is this, the rule prescribes that when an amendment is reached on the order of third reading it may be laid on the table, and something else that the President read,

which can be done. That is right; but that does not prevent the introducer of it asking that it be laid aside, in which case it is in his power to have it read or not, when he pleases to have it read. He simply asks that it be laid aside for the time being. That is all, and it is never refused under any parliamentary law. I see that the President regards my point of order as contemplating a motion. Mr. Holls, the introducer of the resolution, makes no motion. He asks it as a matter of right that he has; inherent right, first right, natural right to lay it aside.

The President — The Chair is unwilling to depart from the former construction of these rules, and he is impressed with the belief that the gentleman from Cattaraugus does not state the matter correctly. I read the rule again.

The President here read the rule again.

Mr. Holls — Now, Mr. President, if I may be permitted, I will change my motion with reference to that rule, and move that this proposed constitutional amendment be taken up upon its third reading immediately after the consideration and the passage of the charities article in Committee of the Whole. I think that requires a two-thirds vote, and I hope it will be carried.

The President put the question on the adoption of the motion of Mr. Holls that this constitutional amendment be taken up in the order of third reading immediately after the charities amendment shall have come from the Committee of the Whole and have been ordered to a third reading, and the question was determined in the affirmative by a standing vote — 114 to 18.

Mr. Foote — Mr. President, I present the following report:

The Secretary read:

"Mr. Foote, from the Committee on Revision and Engrossment, to which was referred the proposed constitutional amendment introduced by the Committee on Cities (introductory No. 369), reported by the Committee on Cities and by the Committee of the Whole, entitled 'Proposed constitutional amendment to provide home rule for cities,' reports the same as examined, corrected and correctly engrossed."

The President — It will be printed and take its place on the calendar on third reading. The next matter on the order of third reading is the judiciary article, third reading 17, general order 45. The Secretary will read the title.

The Secretary read the title as follows: "Proposed constitutional

amendment to amend article 6 of the Constitution, relating to the judiciary." (O., I. No. 383 — P. No. 422.)

The President — This matter, being the judiciary article, is now open for debate for one hour.

Mr. Hirschberg — Mr. President, I desire to call attention to what I think is an oversight. The growth of the second district has been great, and its necessities in the way of trial judges seem to have been entirely overlooked by the Judiciary Committee. They have made provision for the division of the State into four departments, the first district to constitute the first department, and the rest of the State to be divided into three additional departments, as nearly in accordance with population as may be. They have made provision for an Appellate Court, to consist of five Supreme Court judges in each of those departments, and prohibited the judges in that court from holding trial courts and special terms. The population of the State is 6,513,343, of which the first department will have 1,801,739; the second department, consisting of nine counties, 1,623,271; the third department, presumably the third, fourth and fifth districts as now created, with a population of 1,476,644, and the fourth department, presumably the sixth, seventh and eighth districts as now created, with a population of 1,611,689, which will leave the second district the second largest in the State, and nearly the size of New York, having over 1,600,000 inhabitants. Taking the three judges of the City Court and creating this Appellate Division we will have this state of facts, that in New York city, or the first department, there will be fifteen judges of the Supreme Court to try cases. There will be in the third department fourteen judges to try cases. There will be in the fourth department eighteen judges to try cases; and in our department, with 1,600,000 inhabitants, only seven judges to try cases. The result of it will be that there will be only seven men in all those nine counties who can sit on the bench, summon juries, hear trials and hold Special Terms, while there are eleven there, without this article, to do that work to-day. Now, in recognizing the needs of that department, the Legislature, for the past two years, has been engaged in endeavoring to secure for the people of the district, or department, two additional judges; and without the work of this Constitutional Convention, there would have been submitted to the people this fall the question of the election of two more judges in that district. Those two have not been taken into consideration at all by the committee, so that in order to place that department in nearly the same position in which it is to-day, and to

give it nearly the same judges to do original work that it has to-day, it is certainly necessary that this article should be so amended as to provide one of two things — first, that the judges in the Appellate Division should be permitted to do work, hear cases, attend at Circuit and at Special Term, when not necessarily engaged in appellate work, or else there should be such an addition to the judges in the district as would reasonably enable the work to be transacted. In other words, the two judges who have already been provided for by the Legislature, but whose election cannot take place now, as the submission is to be at the same time as this Constitution is to be submitted to the people, ought to be incorporated in this article, and, therefore, the provision for the addition of three judges in the first district, three in the second and one in each of the other districts should read, "Three in the first, five in the second and one each in the others;" in others words, the two judges already provided for outside of the necessity for additional judges made by the change in the system which takes five away from the bench to hear cases, that change should be made, recognizing the need of at least two new judges, and that should have been incorporated in this article. I, therefore, move, Mr. President, that this be recommitted to the Judiciary Committee with instructions to report forthwith an amendment to section 1, substituting in line 3, page 2, the word "five," for the word "three," where it appears "three in the second."

Mr. Bowers — Question of privilege, Mr. President. I understand this motion is not debatable. It is an exceedingly unfortunate position, because Mr. Hirschberg has been allowed to make a statement of what he wants and nobody on the floor is able to state anything against it or argue the matter at all.

The President — The construction given by the Chair to that rule is, that although the motion itself is not debatable, under the cover of debating the general question you may say what you please.

Mr. Bowers — May the amendment then be read?

The Secretary read the amendment in the language following: Substitute in line 3, page 2, the word "five" in place of the second "three" in the same line.

Mr. Bowers — Mr. President, I understand that the reason for that proposed amendment is that the second division by proposed constitutional amendments that have passed the Legislature twice, is to have voted upon this autumn a proposition as to whether they shall have two new judges. Is there not a similar provision to be

voted upon giving New York city two new judges, and is there any reason for amending one without amending the other?

Mr. Hirschberg — Yes, sir; there is a reason. I thought I stated it.

Mr. Bowers — Perhaps you did. I couldn't ——

Mr. Hirschberg — In the city of New York with a population of 1,801,000, you have fifteen judges of the Supreme Court to try cases, and seven to review them. In the second department with a population nearly as large, and a territory infinitely larger, with 1,623,000, there are but seven judges to try cases and five to review them.

Mr. Bowers — Now, Mr. President, assuming that there is something in the gentleman's reasons, which, however, could be very easily answered by saying that the amount of the work that is done in the first department so far exceeds the work in the second department that there ought to be the same increase, I wish to say this. The judiciary article has been under consideration for months. The gentleman from Orange (Mr. Hirschberg) has known of these provisions for a long period of time. He must have heard the report adopted in the Committee of the Whole. There was a great deal of discussion as to whether all these new judges should be added. There was very considerable opposition to it. All this matter was discussed in the Judiciary Committee. The proposition could have been presented there and heard at length and determined. It was considered. All matters of this kind were considered, and the Judiciary Committee determined that as to these extra judges to be given to the counties of New York and Kings, or the second department, which judicial department includes the county of Kings, were all that they needed, in consideration of the additional judges to be given to the rest of the State, some of whom would undoubtedly be assigned to the performance of duties in the Appellate Division in the second department. Now, I shall regret exceedingly if, at this late moment, any amendment is to be made to this article. The motion can, of course, be pressed, but I am strongly opposed to it, and I think that it would be very harmful, at what is a moment's notice, to change a plan which has been considered for weeks in the Judiciary Committee, and for three or four days in the Committee of the Whole; and I certainly hope that the motion will fail.

Mr. Hirschberg — Mr. President, the gentleman from New York is mistaken. I knew nothing about the proposition until the committee had reported it.

Mr. Bowers — You ought to have known.

Mr. Hirschberg — There was no sort of way by which I could have known. The counties outside of Kings county, eight counties, with a population of 627,995, were not represented on that committee at all. I went to the chairman of the committee as soon as I found out what was done, and stated to him the difficulty in the way, and the necessity of making some provision by which there would be as many trial judges as there are now, if it could be done; that there was no excuse for reducing the trial judges in that district. Now, I want to call the attention of the gentleman to the fact that the eighth district has a population scarcely any larger than the second district outside of Kings county, taking the one million inhabitants out entirely, and yet it has six judges. The seventh has only 526,000 population, and it has six judges. The fifth district has 493,000 as against our 1,600,000, and it has the same number of judges. It is perfectly ridiculous. It is the reduction of the force that I am objecting to. There is no comparison with New York city. There is no reduction there; it is an increase.

Mr. Countryman — Mr. President, there are two members on the Judiciary Committee from the city of Brooklyn, Mr. Jenks and Mr. Johnson, and they were perfectly satisfied with this arrangement, and assented to the number of judges assigned to the second department. My friend talks about the population of the Second Judicial Department, but he forgets to state that a large proportion of that population, while resident in the second department, do business in the first department, and their litigations principally arise in the first department. That was one of the elements taken into account in determining the number of judges which should be assigned to that department. It was understood that that would be the lightest department in the State, notwithstanding its apparent large population as compared with some of the country districts; and these matters were all carefully taken into consideration before the committee. We have increased the number of judges by three in that department, assigning two of them to the General Term; the General Term judges, of course, being restricted entirely to General Term work. It was understood that that General Term would be the lightest department in the State, but it was understood also, tacitly at least, and a special provision was made in the judiciary article by which surplus business in the first judicial department could be turned over to the second department, thus equalizing the amount of business to be done by the two departments in respect to each other.

Now, in reference to the trial courts; we gave them three more trial judges, or three more judges in the whole than they had before. Under the present system, the second department is an anomaly in our present judicial system of the State, where General Term judges are required to do Circuit or Trial Term work; whereas, the judges which we assign to them to do that kind of work, now do nothing else and do not have their attention distracted by any attendance at the General Term; so that when all these matters are taken into consideration, a larger judicial force, I submit, is given to that department compared to its litigation, its business, than any other department in the State.

Mr. J. Johnson — Mr. President, I am unable to concur in the view that any more than three judges should be added to the judicial force of the Supreme Court in the Second Judicial District. I understand that it is agreed that in some subsequent provision, which I believe does not come as a part of these articles, that provision will be made so that the resolutions that have been passed by two successive Legislatures as to adding judges there will not take effect to add anything to these three; so that the total by constitutional amendment, brought out by resolutions of the Legislature and by the proceedings of this Convention, shall be but three. I was of the opinion, sir, that one additional judge would be sufficient for that district. I was very strong in that opinion, and urged it with what force I was able. But when the plan of the General Term was adopted, a plan extending through the State, then it seemed to me that we ought to concede the necessity of three additional judges, one more than the Legislature had already provided for; and it was only on account of the necessities of the General Term that I was willing to vote to sustain the proposition for even three more. I hope the proposition to increase it to five will not prevail. I do not think it would be acceptable in the district.

Mr. Hirschberg — Mr. President, I am amazed at the position taken by Mr. Johnson, if I understand his argument, that he really thinks that these judges are not needed. Does he know how many judges there are in the district now to try cases?

Mr. Marshall — There are nine judges to try cases — there will be under this provision.

Mr. Hirschberg — There are three now. There are three judges in Brooklyn, and six in the Supreme Court. There will be seven under this article.

Mr. Marshall — There will be nine under this article.

Mr. Hirschberg — Seven.

Mr. Marshall — Nine.

Mr. Hirschberg — How do you make nine?

Mr. J. Johnson — Mr. Chairman, if I may be allowed to answer what seems to be a question; I think it was the opinion of the judges that with the present arrangement of the General Term there would not be any need of as large an addition as three, but with the arrangement of the General Term it will make an additional number of judges necessary, and I think that is provided for.

Mr. Hirschberg — Mr. Chairman, in answer to the suggestion of Mr. Marshall that there will be nine judges; he assumes that two will be sent to the General Term?

Mr. Marshall — Yes.

Mr. Hirschberg — In twenty-eight years that I have been connected with the practice of the law, I have known of just one man to be sent into that district, and that was a man named Talcott, who came from Buffalo. There is more chance that the two we have will be taken away and sent somewhere else than there is that any will be sent to that General Term.

Mr. Towns — Mr. President, I hope this amendment of Mr. Hirschberg's will prevail. If this Convention should come to the conclusion to pass the judiciary article, which it seems they have about determined upon, it will certainly be necessary for the efficient discharge of the functions of the court in the second district, to enlarge the number of judges residing there. Under this arrangement we will have but seven judges in active service to carry on the entire litigation in that district, which is only second in litigation to the first district. As Mr. Hirschberg has said, there is a population of nearly 1,700,000 in that district, and the litigation of the second district is continually upon the increase, and it will be impossible for seven judges to properly administer justice there as efficiently and expeditiously as it is at present administered. We have there now nine judges who are actually engaged, and with those nine judges the calendars are at least eighteen months behind their work, and it will certainly be impossible for seven judges to do the work which nine judges are now doing. The consequence will be that there will be a block in the administration of justice in the second district.

Mr. Platzek — Mr. President, there are six Supreme Court judges and three City Court judges in the county of Kings now, or, rather, in the second department, and according to the provision as

it stands to-day, three new judges are to be elected, making in all twelve. There are to be five General Term justices, but two of these will be drawn from another district, thus leaving nine judges for circuit work, which, in my humble opinion, is ample and sufficient. Under the present article, at it stands, there is an increase of twelve judges of the Supreme Court, and I believe that is about sufficient to tax the citizens of this State for, and probably more than we ought to have included. But to add two more judges now would, in my opinion, be unjust and unfair and burdensome to the taxpayers of the State.

It is true that there are a number of counties which are embraced within the second district, and that because of them the number is almost as large as that contained in the first district; but it must be borne in mind that in New York we litigate for the whole world almost, the courts being the most important in this country. I recall when the discussion took place here upon this article that there was considerable contention upon this floor that we were giving the second judicial department too much in increasing the judges to the number of three, and the same statement was made in respect to the third department, that the judges would have an insufficient amount of work and too much leisure, and, therefore, there was a wise provision inserted, so far as the second district is concerned, that when we become overburdened with work in the first district we might call in the assistance of the second district; and at this late hour, and after all the discussion that has taken place here, there comes a proposition that the second district, which stated some time ago to its representatives that they had not enough to do, are likely to have too much to do, because, perchance, there are two gentlemen who want places upon the Supreme Court bench. Now, I am not in this Convention to make judicial places for any one. I am here to discharge my duty as best I know how, to legislate economically and properly. I think the provisions as they are contained in the article that we have under reading now are sufficient, and I will regard it as an imposition upon the taxpayers of this State to pay for two additional judges in the second department, three new judges already being allowed, and the ambition of those men must be limited to three instead of five in that district.

Mr. Abbott — Mr. President, in these democratic times, when the expenses of living are very much increased, and the ability to earn money to pay the taxes is very much decreased, I think it behooves us to look at the question of the salaries of these officials. I, therefore, desire to offer an amendment. I move that this article

be recommitted to the Judiciary Committee, with instructions to strike out "by law," in lines 4 and 5 of page 9, and insert instead, as follows: "The judges of the Court of Appeals each a salary of $7,500 per year, together with $1,000 for expenses; the justices of the Supreme Court each a salary of $5,000 per year, together with $500 for expenses."

The President — The gentleman will please submit his amendment in writing, and it will be considered after Mr. Hirschberg's amendment is passed upon.

Mr. Nicoll — Mr. President, is Mr. Hirschberg's proposition still under consideration?

The President — Yes, indirectly.

Mr. Nicoll — Mr. President, I am opposed to it. I think this Convention has gone about as far as it should in increasing the judicial force of the Court of Appeals. So far as the Supreme Court is concerned we have gone as far as we ought. I believe it is commonly stated by some of the gentlemen in the other districts of the State that perhaps our increase of their judicial force in the Supreme Court is unnecessary; at least that is my understanding from some of the arguments which have been made in this Convention. We have done it only because of our Appellate Division. It has been increased from three to five. Now, this suggestion comes to my mind; there never will be any objection, if there is any congestion in the second district, represented by the gentleman from Orange in assigning to that department the superfluous force in the other departments. Then, why increase the force in the second department? If you find any difficulty in transacting your business there at Circuit and Special Term, why not ask the judges, by the intervention of the Governor, from the third and fourth judicial departments to come there? That will relieve you of your difficulty. Isn't that a great deal better than to increase the force of your department by two judges, which may really lay us open to the charge that we have unnecessarily increased the force of the Supreme Court judges in the State?

Mr. Hirschberg — Mr. President, may I ask the gentleman from New York a question? Does he understand that the point I am making is that his committee has reduced the working force of our district materially.

Mr. Nicoll — I understand that, and I have suggested the means for increasing it if the necessity arises. In your department you have not the business that justifies much more than we have given you.

Mr. Hirschberg — When was it reduced? When was the business so reduced?

Mr. Nicoll — While your population is large, you have little or no practice there.

Mr. Hirschberg — I see the point.

Mr. Nicoll — We have recognized that fact, and if your practice increases, you can draw on the third and fourth departments.

Mr. Root — Mr. President, I regret very much that Mr. Hirschberg's arguments were not presented to the Judiciary Committee. The representatives of the second department in that committee made no claim that there should be additional judges. One of them this evening has expressed the opinion that there ought not to be. This article was discussed, considered, certainly, with great patience and unremitting attention and care. It was reported to the Convention and fully discussed in Committee of the Whole. It seems to me that it is impossible now to enter into the consideration of the respective claims of the different districts of the State as to the distribution of judges. I am very sorry that any consideration which the gentleman from Orange thinks ought to be had, ought to receive weight, should come at a time when the consideration of such subjects is necessarily past. But we have got to conclude our work. We are approaching the close. We cannot open all questions; if one question of the kind is opened, other questions must be opened also. It seems to me we have got to take this as it is substantially, or leave it.

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

Mr. Bowers — Mr. President, a point of order. I do not care to invoke the rule against a gentleman speaking twice, but when it comes to five times, I think that it is proper that we should stop it.

The President — I understood Mr. Hirschberg to say that he did not wish to say anything.

Mr. Hirschberg — No; I am going to ask a question. The question I purpose to ask it this: how does it open the whole matter in any way, or affect this article, if an amendment is made which simply incorporates in the proposed Constitution the two judges now to be submitted to the people for their approval, if the force is not increased in the department?

Mr. Root — Mr. President, my answer is that that proposition opens the question as to, first, whether there shall be an increase in the total number of judges above the twelve now provided for, or

whether, on the other hand, these two additional judges should be taken away from some other department, some other districts, and the representatives of those districts must be heard upon the subject, and, therefore, we must go into the consideration of the business of the other parts of the State. My point is, that we are not now in a position where we can consider generally the condition or business and the requirements of the judicial force throughout the State. We thought we had a system elastic enough, arranging for the sending of judges from one department into another, to equalize difficulties such as the gentleman suggests; and under this amendment two judges can be sent from other departments if they have too many and the second has too few, into the second department, so that instead of anybody being taken away from the trial force in that department, there will be a large and substantial increase of the trial force.

The President — The question will now be taken on Mr. Hirschberg's amendment, which the Secretary will read.

The Secretary again read the amendment.

The President put the question on the adoption of Mr. Hirschberg's amendment, and it was lost, by a rising vote — 36 to 60.

The President — The Secretary will read Mr. Abbott's amendment.

The Secretary read the amendment of Mr. Abbott.

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

Mr. Dickey — Mr. President, I move that the article be recommitted to the Judiciary Committee, with instructions to report forthwith an amendment on page 2, line 18, by striking out the word "five" and inserting the word "three." I desire to say a word on the general proposition, and, incidentally, upon this proposed amendment. The present number of judges at General Term is three. It answers the purpose very well, and as the judges to be assigned to these departments are to do no other work, but are to devote themselves exclusively to appeal work, and as we cannot spare from the second department five judges for that exclusive work, I hope the Convention will reduce the number of judges to sit at General Term to three, because the only judge we have in the three counties of Rockland, Orange and Dutchess, Judge Brown, from the city of Newburgh, will be assigned to that work undoubtedly, as he occupies a similar place now, and was a member of the second division of the Court of Appeals. In that way we will not

have any judge in our three counties to do Special Term work, except an occasional judge who comes there from the city of Brooklyn; but, if you reduce the number of General Term judges to three, we may have a chance to get a Special Term once a month, where we have been in the habit of having one every Saturday, except in the month of August.

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

Mr. McKinstry — Mr. President, I desire to offer the following amendment:

The Secretary read the amendment as follows:

"Mr. McKinstry moves that the article under consideration be recommitted to the Committee on Judiciary, with instructions to report the same forthwith, with the first sentence of section 4 amended so as to read as follows:

"Sec. 4. The official term of the justices of the Supreme Court, elected after January 1, 1895, shall be ten years, from and including the first day of January next after their election. Such justices elected prior to January 1, 1895, shall serve for the remainder of the term for which they were elected."

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

Mr. Griswold — Mr. President, I move that the article be recommitted to the Committee on Judiciary, with instructions to insert and report immediately, upon page 8, line 4, after the words, "the Legislature may further," the words "enlarge or," so that it shall read: "The Legislature may further enlarge or restrict the jurisdiction of the Court of Appeals." I see the committee have thought proper to give to the Legislature the discretion of further restricting appeals to the Court of Appeals. It seems to me that it would be likely to be found, and more likely to be found, necessary to enlarge the jurisdiction in certain cases than to restrict it; it is very difficult to say in advance. It is fair to presume that if there is any enlargement of the jurisdiction or a proposition to do so by the Legislature, it will be done with due consideration and by the court, perhaps the Court of Appeals or other courts, and I apprehend that cases will be found where it will be deemed necessary to enlarge in some respects, in some cases, and that that power will be safe to be left in the discretion of the Legislature, and it will be better to leave it there than to tie up the Legislature by this iron-bound rule. The amendment is simply to add words so that the Legislature may enlarge

as well as restrict. My motion is that the article be recommitted to the Judiciary Committee, to report immediately with that amendment.

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

Mr. Dickey — Mr. President, I move that the article be recommitted to the Committee on Judiciary, with instructions to amend and report forthwith, by adding at the end of section 7, page 6, as in the amendment I handed up, that part of it providing for a second division of the Court of Appeals, as in the present Constitution, and on that I ask for the ayes and noes.

The call for the ayes and noes was sustained.

The President — The question will be taken on Mr. Dickey's latest motion.

Mr. H. A. Clark — Mr. President, I wish to ask if there is not included in that amendment the old limit of five hundred dollars?

Mr. Dickey — Mr. President, it is not. I have eliminated that, and made it the second division, pure and simple.

The Secretary called the roll on Mr. Dickey's motion.

Mr. Ackerly — Mr. President, I desire to explain my vote. When this proposition was in the Convention before, I was in favor of it, and I am in favor of it still. I think if this article is passed, we ought to have a safety-valve. I, therefore, vote aye.

Mr. Durfee — Mr. President, I wish to explain my vote. I sincerely hope the anticipations of the gentlemen of the committee, which reported this article that the provisions made for the dispatch of business in the Court of Appeals, may be realized; but, Mr. President, we are entering upon a comparatively new and, in some respects, untried scheme, and I think it is impossible for any gentleman in this Convention to precisely forecast what the result will be, and that it will be the part of prudence and wisdom, to have some provision made for relieving the Court of Appeals, in case it should be found upon trial that the present provisions or the provisions reported by the committee, prove to be insufficient; and while I am not altogether satisfied with the provision contained in the present Constitution, and should, perhaps, prefer some different provision, at this stage in the proceedings it seems impossible to mature any other or different provision, and that we are limited to the acceptance of the provision contained in the present Constitution, or the alternative of not making any provision at all. In that situation it seems to me that it will be wise for us to make this pro-

vision contemplating the possible contingency of a a congestion in the Court of Appeals by the accumulation of causes which there cannot be properly disposed of. I, therefore, vote aye.

Mr. Griswold — Mr. President, I wish to give my reason for my vote. It seems to me this untried experiment, the scheme that has been devised in the committee room, as though its inventors ought to apply for a patent right for organizing courts. They object to two heads of a court of ultimate resort, but they have created five in most of the cases, because these five General Terms will be the courts of ultimate resort from the limitation they have made of appeals, and thus we will have one law in one district, and another law in another. You cannot appeal to the Court of Appeals except you get the permission of the court to do it, and when they will give you permission you do not know.

Another reason for voting for the amendment is that our Court of Appeals is blocked now, as I understand, with 150 causes, and half as many more ready to be placed upon the calendar. It is equivalent to a denial of justice, in violation of the Constitution, and I do not see any way to relieve the court, except to have the additional work, which will cost the State nothing; simply when the court has certified, the Governor assigns six judges, and they get there without a dollar expense. I vote aye.

Mr. Holcomb — Mr. President, I believe when one puts out to sea, it is a good idea to take a life preserver along, whether he expects to use it or not. We have organized a Court of Appeals with a jurisdiction as to which it is quite speculative whether we shall diminish or increase the number of causes which will come before it. If we have increased the number of causes so that the court is not able to keep up with its work, it will be necessary for us to organize some court for its relief, and it seems to me that this is the time to do it. I vote aye.

Mr. J. Johnson — Mr. President, I desire to explain my vote. I have very much doubt whether or not the relief which it is hoped will be given to the Court of Appeals by this amendment will be sufficient to enable it, as now constituted, to do its work. I am very much in doubt; I do not believe it can. I think it would be rash not to do away with the provision in the present Constitution for a commission of appeals. I think there is no sufficient reason for it, and, therefore, I am very heartily in favor of the proposition to put back in this judiciary article that which is now a part of the supreme law of the State. I hope the motion will prevail, and I vote aye.

Mr. Lester — Mr. President, I wish to explain my vote. Many gentlemen in whose judgment I have great confidence have expressed a doubt whether the Court of Appeals as now organized, and as it is to be organized under the proposed amendment to the Constitution, will be able to accomplish the work that will be cast upon it. I must say that it is not a matter of doubt to me. I believe that tribunal will be entirely inadequate to perform that work, and, sir, I believe that within three years after the adoption of this constitutional amendment, a necessity will be felt for a reorganization of the Court of Appeals upon such basis as will enable it to accomplish its work. And, sir, I do not want any such temporary and beggarly make-shift as a second division interposed between that necessity and the people of the State. I want to see that which I believe must come, I want to see it come, and come in proper manner, and come through a thorough reorganization of the Court of Appeals upon an adequate basis. I, therefore, vote no. (Applause.)

Mr. McClure — Mr. President, when the judiciary article was up before, I took occasion to suggest that in my opinion there ought to be some relief given to the people of this State in the matter of the court of last appeal. No relief was given whatever. Instead of that, the relief that has existed in the shape of the prohibition of appeals where the amount did not exceed five hundred dollars, has been taken away. As Mr. O'Brien argued when the question was up, all the corporations, all the rich litigants, will take advantage of that to take appeals to the Court of Appeals on all small judgments, so as to prevent, so as to discourage suits being brought against them by poor people. The number of appeals to the Court of Appeals, by reason of this five hundred dollar prohibition having been removed, will be very many. It is known to every lawyer of experience in this State, that the delay in reaching the conclusion of litigation by reason of the congestion in the Court of Appeals is at times disgusting. I do not believe very much in the second division provision, but it is the only relief we can get at this time. This Convention would not have the Court of Appeals increased in any degree in any way, and I am heartily in favor of the amendment proposed by Mr. Dickey. I vote aye.

Mr. Mereness — Mr. President, when this matter was before the Committee of the Whole, I voted in favor of this amendment, and shall do so at the present time. Inasmuch as we have this provision in the Constitution, it seems to me very unwise to start off with this

new scheme without some safeguard in the new Constitution, if it should happen to be adopted, such as we have in the present one. I know a great deal of fault has been found with the second division, but I think I am right in saying there has been no more difference between the decisions of the first and second divisions than there has been between the decisions of the Court of Appeals proper. And, sir, it seems to me, that out of seventy-six judges of the Supreme Court, which we shall have if this new Constitution is adopted, the Governor will be able to find seven justices who will be able to discharge their duties as acting judges of the Court of Appeals very acceptably to the litigants of this State, and that it is much better to keep this provision in the Constitution than it is to take the chance of being obliged, after three or four years, to have the Constitution amended again, in order to provide for some means of disposing of the surplus business at the court of last resort. I vote aye.

Mr. Moore — Mr. President, I desire to explain my vote. In the Committee of the Whole I voted no upon this matter, and I vote no now. I do not believe in it at all. I do not believe that the Court of Appeals needs any tail to its kite. I wanted nine judges if there were not enough judges to keep up with the business, but I couldn't have that, and now I do not propose to have any other tail on that kite. I vote no.

Mr. Nicoll — Mr. President, if this amendment of the gentleman from Orange should prevail it would be a sad commentary upon the incapacity of a Convention of lawyers to devise any new and appropriate judiciary article. After the Convention assembled, the Judiciary Committee was appointed and sat for three months, and out of it was evolved the present judiciary article. That article undertook to limit the business of the Court of Appeals in certain ways which are expressed in the measure itself. The adoption of the proposed amendment of the gentleman from Orange says nothing more nor less than this: that all the work of the Judiciary Committee and of this Convention up to date amounts to nothing, and writes us down a Convention of a hundred and forty lawyers, before the people of this State and for all time, as a set of idiots who are incompetent to deal with this question. We have undertaken to limit the business of the Court of Appeals in certain ways, which are well known to the members of this Convention, by the establishment of intermediate courts of appeal and by the restriction of appeals to the Court of Appeals, and yet at the same time we say that we have doubt of the efficacy of our own work by providing

for a second division of the Court of Appeals to do the superfluous business of that court itself. I am unwilling to confess myself guilty of such self-stultification, and, therefore, I vote no. (Applause.)

Mr. O'Brien — Mr. President, I do not quite agree with Mr. Nicoll that we should write ourselves down as idiots, if we should amend this article, and I do not believe that a body of practicing lawyers is the place to go to find law reform. When this matter was in Committee of the Whole I introduced the amendment to restore the limitation, or rather to leave it in the power of the Legislature to put on the limit if it saw fit to do so. That was rejected in Committee of the Whole. In that committee I was just as unalterably opposed to the second division. I think that the second division was eminently unsatisfactory to the bar and the people of the State in the work which it accomplished. I still believe that the present Court of Appeals is inadequate. I do not believe that it is going to do the work which it is supposed it will do. I think you have increased the appeals which will go there, but, in spite of that, I do not believe that the second division is a remedy for the evil. I believe that a better way could be obtained, and, therefore, I vote no.

Mr. Parmenter — Mr. President, I desire to explain my vote. I am satisfied from experience and observation that the Court of Appeals, as it now exists, and is proposed to be continued, is entirely inadequate to discharge the duties and to perform the work which will be assigned to it under this constitutional amendment. I desired to give it relief in a different manner, but this Convention, as it had a perfect right to do, was opposed to my proposition. I think the only relief they require is in the number of judges, so that we may have two divisions of that court, which may sit alternately, and discharge the duties which will devolve upon it. I do not like a second division, but I know that the Court of Appeals needs relief. Although they prefer to have no increase in the judges, yet, if I cannot have my own way in having it increased in the manner I have suggested, I will give them such relief as is afforded by this proposition. I will support Mr. Dickey's amendment, and vote aye.

Mr. Peck — Mr. President, I think that the scheme of the judiciary, as presented to this Convention, is so little changed from that which is now in operation as to be substantially the same. We are to have the same Court of Appeals, we are to have the same General Terms under a different name, with appointed judges for a short term, and we are, except in the cities of New York, Brooklyn

and Buffalo, to have substantially no change at all. It is the same thing, and the work will get behind in exactly the same way, and with the reduction of one department, I think it will be worse. Therefore, I think it would be unwise to reduce the possibilities of our present scheme by taking out from it the second division. I, therefore, vote aye.

Mr. Platzek — Mr. President, I desire to explain my vote, and I will say now that I shall be obliged to vote in the negative. I read from page 1175 of the Debates, when this article was heretofore discussed, the words uttered by a gentleman whom we all highly prize for his ability and his energy, as well as his non-partisan conduct in this Convention, in which he says: " It will be the most matchless and peerless system of jurisprudence that ever came from the brain of man." Now, I will not stultify myself this day, nor allow anybody to say that our friend from Cattaraugus, Mr. Vedder, was mistaken in that assertion. Therefore, I vote no.

Mr. Root — Mr. President, I believe that the plan included in the present judiciary article as it stands is perfectly adequate to provide for the wants of the State, so far not only as the original courts, but so far as the Court of Appeals is concerned. I think that under that plan it rests entirely in the hands of the court to keep pace with its work. But I have talked about this judiciary article until I am tired, and you are tired, and I can do no more than vote, and I vote for the article as it stands, and against this amendment. I vote no.

Mr. Tibbetts — Mr. President, I do not think so soon after the lauding we have heard of this judiciary article, that we should become weak-kneed and begin to vote against it without giving it a proper trial. It was framed with the idea of cutting off many of the appeals that now go to the Court of Appeals. I had a talk only last Saturday with one of the judges of the Court of Appeals, who said that he was very well pleased with this article. He believed, after going over it carefully, that it would largely cut down the appeals to the Court of Appeals. He told me that the capacity of that court was seven hundred cases a year, and he did not see how, under this judiciary article, that many cases could go there; that there was no reason for a second division, and that they were amply able, as he believed, to properly conduct and dispose of all the business that might go there. It seems to me with that authority, and with the fact that it does, on its face, cut off some of the appeals to the Court of Appeals, we ought to stand by the judiciary article. I, therefore, vote no.

Mr. Vedder — Mr. President, I ask to be excused from voting. I feel precisely to-night as I did when I uttered those words which have been quoted by Mr. Platzek. This article was framed by the very flower of legal ability in this Convention, and I believe its work was about as perfect as could be any work coming from the hands of man; and if this should be amended in the particular suggested, I would feel in looking upon this ruin of the work of the Judiciary Committee somewhat as I imagine the New Zealander would feel sitting upon the broken arch of London bridge, in a vast solitude, and sketching the ruins of St. Paul, and I would feel like saying, in the classic language of Mr. Platzek:

"Shades of the mighty, can it be
This is all that remains of thee?"

Everything, I suppose, is liable to be destroyed, and if this work should be injured in the particular which I suggest, by this amendment, I could only say, "Thus perish the works of man." I cannot, notwithstanding all these attacks that have been made upon this article, feel that I was wrong when I uttered the words I did concerning the article and the work of the committee, and feeling now as I did then, I must withdraw my request to be excused from voting, and vote no.

Mr. Smith — Mr. President, I wish to explain my vote. I have practiced in the Court of Appeals for more than thirty years. I recall the fact that we have had a commission or second division upon two separate occasions. In all my practice, there never has been a time when a case could be reached and argued in the Court of Appeals in less than one year, and upon many occasions in not less than three years. The proposition of the Judiciary Committee would give no relief to the Court of Appeals. The people of the State are expecting that the Court of Appeals will be so reorganized that a case may be reached, argued and decided within sixty days. They are entitled to have our courts of justice so organized that suitors may have their cases tried promptly. It is not a pleasant reflection that in a great State like New York a demand for justice is so delayed as to be in many cases a substantial denial thereof. I do not exactly like a second division, but it is better than nothing for the relief of a congested calendar. Our court of last resort should be so organized as to have fifteen judges, nine to form a quorum; seven to make a decision. The court so organized could hold its sittings continuously from October first to June thirtieth, with six judges always off the bench writing opinions and doing service, or on the sick list. Then your court could keep up with

the business. As it is, it will be a failure; it will not be approved by the bar or the people. Therefore, I vote aye.

The amendment proposed by Mr. Dickey was lost by the following vote:

Ayes — Messrs. Ackerly, Arnold, Barnum, Blake, Burr, Clark, H. A., Cochran, Crosby, Davenport, Davis, Deady, Deyo, Dickey, Durfee, Emmet, Faber, Farrell, Floyd, Fuller, C. A., Gibney, Gilleran, Goeller, Green, J. I., Griswold, Hedges, Hirschberg, Holcomb, Hotchkiss, Hottenroth, Jenks, Johnson, J., Kellogg, Kerwin, Kimmey, Mantanye, Marks, Maybee, McArthur, McClure, McKinstry, McLaughlin, J. W., Mereness, Meyenborg, Osborn, Parmenter, Peabody, Peck, Pratt, Roche, Sandford, Smith, Steele, W. H., Titus, Towns, Veeder, Wiggins, Williams, President — 59.

Noes — Messrs. Acker, Allaben, Baker, Banks, Barhite, Barrow, Bowers, Brown, E. A., Bush, Cady, Carter, Cassidy, Church, Clark, G. W., Coleman, Cookinham, Cornwell, Countryman, Danforth, Davies, Dean, Deterling, Doty, Durnin, Foote, Francis, Frank, Andrew, Frank, Augustus, Fraser, Fuller, O. A., Galinger, Goodelle, Green, A. H., Hamlin, Hawley, Hecker, Herzberg, Hill, Holls, Johnson, I. Sam, Kinkel, Kurth, Lauterbach, Lester, Lewis, C. H., Lincoln, Lyon, Manley, Marshall, McDonough, McIntyre, McLaughlin, C. B., McMillan, Moore, Morton, Nichols, Nicoll, Nostrand, O'Brien, Parker, Parkhurst, Pashley, Phipps, Platzek, Porter, Powell, Putnam, Redman, Root, Schumaker, Springweiler, Steele, A. B., Sullivan, T. A., Tekulsky, Tibbetts, Truax, C. H., Turner, Vedder, Vogt, Wellington, Whitmyer, Woodward — 83.

The Convention adjourned until to-morrow morning at ten o'clock.

Thursday Morning, September 13, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber, at the Capitol, Albany, N. Y., Thursday morning, September 13, 1894.

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

The Rev. DeW. T. Van Doren, of the First Baptist church, Albany, N. Y., offered prayer.

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

Mr. Schumaker — Mr. President, General Merritt, of St. Lawrence county, who was a co-delegate with me in the Convention of 1867 and 1868, and afterward Collector of the Port of New York,

is in the city, and I ask that the privileges of the floor of this Convention be granted to him.

The President put the question on granting the privileges of the floor to General Merritt, and it was determined in the affirmative.

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

The President — The Secretary will read the resolution.

The Secretary read the resolution, as follows:

" Whereas, From the files upon the desks of the delegates of this Convention at the present time, it appears that the Record and proceedings of said Convention are not printed later than Saturday, August twenty-seventh, or seventeen days ago;

R. 209.—" Resolved, That the Compiler be and is hereby directed to inform this Convention forthwith the cause of such delay or neglect."

Mr. Bowers — Mr. President, I rise to a point of order. My point of order is, that that gives rise to debate, and the matter was referred yesterday to the Committee on Printing, with instructions to report to-day.

The President — This matter was referred?

Mr. Bowers — A similar motion was referred, as I understand, to the Committee on Printing, for them to inquire and report to-day on the matter.

Mr. Hamlin — Mr. President, I rise to a point of order. The committee is prepared to report in a very few moments on a similar resolution offered by Mr. Blake yesterday.

The President — As this gives rise to debate, it will stand over until to-morrow, and in due form the Committee on Printing will report. The Chair has to call the attention of the Convention to what seems to be a dereliction on the part of the printer. The apportionment amendment is next in order after the one now under consideration. It was sent to the printer, and the proof was examined before ten o'clock last night, but the printer now sends word that it cannot be ready for use this morning.

Mr. Gilbert — Mr. President, I ask the privileges of the floor for Senator Kilburn.

The President put the question on granting the privileges of the floor to Senator Kilburn, and it was determined in the affirmative.

Mr. Lyon — Mr. President, I have a report from the joint Committees of Privileges and Elections and Contingent Expenses.

The President — One moment, Mr. Kellogg having been summoned to his home on account of illness there, begs to be excused for to-day.

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

The President — Are there any other resolutions to be offered or motions to be made? If not, reports of committees are in order. A report from the Committee on Contingent Expenses is ready.

Mr. Lyon — Mr. President, I present a report from the Committee on Privileges and Elections and Contingent Expenses.

The President — The Secretary will read the report.

The Secretary read the report as follows:

The Committee on Privileges and Elections and Contingent Expenses, to which were jointly referred the annexed claim of Harvey W. Putnam and Thomas A. Sullivan, delegates from the Thirtieth Senatorial District, for counsel fees and disbursements aggregating $2,388.79, incurred in contesting the seats held by Messrs. Trapper and Beckwith, would respectfully report, in the opinion of said committee such claim is fair and reasonable and ought to be allowed.

M. H. HIRSCHBERG,
Chairman of Committee on Privileges and Elections.
GEORGE F. LYON,
Chairman of Committee on Contingent Expenses.

Mr. Bowers — We could not hear that. I tried to listen to what the Secretary read, but could not hear it.

The Secretary again read the report.

Mr. Cookinham — In connection with that report, Mr. President, I desire to offer the following resolution:

Mr. Bowers — Mr. President, I make the point of order that that has to go over for a day. It is to be debated.

Mr. E. A. Brown — Mr. President, I ask that the claim be read.

Mr. Cookinham — I believe that I have the floor.

Mr. Maybee — The claim attached to the report of the committee, may that be read?

The President — The claim, yes. Will the Secretary read the claim of Messrs. Putnam and Sullivan, referred to in the report?

The Secretary read the claim of Messrs. Putnam and Sullivan as follows:

In the matter of the claim of Harvey W. Putnam and Thomas A. Sullivan, for expenses incurred in their contest for their seats in the Constitutional Convention from the Thirtieth Senatorial District against Herman F. Trapper and Charles Beckwith.

The contestants, Putnam and Sullivan, having joined in said contest and having employed the same counsel and having borne jointly the expenses thereof, respectfully present the following claim, with annexed detailed statement and verification thereon, of their expenses and disbursements in said contest:

1894.

June 28.	For legal services, counsel fee, as per annexed statement, No. 1	$2,000 00
	For disbursements of counsel, as per annexed statement, No. 2	305 35
	For personal disbursements and expenses, as per annexed statement, No. 3	83 44
	Total	$2,388 79

(No. 1.)

Harvey W. Putnam and Thomas A. Sullivan to Seward A. Simons, Dr.

1894.

Jan. 1 to May 1.	Retainer and proceedings before canvassing board and preliminary investigation in respect to contest,	$250 00
May 2, 3.	Preparation of petition of Convention	40 00
6, 7, 8, 9.	Time at Albany	80 00
1 to 15.	Preparation for trial and trial of case before committee	500 00
16 to 22.	Preparation of brief	100 00
23, 24.	Albany	40 00
25 to 30.	Brief in contest	250 00
31.	Argument before committee	100 00
May 31 to June 2.	Albany	60 00
June 14, 15.	Albany	40 00
27, 28.	Albany	40 00
	Total	$2,000 00

(No. 2.)

Disbursements of Counsel.

1894.

May	3, 7, 8, 9.	Traveling expenses	$32 50
	16.	Hotel	7 50
	23, 24.	Traveling expenses and hotel	24 20
May 31 to June 3.		Traveling expenses and hotel	35 95
June	14, 15.	Traveling expenses and hotel	25 00
		Telegrams, express and postage	10 70
	27, 28.	Traveling expenses and hotel	25 30
		Stenographer on brief	14 00
		Stenographer	34 50
		Courier Company, brief	95 70
			$305 35
		Total services, etc	$2,000 00
		Total expenses	305 35
			$2,305 35

Received payment.
SEWARD A. SIMONS.

(No. 3.)

Personal Disbursements.

1894.

May	3.	Stationery and typewriting	$2 84
	7, 8.	Car fare and expenses, Albany, T. A. S.	24 70
		Car fare and expenses, Albany, H. W. P.	24 70
	14.	Express charges	45
	15, 16, 17.	Paid serving (19) subpoenas, mileage, messengers, telephone, etc., during trial	29 10
June	20.	Telegrams	1 15
	20.	Express charges	50
		Total	$83 44

State of New York, City and County of Albany, ss.:

Harvey W. Putnam and Thomas A. Sullivan, being severally duly sworn, each for himself, deposes and says that he did join with the other in the matter of the election contest for their seats in the Constitutional Convention of 1894 as members thereof from the Thirtieth Senatorial District of Erie county, N. Y.; that the several sums charged in the annexed claim for the legal cost and expenses were necessarily incurred by them in said contest, and are true and correct; that the services were necessarily rendered and performed, and that the compensation charged therefor is fair and reasonable for such services, and that the disbursements therein charged have been actually and necessarily incurred and paid by them; that the whole of said amount, amounting to $2,283.79, is just and fair, and no part of the same has been paid or satisfied.

THOMAS A. SULLIVAN.
HARVEY W. PUTNAM.

Sworn to before me this 18th
day of July, 1894.

JOHN T. McDONOUGH,
Notary Public in and for Albany County.

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

The President — Mr. Cookinham's resolution will be read.

The Secretary read the resolution, as follows:

R. 210.—"Resolved, That Harvey W. Putnam and Thomas A. Sullivan be and they are allowed the sum of $2,383.79, their expenses for counsel fees and expenses in their contest in the thirtieth district against Herman F. Trapper and Charles Beckwith."

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

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

Mr. Bowers — That resolution is debatable, and it will be debated.

The President — It goes over under the rules.

Mr. E. A. Brown — Mr. President, as a member of the Committee on Contingent Expenses, I desire to say that I was not

present at the meeting at which this matter was under consideration, and I desire to go upon record as not joining in the report.

The President — Mr. Brown's statement will be entered upon the Journal.

Mr. Deady — I would like to have the report read. I was present and have not heard the report read.

The President — It has been read twice, but, if the gentleman will give attention, it will be read the third time.

The Secretary read the report again.

Mr. Countryman — Mr. President, I simply wish to state that, as a member of the Committee on Privileges and Elections, I was not present at the meeting at which this matter was considered, and took no part or lot in this report.

The President — Mr. Countryman's statement will be entered upon the Journal.

Mr. Deady — Mr. President, I desire it to be noted that I dissent from the report.

The President — Mr. Deady's dissent will be noted on the Journal.

Mr. Whitmyer — Mr. President, I desire to be recorded as dissenting.

The President — Mr. Whitmyer's dissent will be noted.

Mr. Faber — Mr. President, I also desire to dissent.

The President — Mr. Faber's dissent will be noted. The Chair would inquire if this is a minority report? (Laughter.)

Mr. Kinkel — Mr. President, I offer the claim for counsel fees in the Sixth Senatorial District.

Mr. Hotchkiss — Mr. President, has the other matter been laid upon the table?

The President — It lies on the table until to-morrow.

The bill presented by the sitting delegates in the Sixth Senatorial District will be referred to the joint Committee on Privileges and Elections and Contingent Expenses.

Mr. Bowers — Mr. President, we would like to know the amount of that bill.

The President — The Secretary will state the amount of it.

The Secretary read the claim in the contest of the Sixth Senatorial District, as follows:

NEW YORK, *August* 14, 1894.

State of New York to John C. Kinkel, Charles L. Pashley, J. Lott Nostrand, William Deterling, Charles J. Kurth, Drs.

1893 and 1894.

To expenses for counsel fees in action of John C. Kinkel against James W. Riggs, in contest for seat as delegate to the Constitutional Convention from the Sixth Senatorial District, Kings county, New York.....	$1,200 00
To expenses for counsel fees in motion of Charles J. Pashley against Eugene Curran in contest for seat in said last-named district.....	1,200 00
To expenses for counsel fees in action of William Deterling against George W. Roderick, in contest for seat in said last-mentioned district.....	1,200 00
To expenses for counsel fees in action of J. Lott Nostrand against William M. Mullen, for contest for seat in said last-mentioned district.....	1,200 00
To expenses for counsel fees in action of Charles J. Kurth against Thomas W. Fitzgerald, for contest for seat in said last-mentioned district.....	1,200 00
Disbursements.	
Paid for stenographer fees, witness fees, copying papers, etc., traveling expenses and expert accountant in the above cases	542 05
	$6,542 05

BROOKLYN, N. Y., *August* 14, 1894

Hon. John C. Kinkel, Hon. Charles L. Pashley, Hon. J. Lott Nostrand, Hon. William Deterling, Hon. Charles J. Kurth to Kiendl Bros., Dr.

To professional services rendered in case of John C. Kinkel against James W. Riggs; also, in case of Charles L. Pashley against Eugene Curran; also, in case of William Deterling against George W. Roderick; also, in case of J. Lott Nostrand against William M. Mullen; also, in case of Charles J. Kurth against Thomas W. Fitzgerald, from November 7, 1893, to August 7, 1894, in attendance before Board of Canvassers, during canvass, drawing protests and

objections to canvass, filing same with State Board of Canvassers, drawing petition and presenting same to Constitutional Convention, preparing cases, and witnesses and various trips to Richmond county, Gravesend jail and penitentiary, examining fifty-nine witnesses, consulting over seventy-five witnesses in Richmond county and Kings county, cross-examining five witnesses, preparing subpoenas, attendance at Albany on presentation of petition and various hearings before Committee on Privileges and Elections; also, attendance before committee at Richmond county, in the city of Brooklyn, at Albany, the jail and the penitentiary, and taking testimony of sixty-four witnesses, each of the hearings before the committee occupying almost the entire day; preparing statement from election returns and poll registry list, containing about 50,000 pages; copying papers in contempt proceedings and nineteen indictments against McKane, Sutherland, Newton and others (see exhibits — statements); attendance at Albany before sub-committee at various times on argument, preparing brief, argument before committee..... $6,000 00

Disbursements.

May 7, 8 and 9.	Paid expenses to Albany and return on attendance before Convention and committee	20 00
9 and 10.	Paid witness' fees.....	24 00
11.	Serving witnesses	20 00
26.	Witness' fees, Richmond county.....	27 00
	Amount forward serving witnesses with subpoenas	20 00
	Witness' fees in Brooklyn and serving..	17 50
June 1.	Witness' fees and serving.....	3 00
11.	Miss M. Farrel, for taking testimony at first hearing in absence of Convention stenographer	20 05
14 and 15.	Expenses to Albany and return.....	15 00
	Certified copy indictment.....	3 00
	Certified copy election returns.....	3 00
26 and 27.	Expenses to Albany and return.....	15 00
10.	Expenses to Albany and return.....	15 00

July	10. Expert bookkeeper preparing statements of votes, etc. (see exhibits)...	$250 00
July	Expenses to Albany and return.....	15 00
	Expenses to Albany and return.....	15 00
	Expenses to Albany and return.....	15 00
	Douglas Taylor, printing brief.....	44 50
		$6,542 05

State of New York, County of Kings, City of Brooklyn, ss.:

Adolph Kiendl, being duly sworn, says that he is one of the attorneys for the contestants in the above-mentioned matters; that said annexed bill and the items therein contained are in all respects true and correct, and said disbursements have been actually made and were necessary for the proper conduct of the contestant side of the cases; that said counsel fees are fair and reasonable charges for said services, as deponent verily believes.

ADOLPH KIENDL.

Sworn to before me this 11th day of September, 1894.

JOHN KNAPP,
Commissioner of Deeds, City of Brooklyn.

Mr. Veeder — Mr. President, I desire to make an inquiry. Is the statement verified? Further, have these counsel fees been paid, actually paid?

The President — It seems to be in the ordinary form of a bill rendered.

The Secretary — There is an affidavit attached.

Mr. Countryman — Mr. President, I wish also to state that, as a member of the Committee on Privileges and Elections, I had no part or lot in this report.

The President — It is not a report. The bill has just been rendered.

Mr. Cochran — Mr. President, it may assist in the disposition of this bill if I say that the delegates from the second district will figure up their bill and have it ready to-morrow morning.

Mr. Parmenter — Mr. President, will the Secretary state to us the number of cents; I did not hear that. (Laughter.)

Mr. A. H. Green — Mr. President, about a week ago Mr. Augustus Frank offered a resolution relative to the time of the adjourn-

ment of this Convention, or of some disposition by the Convention of what should be done relative to its prolonging the session beyond the fifteenth. I think the public business would be very much advanced and the convenience of members would also be very much subserved if it could be known whether we are to take a final adjournment on the fifteenth or whether we are to take a recess. I think the majority of the Convention would acquiesce in the decision of that matter, but we should know definitely what is proposed to be done in regard to adjournment so that members can make their arrangements accordingly. I, therefore, would like to call that matter up for determination by the Convention.

The President — Will Mr. Green wait until after the vote has been taken on the judiciary article? That is the pending business.

Mr. A. H. Green — Very well.

The President — The business before the Convention is the judiciary article. There are fifteen minutes more of time under the rule. If any gentlemen have any motions or amendments to offer, they will please send them up to the desk.

Mr. Peck — Mr. President, I move that the judiciary article be referred back to the Judiciary Committee, with instructions to report forthwith as follows: I offer the same amendment that I offered in Committee of the Whole, making the Appellate Division elective.

The President — Has any other gentleman any other amendment to offer to the matter now pending?

Mr. Jenks — I have an amendment to offer and which is in the hands of the Secretary.

Mr. Smith — Mr. President, I offer an amendment. I would like to say that when the question of the limitation of judicial office, by reason of age, was before the Convention the proposition to increase the age to seventy-five was rejected by a small majority. I now offer a resolution that the article be recommitted to the Judiciary Committee, with instructions to report forthwith amended so that the age will be seventy-two years instead of seventy-five.

The President — Are there any other amendments or motions to recommit, with instructions to amend? There are three now.

Mr. A. H. Green — Mr. President, I desire to offer an amendment that wherever any term is over eight years that it be reduced to eight years.

The President — You wish to recommit, with instructions to amend in that way?

Mr. A. H. Green — Yes, sir.

The President — Now, gentlemen, the time for discussion of this article is about to terminate, unless the Convention orders otherwise.

Mr. Jenks — Mr. President, I move that each proposer of an amendment this morning be allowed not to exceed five minutes to explain the purpose of his amendment.

Mr. Countryman — Mr. President, I move, as an amendment, that five minutes be allowed also to answer.

The President — That will make ten minutes, or forty minutes for these four amendments.

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

The President then put the question on the motion of Mr. Jenks, as amended by Mr. Countryman, and it was determined in the affirmative.

The President — The Secretary will now read Mr. Peck's amendment, and the first ten minutes, five on each side, will be allowed for the consideration of that.

The Secretary read the amendment as follows:

"Sec. 2. The Legislature shall divide the State into four judicial departments. The first department shall consist of the county of New York. The others shall be bounded by county lines and be compact and equal in population, as nearly as may be. 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 departments, 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 designations 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 decision of motions submitted by consent of counsel. From and after the last day of December, 1895, the Appellate Division shall have the jurisdiction now exercised by the Supreme Court at its General 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 — Mr. President, as has already been stated in Committee of the Whole, the purpose of this amendment is to conform the Appellate Division of the Supreme Court in the manner of its appointment to the terms for which it is to be held, to the Court of Appeals. That is, instead of having an appointive court for five years I propose that we shall have an elective court for fourteen years, and I do it based upon the success of the term of the Court of Appeals. That is, we have a permanent and stable court of judges accustomed to each others methods and habits, and not requiring them once in five years, at least, to apply for a reappointment or to go into any electioneering business for the purpose of getting back. It will be noticed that I have also reduced the number of the General Term to three. I do that only because of the criticism which was originally made to the article, that I was providing for more judges. I do not desire to have that criticism affect it, and I think that a court of three judges would answer the criticism which was made of the Court of Appeals, and that is, that increasing the number from three to five will not increase the efficiency of the court. These are the real reasons for this amendment, and, as I have enlarged very generously heretofore, I will leave the matter in the hands of the Convention.

Mr. Countryman — Mr. President, I was in favor of some of the provisions contained in this proposed amendment of Mr. Peck; that is, so far as it regarded the election of the judges of the General Term, as such, and making it a separate and distinct tribunal from the trial court, but I am uncompromisingly opposed to the reduction of the General Term from five judges to three, and I am equally opposed to the provision by which jurisdiction is given to these judges of the Appellate Division in this proposed amendment of Mr. Peck, to hear motions at Special Term. One of the main objects of the new judiciary article is to make this General Term more effective and efficient, of greater authority, and greater strength by increasing the number and at the same time rendering it for all practical purposes distinct and separate from the trial court.

Mr. Peck — Mr. President, the gentleman is mistaken in regard to the force of the amendment as to Special Terms. There is no such provision. The provision is the same both in the report of the Committee on Judiciary and in my amendment, with regard to the fixing of Special Terms — not the holding of them.

The President — The question is on the motion of the gentleman from Rensselaer (Mr. Peck).

Mr. A. H. Green — Mr. President, is an amendment in order to his amendment? If so, I move to amend that the term be placed at eight years.

The President — The question is on Mr. Green's amendment.

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

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

The President — The amendment offered by the gentleman from Kings (Mr. Jenks) will now be read.

The Secretary read the amendment as follows:

Amend section 1 as follows: Page 2, line 3, strike out the words "three in the second," and insert in place thereof the words "four in the second."

Mr. Jenks — Mr. President, Mr. Hirschberg made a motion last night that the number of judges in the second department should be five instead of three, so far as the increase of the judiciary was concerned. That motion was rejected by the House. The present number of new judges is three. Perhaps I am subject to the criticism of the chairman of the Judiciary Committee, that I

should have made this motion earlier in the day, or should have brought it up before the committee itself; but I have not had the opportunity for consultation with the members of this Convention who live in other parts of the Second Judicial Department than that of the city of Brooklyn, and after some consultation with them I am of the opinion that this is an entirely proper move. I did not speak of the matter last night, Mr. President, for the reason that I did not feel that I was fully acquainted with the matter. But I have given the subject due deliberation, have had the advantage of consultation, and I now make the motion. The city of Brooklyn has about a million people. That is a mere spot in the great district which comprises nine counties. The business of the city of Brooklyn is very great, and the business in the county is large. The circuit which must be traveled is extended. The judges of the Supreme Court, not jealous of their rank or of the privileges of the few, for the past eight years have been in favor of the increase by the Legislature. Twice the Legislature has voted in favor of the increase of two in the number of the judges. Once it was killed by the people, because of the tacking on of some provisions which were not germane to it. Now, this is a Constitution which is to provide for a judiciary which shall be equal to the occasion; which is not to be made up of mere temporary drafts upon the judiciary in other parts of the State. There are but nine judges in the second department. If we are going to preserve our present system, as introduced by the Judiciary Committee, that makes a General Term of five reviewing the decisions of an equal number of judges below (I hope I am accurate in what I say). The purpose, then, of this amendment, so far as the second district is concerned, is that it shall not be a pyramid standing upon its apex, but that there shall be equal to the volume of the business a provision in the Constitution which is not for a mere hectic of the hour, which shall not require the running to the Legislature for amendment to the Constitution. I hope the amendment will prevail, for I make it in furtherance of the suggestion made by Mr. Hirschberg last night, and after consultation with several members of the bar who reside in the Second Judicial Department.

The President — Does any other gentleman desire to be heard upon Mr. Jenks's amendment?

Mr. Cady — Mr. President, if I understand the delegate from Kings correctly, he is in error as to the number of justices in the Supreme Court in the second department which will be provided for under this article, if adopted. I understood him, perhaps, incorrectly. I understood him to say nine.

Mr. Jenks — You did so understand me. However, I omitted to mention three City Court justices.

Mr. Cady — There are nine judges now and three judges of the City Court who will become judges of the Supreme Court, making twelve, so that under the arrangement there may be now nine trial judges in the second district, and we also provide for an additional judge in the county of Kings.

Mr. Hirschberg — I would like to correct the gentleman from Columbia (Mr. Cady), and state that I cannot see any way by which there shall be nine trial judges in the Second Judicial Department.

Mr. Cady — In answer to the suggestion of the delegate from Orange, I call attention to that provision of the judiciary article which provides that justices may be sent from their departments into the General Term of another department, so that there may be two, at least, sent into the second department, making nine trial judges.

Mr. Hirschberg — The gentleman means that there "may be."

Mr. Cady — They borrow them.

Mr. Hirschberg —"May be."

Mr. Countryman — Mr. President, the second department now has nine judges who do nothing but try cases at Circuit and Special Term. Now, your system gives them nine judges to do all that work in connection with the business of the General Term, two General Terms sitting in that department, one in the City Court and one in the Supreme Court, so that practically they did not have but seven to do certain court work. Now, they have nine.

Mr. Jenks — Mr. President, I am amazed at my friend. He is resenting the attempt on my part to couple his name with that of the immortal Shakespeare, for he told me in confidence (which I hope I am not violating) that he was in favor of eight judges in the city of Brooklyn. Whence this change?

The President — The question is on the amendment of Mr. Jenks.

Mr. Jenks — Mr. President, I call for a rising vote.

The President — Mr. McDonough and Mr. Cochran will please act as tellers.

The gentlemen named acted as tellers.

The amendment was lost — 48 ayes, 55 noes.

The President — The question is on the amendment offered by

the gentleman from New York (Mr. Smith). The Secretary will read the amendment.

The Secretary read the amendment as follows:

Amend section 12 by inserting the word "two" between the word "seventy" and the word "years," so that it will read "seventy-two years."

Mr. Smith — Mr. President, the purpose of my amendment is very simple, indeed. It is to make a judge eligible to hold his office until he is seventy-two years of age, instead of limiting the term to the age of seventy years as now fixed by law. The advantages to accrue from this change in the law are, in the first place, of a pecuniary character. I have looked over the list of judges who would be retired under the age limitation of seventy years, and find that the salaries to be paid to them in the form of pensions would amount to about $100,000 a year, which may be saved. In the next place, we would be keeping on the bench such distinguished jurists as Judge Earl, and many of the justices of the Supreme Court. Mr. President, it is a fact that cannot be denied, that men nowadays are living better than they formerly did; closer to the laws of nature. (Applause.) This is true especially of the legal fraternity; lawyers, I am happy to say, are displaying this good sense. Men now at seventy are not, as a general thing, as old as men formerly were at sixty. I could point out, if I were to go into a personal classification, a great many such members of this Convention.

Mr. Schumaker — How is it with yourself?

Mr. Smith — That should go without saying. I must leave that to the Convention. (Laughter.)

There is no logical reason why a man who happens to be a judge should be disfranchised because he is seventy years of age. I am ready to believe that our distinguished President will agree with me in this statement. I know that he has taken good care of himself. (Cheers.)

Men are not only living better, but they are taking better care of themselves in every respect. They take more exercise, more rest, they eat more regularly, and are more conservative in all their habits. These things have a great influence in preserving health, and they should be recognized in dealing with this question. Now, I know there are in this Convention quite a large sprinkling of young men who want the older ones retired. That is perfectly natural. Youth is always impulsive. (Laughter.) But I would appeal to my young friends, and ask them to reflect that it will be

but a few years before they will attain the age when they will pray for an extended term. I have made this motion largely for their benefit. Of course, they all expect to be judges. (Laughter.)

Now, Mr. President, I am not disposed to indulge in general arguments upon this subject. We had quite an extended discussion a few evenings ago when the proposition was before us, to limit the judicial office to seventy-five years of age; then we discussed Moses and the prophets and other characters of antiquity. I will simply say that, taking it all in all, this is a fair compromise between seventy and seventy-five. When the vote was taken before, those who voted in favor of keeping the limit at seventy numbered about sixty, and those who voted in favor of seventy-five numbered, I think, forty-eight or fifty. This is a fair compromise, and it is a very reasonable one, and it is one which, I believe, all the young men will give thanks for, when they have grown a little older. (Applause.)

Mr. Jenks — Mr. President, I ask the privilege of the floor of this Convention for Mr. James G. Blaine, of Maine. (Applause.)

The President put the question on granting the privileges of the floor, as requested, and it was determined in the affirmative.

The President — The question now is on the motion offered by the gentleman from New York (Mr. Smith).

Mr. Smith — I call for a rising vote.

The President — Mr. McDonough and Mr. Cochran will act as tellers.

The gentlemen named acted as tellers.

The amendment was determined in the negative — ayes, 21; noes, 30.

The President — The question now is on the amendment of Mr. Green.

The Secretary will read.

The Secretary read the amendment as follows:

"Wherever any term is fixed at over eight years that it be reduced to eight."

Mr. A. H. Green — Mr. President, I beg to call to the memory of my friends on the other side that in the Constitution of 1846 the term was originally fixed at eight years, and I think that the traditions and memories of the great party, which they so ably represent, should not be forgotten. My opinion is that the term of fourteen years is entirely too long, and where it was originally eight years,

it has been juggled along by the representatives of the judiciary until it has got up to fourteen years, and by the time we have another Constitutional Convention they will get it up to life. We are told by one gentleman that they get to be old fossils on the bench; they get to be very dull. I don't know much about that, but when I hear distinguished lawyers speak that way, my own opinion is that they should be relieved from the duties of the bench and that the terms should be shorter.

The President put the question on Mr. Green's amendment, and it was determined in the negative.

The President — There is a motion on the table, offered by the gentleman from Jefferson (Mr. Brown). The Secretary will read.

The Secretary read Mr. Brown's amendment as follows:

In lines 17 and 18 on page 13, strike out the words "but no inferior local court hereafter created shall be a court of record." Also insert in line 20 of page 13, before the word "equity" the word "greater."

Mr. E. R. Brown — Mr. President ——

The President — Forty minutes having expired, Mr. Brown has five minutes in which to explain his amendment.

Mr. E. R. Brown — Mr. President, I offer this amendment in deference to what seems to be the sentiment among the members of the bar of my county. As the article now stands, it will be impossible to confer upon inferior local courts hereafter created the same equity jurisdiction which is now vested in justices' courts, and it seems to me that, in view of the well-established fact that it becomes necessary in all cities at some time to do away with justices' courts, and establish City Courts, it is unwise for us to prevent the conferring of powers upon inferior City Courts which are like those now vested in justices' courts. I am entirely in accord with the article, so far as it is intended to prevent the growth of inferior local courts so that they will become rivals of the Supreme Court. The principle which the committee has sought to embody in the bill is correct, but it is carried to an extent which is unjustifiable. I, therefore, make this motion.

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

The President — The time for debate on this judiciary article having been closed, it will now be read the third time by the Secretary.

Mr. Root — Mr. President, may I call attention to a manifest

misprint on page 13, line 9? It is printed "justices of the peace and district county justices." It should be printed "district court justices," I suppose.

The President — By unanimous consent this misprint will be corrected by the Secretary.

Mr. Parmenter — Mr. President, I think on page 14, line 17, there is a misprint. It is printed "single." It means "similar."

The President — By unanimous consent this misprint will be corrected by the Secretary.

Mr. Marshall — There is another misprint in line 20, page 3. The word "counsels" should be "counsel," leaving off the "s" from the word as printed.

The President — By unanimous consent this misprint will be corrected by the Secretary.

Mr. Marshall — Also on page 1, line 9, the word "justices" where it occurs the second time in that line should be "judges." The official title of the judges of the Superior Court and the City Court of Brooklyn are judges of the City Court and not justices.

The President — This correction will be made by the Secretary by unanimous consent.

Mr. Parkhurst — On page 13, line 17, the word "Legislature" is misspelled.

The President — The Secretary will make that correction.

The President — The Secretary will now read the judiciary article.

The Secretary read the judiciary article as follows:

"Article 6 of the Constitution is hereby amended so as to read as follows:

"Section 1. The Supreme Court is continued with general jurisdiction in law and equity, subject to such appellate jurisdiction of the Court of Appeals as now is or may be prescribed by law not inconsistent with this article. The existing judicial districts of the State are continued until changed as hereinafter provided. The Supreme Court shall consist of the Supreme Court justices now in office, and of the judges transferred thereto by the fifth section of this article, all of whom shall continue to be justices of the Supreme Court during their respective terms, and of twelve additional justices, who shall reside in and be chosen by the electors of the several existing judicial districts, three in the first district, three in the second, and one in each of the other

districts, and of their successors. The successors of said justices shall be chosen by the electors of their respective judicial districts. The Legislature may alter the judicial districts once after every enumeration under the Constitution of the inhabitants of the State, and thereupon reapportion the justices to be thereafter elected in the districts so altered.

"Sec. 2. The Legislature shall divide the State into four judicial departments. The first department shall consist of the county of New York; the others shall be bounded by county lines, and be compact and equal in population, as nearly as may be. Once every ten years the Legislature may alter the judicial departments, but without increasing the number thereof.

"There shall be an Appellate Division of the Supreme Court, consisting of seven justices in the first department, and of five justices in each of the other departments. In each department four shall constitute a quorum, and the concurrence of three shall be necessary to a decision. No more than five justices shall sit in any case.

"From all the justices elected to the Supreme Court the Governor shall designate those who shall constitute the Appellate Division in each department; and he shall designate the presiding justice thereof, who shall act as such during his term of office, and shall be a resident of the department. The other justices shall be designated for terms of five years, or the unexpired portions of their respective terms of office, if less than five years. From time to time, as the terms of such designations expire, or vacancies occur, he shall make new designations. He may also make temporary designations in case of the absence or inability to act, of any justice in the Appellate Division. A majority of the justices designated to sit in the Appellate Division in each department shall be residents of the department. Whenever the Appellate Division in any department shall be unable to dispose of its business within a reasonable time, a majority of the presiding justices of the several departments, at a meeting called by the presiding justice of the department in arrears, may transfer any pending appeals from such department to any other department for hearing and determination. No justices of the Appellate Division shall exercise any of the powers of a justice of the Supreme Court, other than those of a justice out of court and those pertaining to the Appellate Division or to the hearing and decision of motions submitted by consent of counsel. From and after the last day of December, 1895, the Appellate Division shall have the jurisdiction now exercised by the Supreme Court at its

General Terms, and by the General Terms of the Court of Common Pleas for the city and county of New York, the Superior Court of the city of New York, the Superior Court of Buffalo, and the City Court of Brooklyn, and such additional jurisdiction as may be conferred by the Legislature. It shall have power to appoint and remove a reporter.

"The justices of the Appellate Division in each department shall have power to fix the times and places for holding Special and Trial Terms therein, and to assign the justices in the departments to hold such terms, or to make rules therefor.

"Sec. 3. No judge or justice shall sit in the Appellate Division or in the Court of Appeals in review of a decision made by him or by any court of which he was at the time a sitting member. The testimony in equity cases shall be taken in like manner as in cases at law; and, except as herein otherwise provided, the Legislature shall have the same power to alter and regulate the jurisdiction and proceedings in law and in equity that it has heretofore exercised.

"Sec. 4. The official terms of the justices of the Supreme Court shall be fourteen years from and including the first day of January next after their election. When a vacancy shall occur otherwise than by expiration of term in the office of justice of the Supreme Court the same shall be filled, for a full term, at the next general election, happening not less than three months after such vacancy occurs; and, until the vacancy shall be so filled, the Governor, by and with the advice and consent of the Senate, if the Senate shall be in session, or if not in session, the Governor may fill such vacancy by appointment,which shall continue until and including the last day of December next after the election at which the vacancy shall be filled.

"Sec. 5. The Superior Court of the city of New York, the Court of Common Pleas for the city and county of New York, the Superior Court of Buffalo and the City Court of Brooklyn are abolished from and after the 1st day of January, 1896, and thereupon the seals, records, papers and documents of or belonging to such courts shall be deposited in the offices of the clerks of the several counties in which said courts now exist, and all actions and proceedings then pending in such courts shall be transferred to the Supreme Court for hearing and determination. The judges of said courts in office on the 1st day of January, 1896, shall, for the remainder of the terms for which they were elected or appointed, be justices of the Supreme Court; but they shall sit only in the counties in which they were elected or appointed. Their salaries shall be paid by the said counties, respectively, and shall be the

same as the salaries of the other justices of the Supreme Court residing in the same counties. Their successors shall be elected as justices of the Supreme Court by the electors of the judicial districts in which they, respectively, reside.

"The jurisdiction now exercised by the several courts hereby abolished shall be vested in the Supreme Court. Appeals from inferior and local courts now heard in the Court of Common Pleas for the city and county of New York and the Superior Court of Buffalo, shall be heard in the Supreme Court in such manner and by such justice or justices as the Appellate Divisions in the respective departments, which include New York and Buffalo, shall direct unless otherwise provided by the Legislature.

"Sec. 6. Circuit Courts and Courts of Oyer and Terminer are abolished from and after the last day of December, 1895. All their jurisdiction shall thereupon be vested in the Supreme Court, and all actions and proceedings then pending in such courts shall be transferred to the Supreme Court for hearing and determination. Any justice of the Supreme Court, except as otherwise provided in this article, may hold court in any county.

"Sec. 7. The Court of Appeals is continued. It shall consist of the chief judge and associate judges now in office, who shall hold their offices until the expiration of their respective terms, and their successors, who shall be chosen by the electors of the State. The official terms of the chief judge and associate judges shall be fourteen years, from and including the first day of January next, after their election. Five members of the court shall form a quorum, and the concurrence of four shall be necessary to a decision. The court shall have power to appoint and to remove its reporter, clerk and attendants.

"Sec. 8. When a vacancy shall occur, otherwise than by expiration of term in the office of chief or associate judge of the Court of Appeals, the same shall be filled, for a full term, at the next general election happening not less than three months after such vacancy occurs; and until the vacancy shall be so filled, the Governor, by and with the advice and consent of the Senate, if the Senate shall be in session, or if not in session, the Governor may fill such vacancy by appointment. If any such appointment of chief judge shall be made from among the associate judges, a temporary appointment of associate judge shall be made in like manner; but in such case the person appointed chief judge shall not be deemed to vacate his office of associate judge any longer than until the expiration of his appointment as chief judge. The powers and jurisdiction of the court shall not be suspended for

want of appointment or election, when the number of judges is sufficient to constitute a quorum. All appointments under this section shall continue until and including the last day of December next after the election at which the vacancy shall be filled.

"Sec. 9. After the last day of December, 1895, the jurisdiction of the Court of Appeals (except where the judgment is of death) shall be limited to the review of questions of law. No unanimous decision of the Appellate Division of the Supreme Court that there is evidence supporting or tending to sustain a finding of fact or a verdict not directed by the court, shall be reviewed by the Court of Appeals. Except where the judgment is of death, appeals may be taken, as of right, to said court only from judgments or orders entered upon decisions of the Appellate Division of the Supreme Court finally determining actions or special proceedings, and from orders granting new trials on exceptions, where the appellants stipulate that upon affirmance judgment absolute shall be rendered against them.

"The Appellate Division in any department may, however, allow an appeal upon any question of law which, in its opinion, ought to be reviewed by the Court of Appeals.

"The Legislature may further restrict the jurisdiction of the Court of Appeals and the right to appeal thereto, but the right to appeal shall not depend upon the amount involved.

"The provisions of this section shall not apply to orders made or judgments rendered by any General Term before the last day of December, 1895, but appeals therefrom may be taken under existing provisions of law.

"Sec. 10. The judges of the Court of Appeals and the justices of the Supreme Court shall not hold any other office or public trust. All votes for any of them, for any other than a judicial office, given by the Legislature or the people, shall be void.

"Sec. 11. Judges of the Court of Appeals and justices of the Supreme Court may be removed by concurrent resolution of both Houses of the Legislature, if two-thirds of all the members elected to each House concur therein. All other judicial officers, except justices of the peace and judges or justices of inferior courts not of record, may be removed by the Senate, on the recommendation of the Governor, if two-thirds of all the members elected to the Senate concur therein. But no officer shall be removed by virtue of this section, except for cause, which shall be entered on the Journals, nor unless he shall have been served with a statement of the cause alleged, and shall have had an opportunity to be

heard. On the question of removal, the yeas and nays shall be entered on the Journal.

"Sec. 12. The judges and justices hereinbefore mentioned shall receive for their services a compensation established by law, which shall not be increased or diminished during their official terms, except as provided in section 5 of this article.

"No person shall hold the office of judge or justice of any court longer than until and including the last day of December next after he shall be seventy years of age.

"No judge or justice elected after the 1st day of January, 1894, shall be entitled to receive any compensation after the last day of December next after he shall be seventy years of age, but the compensation of every judge of the Court of Appeals or justice of the Supreme Court elected prior to the 1st day of January, 1894, whose term of office has been, or whose present term of office shall be, so abridged, and who shall have served as such judge or justice ten years or more, shall be continued during the remainder of the term for which he was elected, but any such judge or justice may, with his consent, be assigned by the Governor, from time to time, to any duty in the Supreme Court while his compensation is so continued.

"Sec. 13. The Assembly shall have the power of impeachment, by a vote of a majority of all the members elected. The court for the trial of impeachments shall be composed of the President of the Senate, the Senators, or a major part of them, and the judges of the Court of Appeals, or the major part of them. On the trial of an impeachment against the Governor or Lieutenant-Governor, the Lieutenant-Governor shall not act as a member of the court. No judicial officer shall exercise his office after articles of impeachment against him shall have been preferred to the Senate, until he shall have been acquitted. Before the trial of an impeachment the members of the court shall take an oath or affirmation truly and impartially to try the impeachment according to the evidence, and no person shall be convicted without the concurrence of two-thirds of the members present. Judgment in cases of impeachment shall not extend further than to removal from office, or removal from office and disqualification to hold and enjoy any office of honor, trust or profit under this State; but the party impeached shall be liable to indictment and punishment according to law.

"Sec. 14. The existing County Courts are continued, and the judges thereof now in office shall hold their offices until the expiration of their respective terms. In the county of Kings there shall be two county judges, and the additional county judge shall be

chosen at the next general election held after the adoption of this article. The successors of the several county judges shall be chosen by the electors of the county for the term of six years. County Courts shall have the powers and jurisdiction they now possess, and also original jurisdiction in actions for the recovery of money only, where the defendants reside in the county, and in which the complaint demands judgment for a sum not exceeding $2,000. The Legislature may hereafter enlarge or restrict the jurisdiction of the County Courts, provided, however, that their jurisdiction shall not be so extended as to authorize an action therein for the recovery of money only in which the sum demanded exceeds $2,000, or in which any person not a resident of the county is a defendant.

"Courts of Sessions, except in the county of New York, are abolished from and after the last day of December, 1895. All the jurisdiction of the Court of Sessions in each county, except the county of New York, shall thereupon be vested in the County Court thereof, and all actions and proceedings then pending in such Courts of Sessions shall be transferred to said County Courts for hearing and determination. Every county judge shall perform such duties as may be required by law. His salary shall be established by law, payable out of the county treasury. A county judge of any county may hold County Courts in any other county when requested by the judge of such other county.

"Sec. 15. The existing Surrogate's Courts are continued, and the surrogates now in office shall hold their offices until the expiration of their terms. Their successors shall be chosen by the electors of their respective counties, and their terms of office shall be six years, except in the county of New York, where they shall continue to be fourteen years. Surrogates and Surrogate's Courts shall have the jurisdiction and powers which the surrogates and existing Surrogate's Courts now possess, until otherwise provided by the Legislature. The county judge shall be the surrogate of his county, except where a separate surrogate has been or shall be elected. In counties having a population exceeding 40,000, wherein there is no separate surrogate, the Legislature may provide for the election of a separate officer to be surrogate, whose term of office shall be six years. When the surrogate shall be elected as a separate officer his salary shall be established by law, payable out of the county treasury. No county judge or surrogate shall hold office longer than until and including the last day of December next after he shall be seventy years of age. Vacancies occurring in the office of county judge or surrogate shall be filled in the same manner as like vacancies occurring in the Supreme Court. The compensation of any

county judge or surrogate shall not be increased or diminished during his term of office. For the relief of Surrogate's Courts the Legislature may confer upon the Supreme Court in any county having a population exceeding 400,000, the powers and jurisdiction of surrogates, with authority to try issues of fact by jury in probate cases.

"Sec. 16. The Legislature may, on application of the board of supervisors, provide for the election of local officers, not to exceed two in any county, to discharge the duties of county judge and of surrogate, in cases of their inability or of a vacancy, and in such other cases as may be provided by law, and to exercise such other powers in special cases as are or may be provided by law.

"Sec. 17. The electors of the several towns shall, at their annual town meetings, or at such other time and in such manner as the Legislature may direct, elect justices of the peace, whose term of office shall be four years. In case of an election to fill a vacancy occurring before the expiration of a full term, they shall hold for the residue of the unexpired term. Their number and classification may be regulated by law. Justices of the peace and judges or justices of inferior courts, not of record, and their clerks, may be removed for cause, after due notice and an opportunity of being heard by such courts as are or may be prescribed by law. Justices of the peace and district court justices may be elected in the different cities of this State in such manner, and with such powers, and for such terms, respectively, as are or shall be prescribed by law; all other judicial officers in cities, whose election or appointment is not otherwise provided for in this article, shall be chosen by the electors of such cities, or appointed by some local authorities thereof.

"Sec. 18. Inferior local courts of civil and criminal jurisdiction may be established by the Legislature, but no inferior local court hereafter created shall be a court of record. The Legislature shall not hereafter confer upon any inferior or local court of its creation any equity jurisdiction or any greater jurisdiction in other respects than is conferred upon County Courts by or under this article.

"Except as herein otherwise provided, all judicial officers shall be elected or appointed at such times and in such manner as the Legislature may direct.

"Sec. 19. Clerks of the several counties shall be clerks of the Supreme Court, with such powers and duties as shall be prescribed by law. The justices of the Appellate Division in each department shall have power to appoint and to remove a clerk, who shall keep his office at a place to be designated by said justices. The clerk of

the Court of Appeals shall keep his office at the seat of government. The clerk of the Court of Appeals and the clerks of the Appellate Division shall receive compensation to be established by law and paid out of the public treasury.

" Sec. 20. No judicial officer, except justices of the peace, shall receive to his own use any fees or perquisites of office; nor shall any judge of the Court of Appeals or justice of the Supreme Court, or any county judge or surrogate hereafter elected in a county having a population exceeding 120,000, practice as an attorney or counselor in any court of record in this State, or act as referee.

" The Legislature may impose a similar prohibition upon county judges and surrogates in other counties.

" 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.

" 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.

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

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

The Committee on Revision and Engrossment have made the following changes:

In line 9, on page 7, have inserted the word " may " for " shall," after the word " appeals," and after the word " taken," the words " as of right." In line 16, after the word " may," have inserted the word " however; " and after the word "' appeal," in the same line, instead of " in," the word " upon," and instead of " case," the words " question of law," in lines 16 and 17, same page, and have stricken out the words " involves a question of law which " after " opinion," in line 17. In line 6, page 8, after the word " and," have inserted the word " judges," and in line 7, before the word " justices," have inserted the word " or," on page 8.

Have added after the word " terms," in line 19, page 8, the following words: " Except as provided in section 5 of this article."

In line 28, page 8, have inserted instead of the word "any," the following words: "the compensation of every" before the word "judge," page 8.

Have inserted in line 2, page 9, the word "continued," in place of "entitled to the compensation attached to his office." Have inserted, beginning in line 4, the following: "But any such judge or justice may, with his consent, be assigned by the Governor, from time to time, to any duty in the Supreme Court, while his compensation is so continued," in place of "the Governor shall have power to appoint to duty in the Supreme Court any judge or justice, with his consent, whose term of office shall be so abridged, and who shall receive compensation thereafter;" page 9.

Have inserted the word "chosen" in place of "elected," in line 31, on page 10. Have struck out "it be" before "otherwise," in line 5, page 11. Have inserted the word "of," in line 20, the word "such," on page 12. Have inserted after the word "compensation," in line 9, page 13, the words "to be." Have struck out the word "respective" before the word "offices," in line 2, page 14, and inserted the word "respective" before "terms," in line 3, page 14.

The President — The Convention will be in order. This constitutional amendment having been read the third time, the vote will now be taken upon its final passage. The Secretary will call the roll. All those in favor of its final passage will say aye, and those opposed, no.

The Secretary proceeded to call the roll.

Mr. Ackerly — Mr. President, I wish to explain my vote. There are some provisions in this article which personally I would prefer should be different. I should prefer that the power to call the second division into being should have been left in the Constitution as it now is. I am also not satisfied with the words in the ninth section: "No unanimous decision of the Appellate Division of the Supreme Court that there is evidence supporting or tending to sustain a finding of fact or a verdict not directed by the court, shall be reviewed by the Court of Appeals." In other words, whether the facts constitute a cause of action or not, is now taken away from the Court of Appeals, if the appellate court of the Supreme Court unanimously decide upon that fact. The most important litigation, perhaps, that has gone to the Court of Appeals is upon those existing facts, whether certain facts are a cause of action. I recognize the fact that a proposition like this must be a compromise in a great measure, as has been stated here, and

recognizing that there are good features in this article, which will probably improve our judiciary, I yield my personal feelings in the matter, and vote aye.

Mr. Bowers — Mr. President, I wish to explain my vote. I considered that the judiciary article was in its main features destroyed when this Convention reduced the number of judges of the Court of Appeals from nine, as reported by the Judiciary Committee, to seven, and the sentiment in that regard was voiced in this Convention last night when a large majority of the delegates voted in favor of putting in the second division, until called into party line by the caucus whip. That vote meant that this Convention knew that the article as finally altered did not carry out and could not carry out the protestations made in its behalf. Yet, sir, I voted when the article came back from the Committee of the Whole, notwithstanding the change that had been made, to sustain it. I shall continue that course now, because, on the whole, I trust that benefits will come from its provisions. But it does not and cannot accomplish the solution of the problem that we sought to accomplish.

One thing more, however, I wish now to say, that I may not be misunderstood hereafter; there will follow this proposed amendment to the Constitution the iniquitous apportionment scheme prepared by the majority in this body and intended to be carried through. Against that I protest now, and its passage will compel me, in common with every man having the real interests of the cities of the State at heart, when November comes, to vote against the whole proposition that will emanate from this Convention. This statement I make that I may not be misunderstood, as favoring the final passage of this article by the people, if it be coupled with the apportionment scheme. That opportunity will be finally given us when we reach the consideration of the whole Constitution. At the present moment I still consider it my duty to vote upon each proposition according to its individual merits, and when at last it shall be submitted for final approval or disapproval, I shall give my voice and vote here, as I will hereafter, against the approval of the work of the Convention as an entirety. Having made this explanation, and still considering it my duty to maintain the position I have expressed, I shall at the present moment vote aye.

Mr. Cochran — Mr. President, when this article was in Committee of the Whole for discussion, I opposed it, because I felt sir, that the establishment of the Appellate Division in the manner proposed by this amendment would tend to bring political influence into the judiciary, and for that reason I was opposed to it. I

favored the establishment of an intermediate Appellate Court, and I believed, sir, that electing the judges to the court would have removed this influence which undoubtedly now must exist in this amendment. I am also opposed to this article because I do not believe there is any necessity for this increase of judges. I do believe that in the first and second departments some increase of the judiciary is necessary, but that increase is now provided for by the amendments which are to be submitted to the people this fall through legislative enactments. That increase is sufficient. I am also opposed to this article because last night it was apparent that it is an article not of the majority of the Convention. It is not the expression of the will of this Convention; but it is the expression of the will of a few, and the will of the few controlling this majority. We carried on this floor last night an amendment which would have improved this measure, but we heard the crack of the party lash, and we saw fourteen members change their votes. I am opposed to any such influences as that being brought to bear in this Convention, and I vote no.

Mr. Davenport — Mr. President, I desire to explain my vote. I believe that when the committee charged with the revision of the judiciary entered upon their work they found, under the provisions of the Constitutional Convention of 1867, a system for the administration of justice that was practically approved and had been successful, except in the matter of the Court of Appeals. They have proceeded in their effort to change the article to afford less opportunity to the litigant in the lower branch of the progress of the litigation than he possessed before. This inherent right should have first been provided for and protected. They have done nothing to help out the Court of Appeals in the review of a larger number of cases than was formerly provided for. It has been determined here that there shall be no provision in the event of that court becoming again clogged, as it has been in the past; that there shall be no relief. You have created an intermediate Appellate Division, cumbersome in character, and it provides for taking from the active working force of the departments of this State a considerable number of able judges who are inhibited from doing work which they will have abundant time and opportunity to do. Believing that under these changes this judiciary article, if put in force, would be an injury rather than a benefit to the people of this State, I am compelled to vote no.

Mr. Dean —Mr. President, my distinguished compeer has designated this as the most peerless matter that ever came from the

mind of man, and that being in harmony with my best judgment, I vote aye.

Mr. Giegerich — Mr. President, I desire to be excused from voting, because I am a judge of one of the courts affected by the proposed amendment under consideration.

The President put the question on excusing Mr. Giegerich from voting, and it was determined in the affirmative.

Mr. A. H. Green — Mr. President, I have but a word to say upon this subject. This measure contains many provisions, in my judgment, that are not in the interest of the people of this State, nor in the interest of the taxpayers. I allude to one provision in particular, on page 9, whereby in the Constitution of this State is inserted a provision to confirm a claim against the State which has been declared to be without foundation by at least two, if not three, judges of the Court of Appeals. Now, sir, what would anybody say if a contractor or any other claimant against the State had come here and asked us to put a provision in the Constitution to confirm a claim that the judges of the Court of Appeals, two or three of them, had already declared was without any foundation? That is one provision that I object to.

The extension of these terms is, in my judgment, all wrong, and the increase in the salaries of these officers and their perquisites are altogether wrong. This proposition, in my judgment, is far from what is alleged to be "the most matchless, peerless performance that ever emanated from the mind of man." It is as far from that as light is from darkness. It is a wrong provision, and ought not to be passed here.

Now, the consolidation of these courts; we had here addresses — and I have been furnished with one from one of the chief judges of the Supreme Court, in which he says, speaking of the necessity of maintaining the separate jurisdiction of the Supreme Court: "It is a part of the judicial history of the State that the Superior Court of New York city was created by the Legislature at the instance of the bar, which chafed under the apparent favoritism shown by the Supreme Court to a limited circle of practitioners accustomed to appear before it."

That was in the language of one of the gentlemen here, who now tries to do away with the Superior Court which existed under the Constitution, and disturbs the arrangement there which has long existed, if there has been favoritism or antagonism on the part of the justices of the Supreme Court ——

The President — Your time is up, Mr. Green. How do you vote?

Mr. Green — I think it is wrong, the whole measure is wrong, and I vote no.

Mr. Griswold — Mr. President, I think it is well for a delegate, in voting for the rejection of so important a provision as this judiciary article is, to give some reasons for so doing. Some of them I have already given, and to repeat, I think that provision in establishing a constitutional rule in reference to the cases that shall be appealable to the Court of Appeals is injudicious; that it should be left to the Legislature. And if I should desire to be critical, I might perhaps say that the disinclination to leave anything to the Legislature may be one of the faults of this Convention. We assume to legislate in matters that should be left to the Legislature. This matter should be left so that it could be changed as the necessity might require it. I think with regard to this limitation that it will be found by experience that it will be desirable to change the limitation of appeals to the Court of Appeals, but I think also that it would have been better to have left the provision standing that was made once before. The same proposition was made at a former Convention and rejected in the same way. A year afterward they had to provide the second division. It would have cost nothing. That second division should have been left, as it would cost the people nothing to call it in to relieve the Court of Appeals whenever it was necessary, and if it proved never to be necessary, it would do no harm. For those reasons, among others, I vote no.

Mr. Hawley — Mr. President, on the days when this article was under discussion in Committee of the Whole it was my misfortune to be obliged to be away. Since the passage of the article, as well as before its passage, I have given it very careful study. I have been over it line by line and sentence by sentence. I regard it as most admirable in form and sound in principle. I believe it will accomplish the purposes for which it was designed. It is in every particular (except in one slight circumstance, which is too insignificant to be the subject of discussion) entirely satisfactory to me, and I believe it will be a great benefit to the people of this State. I most heartily vote aye.

Mr. Hirschberg — Mr. President, this is the first time that I find myself compelled to explain the reason why I shall vote against the report of a committee of this Convention. If this article left any chance that the judicial business of the second department could be transacted I would vote for it. As now constituted, there are six judges of the Supreme Court to do the business for the nine counties composing that immense district. This article pro-

poses to take five of them away from the trial of cases and constitute them as an appellate court. That would leave one judge of the Supreme Court to do the trial business for one million and six hundred thousand people. Fortunately, Mr. Johnson, who represented the interests of that department in the committee did not state to the committee that one judge would be enough, and, accordingly, the committee have added three. That makes four judges to try cases and hold Special Terms for Kings, Queens, Suffolk, Richmond, Westchester, Putnam, Dutchess, Rockland and Orange. It is true that three judges are to be added from the City Court of Brooklyn. That court is now eighteen months in arrears in the cases on its calendar, and it is unreasonable to expect that those three judges can possibly do any more business in the Supreme Court than will come from the class of cases which have heretofore engaged their attention. Consequently this article is a reduction of the working force of the district, from six trial judges to four, or from nine to seven, beside depriving the department of the additional two judges contemplated by the acts of the Legislature in the past two years. Finding that it is utterly impossible to transact the business of that district with the reduction contemplated by this article, I am compelled to vote no.

Mr. Holls — Mr. President, I wish to explain my vote. It has been well said in the debate upon this article in Committee of the Whole, that an article comprising so many different subjects and reorganizing the entire judicial system, must necessarily be in the nature of a compromise between many conflicting opinions. It has not been possible for me, with my other duties in this Convention, to attend entirely upon the debates upon the judiciary article, and hence I have not taken any of the time of the Convention in any criticism of any provisions from which I dissent. There are many of the provisions of this article from which I would dissent most emphatically in the absence of having heard the arguments in their favor in the Judiciary Committee and in Committee of the Whole, but I believe that the judgment of this committee, on questions upon which there may be doubt, has been exercised so conscientiously and so wisely, that I am willing to submit my own opinion to theirs on those points.

As to the objections raised by my friend from Orange, Mr. Hirschberg, who comes from the same district in which I reside, I consider them very strong indeed. In fact, I think his arguments for additional judges in that district are unanswerable; but I remember, Mr. President, that there is another amendment to the Constitution pending, which has been adopted by the vote of two

successive Legislatures, and to be submitted to the people this fall. That amendment provides for two additional judges in our district. I hope that the sound good sense and judgment of the people of this State will afford us the relief that that amendment will give, and with that and with what we hope to receive from this article, the situation in the second department, which otherwise would be unbearable, will be relieved. I vote aye.

Mr. Lincoln — Mr. President, when this amendment came from the Committee of the Whole and was ordered to a third reading, I voted against sending it to a third reading. I was not then entirely satisfied with the measure and neither am I now; but upon further reflection I am of the opinion that there are features in this amendment which ought to be put into our organic law, and upon the whole I favor its passage and, therefore, vote aye.

Mr. Mantanye — Mr. President, I desire to explain my reason for opposing this proposition. If I could believe that there was any good to be obtained by it in improvement over the Constitution as it now stands, I should certainly vote in favor of it. But I have looked it over very carefully, and I cannot find one single good provision in it that is not already in the Constitution of this State, while there are several good provisions that now stand in article 6 which are left out. I am satisfied that the very next Legislature that meets in this State, if this article is adopted by the people, will have to take immediate steps to submit a constitutional amendment to the people to provide for some relief for the Court of Appeals, in order to relieve the congestion in that court. Experience has shown that a second division at times, was necessary, and the people had, at great expense, by adopting an amendment, submitted through the Legislature, made that provision which is now left out. The present proposition taking away the limit of appeals to the Court of Appeals, and the 200 cases now left over, assure us of its necessity. The only real improvement that was needed at present is that the General Term should be given a fixed place for meeting and should sit continuously and the judges be forbidden from doing any other business, and the term of office shortened. There is no such provision here. They can still travel from one locality to another. The General Term judges still hear *ex parte* motions and also motions contested before them just as they do now, by consent or where no one objects. It is a bill for the benefit of New York city politicians at the expense of the State. The judges of the inferior courts of New York and Brooklyn are made judges of the Supreme Court — offices to which they were never elected — and

those courts are abolished. At the expiration of the terms of the present incumbents, so promoted from inferior courts without election, some thirty more judges are to be paid for by the State at large at an expense of $216,000 per annum, while the judges themselves are for mere local purposes — adding so much to the tax list that it will be most unpopular with the people who are not anxious for an addition to their tax list at this time. For these reasons I cannot see any improvement or anything to be gained by this article, but much that is wrong and vicious. I, therefore, vote no.

Mr. Maybee — Mr. President, I desire to explain my vote. I regard the proposed system of judicial organization and administration which is embodied in this article in most respects an improvement on the system which now exists. While I have some objections to some of the details of the measure, I believe as a whole it will conduce to the more speedy administration of justice and to the best interests of the people of the State. I regret exceedingly that it will probably be coupled with the infamous and unfair apportionment which has been reported from the Committee of the Whole and is now upon the order of third reading, and that being the case, it will probably be my duty to oppose it at the polls; but just now it is here for separate and independent consideration, and, believing as I do, that it will be an improvement upon the existing system, I vote aye.

Mr. Parmenter — Mr. President, the proposed pending article contains many provisions which meet my hearty approval, and I would be pleased to sustain them, but, sir, the article has other important provisions in it to which I am irrevocably opposed — provisions as to which I am unwilling to sustain the article with my vote, and, therefore, without particularly stating all my objections to it, I vote no.

Mr. Smith — Mr. President, I desire to explain my vote. This judiciary article has many most excellent provisions in it. A large part of it is composed of principles which should go into the Constitution, but there are some provisions of the article which should have no place in the organization of a court of last resort. I refer to that part of the article contained in section 9. It is there stated that after the last day of December, 1895, the jurisdiction of the Court of Appeals shall be limited to the review of questions of law. That is correct. If the article had stopped there no objection could have been made, but it goes on to say: no unanimous decision of the Appellate Division of the Supreme Court holding that there is evidence supporting or tending to sustain a finding of fact or a ver-

dict not directed by the court, shall be reviewed by the Court of Appeals.

Now, Mr. President, it is well settled that whether there is evidence sufficient to sustain a verdict or a finding of facts raises a question of law. There is no rule better settled than this. This article, therefore, while professing to give the Court of Appeals jurisdiction to review questions of law, expressly directs that it shall not have jurisdiction to review the question of law whether a finding is supported by any evidence. Nearly one-third of the reversals in the Court of Appeals have been on the ground that there was no evidence sufficient to sustain the verdict or finding of fact. Suppose a judgment rendered without any legal evidence, and its affirmance by the court below, the defendant would be remediless, and, as I have already said, nearly one-third of the reversals in the Court of Appeals have been in cases of that character. The denial of the right of appeal to the Court of Appeals in such cases is a denial of justice, which leaves the court below clothed with despotic power. It is no sufficient answer to say that the court below may be trusted to do justice. Experience has shown that the General Term in the past could not be trusted, and that its judgments have been reversed because it had decided erroneously in a very large number of cases where its judgments would, under this article, be final. Mr. President, this infirmity in this article will not be approved by the bar or by the people of the State.

The President — Mr. Smith's time is up. How does he vote?

Mr. Smith — I vote no.

Mr. Cornwell — Mr. President, I desire to explain my vote. When the matter was under discussion I opposed an increase of judges, so far as the districts are concerned outside the large centers and also on the ground that it required the State at large to pay the salaries of a large number of judges in the cities, who are really judges of local courts and for local purposes, but who are promoted in name to be judges of the Supreme Court. I see no benefit to be obtained by this measure, but the adoption of it will add $200,000 to the tax list of the State. For these reasons and many others that might be stated, I vote no.

Mr. Crosby — Mr. President, some features of this proposition are not satisfactory to me, and I assume that each one of the gentlemen composing this Convention finds some objection to it. I believe, however, that my duty as a member of the majority of this Convention is to be controlled by the better judgment of that majority. I am satisfied that the measure has received the most

careful consideration that could be given to it, and that in the main it is an improvement upon our present system. In republican government majorities should rule, and at this late day a measure of so much importance, which has received such careful consideration, is entitled to the vote of every member of the majority which is charged with the responsibility of the work of this Convention. I vote aye.

Mr. Dickey — Mr. President, I desire to explain my vote. Owing to the fact that I offered an amendment to the article providing for the second division, the impression has gone abroad that I was trying to deal a deathblow to the article. Some people who are opposed to the second division have encouraged this belief and misrepresented me. I deem it but just to myself to say that I had abandoned all notion of proposing such an amendment, until the chairman of the Judiciary Committee (Mr. Root) one day this week came to my seat and said that he had been reading the debate on the subject of the second division in the Committee of the Whole, and, on reflection, he was inclined to believe that such a measure of relief might be necessary and suggested that I again propose it and he would support it. I proposed the amendment, including in it an additional amendment suggested by him, submitted it to him and he approved of it. So, instead of acting in hostility to the Judiciary Committee, I supposed I was doing something in accord with them to improve instead of injure this article. I had no personal interest in the matter. It was no pet project of mine. I was trying to do something for the benefit and relief of the people who might be unfortunate enough to have lawsuits. Many features of the judiciary article I do not like. The provision taking five of the judges in each district for General Term work, and taking them entirely away from Circuit and Special Term work, will seriously interfere with the working force of judges in our department, and will greatly inconvenience our lawyers and people. Three judges would answer instead of five for the Appellate Division. I am thoroughly satisfied that inside of a year the Court of Appeals calendar will be badly clogged without any measure of relief, but the Judicary Committee are so jealous of any change, and object to the crossing of a *t* or the dotting of an *i*, that I am willing the experiment of the new judiciary article shall be tried, and with the hope, but without the expectation, that it may work as well as its sanguine advocates think it will, and in deference to the wishes of my associates, I, reluctantly and with many misgivings, vote aye.

Mr. Emmet — Mr. President, I desire to explain my vote. When this article was first presented to the Convention I was much

attracted by some of its proposed reforms, and still feel favorably disposed to at least one, the creation of a stable, reliable General Term. The change from nine to seven judges in the Court of Appeals, however, and the elimination of the second division as a constitutional possibility, destroy, in my opinion, the hopes of any adequate reform in the highest branch of our judicial machinery, and render the remainder of the article not useless merely, but dangerous. I should vote against this article upon this ground, if on no other. But, sir, as a resident of the Second Judicial Department, I feel that in addition to these broader grounds, I am bound to enter a protest against the reduction in the number of circuit judges in our district. Ample opportunity was given by Mr. Hirschberg's and Mr. Jenks's amendments, for remedying this defect. The chairman of the Judiciary Committee has refused to permit any change, however. Now, sir, to emphasize the unheeded demands of our districts, and to place ourselves in a position where we can consistently renew these demands before the Legislature, I vote no.

Mr. I. S. Johnson — Mr. President, I desire to explain my vote. Like many others in this Convention, I feel that there are some provisions of this article that I cannot fully approve of, but I am satisfied that the judgment of many is oft-times better than the judgment of the few. I would prefer that our system should have followed more in the line of the old system than it does. I would have preferred that the judges of the courts in the city of New York and in the city of Buffalo should have remained as they are, and that our General Terms should have been General Terms that we could reach more easily than I fear we shall be able to reach the General Terms under this provision. But, sir, considering the fact that this committee has taken so much time, and believing that they are honest, and believing that they are intelligent, and that they may have better judgment than myself upon these minor questions, I shall vote aye.

Mr. C. B. McLaughlin — Mr. President, I desire to explain my vote. When this bill was under consideration in Committee of the Whole, I stated that I was in favor of it in the form in which it was reported by the Judiciary Committee. I approved of the bill as it came originally from the Judiciary Committee, because I believed that it was an improvement upon the present judiciary article. While under consideration in Committee of the Whole the majority of the committee saw fit to strike from the article as proposed by the Judiciary Committee the two additional judges of the Court of Appeals. I then stated that I thought it was a mistake

and I have not since changed my mind in that respect. If there was any demand on the part of the people of the State, and especially of the bar, it was that some additional force should be added to the Court of Appeals, so that business should be facilitated in that court. I am willing, however, to let my judgment be controlled by the Judiciary Committee and the majority of this Convention on this subject, though I do so very reluctantly. The President of this Convention, together with the other prominent members of the bar of this State, members of this Convention, believe that under this present article the Court of Appeals can do the work of that court with dispatch. Whether or not it can, time will tell. I do not believe it wise when the Court of Appeals this very year had run one hundred and eighty-four causes behind, that no additional force should be added to that court. I do not believe under this article it could in the future keep up with its work. But, as I said a moment ago, I am willing to take the judgment of men that ought to know, and, therefore, I vote aye.

Mr. McMillan — Mr. President, this article has received the approval of more than eighty-eight votes necessary to pass it. I shall vote in favor of the article, but largely for the purpose of moving a reconsideration to-morrow upon the grounds which I intended to state as my excuse for voting aye. I have some right to criticise this article because I helped to prepare it. I believed thoroughly in the article as it came from the hands of the Judiciary Committee, and I wish to state one or two facts very briefly for the consideration of the delegates upon this floor. For several years the people of this State have protested against the congested condition of the Court of Appeals. They demanded some relief and as a result of that demand we had a commission, and that commission provided that the Court of Appeals should be continued as it now is. We have heard nothing of that report from the day that it was made and it has been almost impossible to find any copy of it. Now, we have come into this Convention, and we have been asked from all portions of the State to give some relief. We have given relief in the trial courts where there was no demand for it. We have given relief in the General Term where there was no demand for it. The only court where there was any congestion we have left as it was. Now, I ask in all fairness, have we relieved the Court of Appeals from any of the work which it has undertaken to do and failed to do in behalf of the people of this State? We have simply taken away from the Court of Appeals appeals from orders which are not final in their character and in every other particular we have left the court as it was, except that

we have increased its work by taking away the limit of five hundred dollars if the litigants desire to go to the Court of Appeals. I say that as far as I am concerned I am ashamed of that condition of affairs, and for one I do not wish to stand here sponsor for it, because I think it will be disapproved of by the litigants of this State, and I vote for it simply to be in position to move a reconsideration to-morrow after the delegates have considered it calmly and deliberately. I have been in favor of the two additional judges as the committee reported and what I am asking for now is nothing different. It is no new proposition. It is what was in the original article and what was queried by one or two gentlemen in Committee of the Whole, before we had opportunity to go through the whole article. (Applause.)

Mr. Moore — Mr. President, I wish to explain my vote. This article does not commend itself to my best judgment, either for the good of the people or to the credit of this Convention in all its features. I am opposed to seven judges only being provided for the Court of Appeals. I believed at first and I believe now that the Court of Appeals should have been strengthened by at least the addition of two members. Secondly, I am opposed to the long terms. I wanted the terms made ten years and that was sufficient. And, lastly, I wanted greater powers conferred upon the County Courts. Those three things I desired. Every one of those three things were denied me. However, I do not feel that I can get out of line and attempt to undo all the work contained in this judiciary article. I shall, therefore, vote aye.

Mr. W. Sullivan — Mr. President, while this article is not satisfactory to me in all its parts, yet, on the whole, I believe it is an improvement upon the present article, and, therefore, I vote aye.

The President — This amendment having received a majority of the votes of all the members, is duly passed, by a vote of 111 ayes and 33 noes.

Mr. McClure — Mr. President, I would like to have it noted that I vote in the affirmative.

The President — Your name was called, Mr. McClure.

Mr. McClure — I did not hear it called, and I was otherwise engaged.

The President — One hundred and twelve ayes and thirty-three noes.

The vote in detail on the judiciary article is as follows:

Ayes — Messrs. Abbott, Acker, Ackerly, Arnold, Baker, Banks, Barhite, Barrow, Becker, Bowers, Brown, E. A., Brown, E. R., Bush, Cady, Carter, Church, Clark, G. W., Clark, H. A., Coleman, Cookinham, Countryman, Crosby, Davies, Davis, Deady, Dean, Deterling, Dickey, Doty, Durfee, Durnin, Faber, Floyd, Foote, Francis, Frank, Andrew, Frank, Augustus, Fraser, Fuller, C. A., Fuller, O. A., Galinger, Gibney, Gilbert, Goeller, Goodelle, Hamlin, Hawley, Hecker, Hedges, Herzberg, Hill, Holls, Hottenroth, Jenks, Johnson, I. Sam, Johnson, J., Kerwin, Kimmey, Kinkel, Kurth, Lauterbach, Lester, Lewis, C. H., Lincoln, Lyon, Manley, Marshall, Maybee, McClure, McDonough, McIntyre, McLaughlin, C. B., McMillan, Mereness, Moore, Morton, Mulqueen, Nichols, Nicoll, Nostrand, O'Brien, Ohmeis, Parker, Parkhurst, Pashley, Phipps, Platzek, Pool, Porter, Pratt, Putnam, Redman, Roche, Rogers, Root, Schumaker, Spencer, Springweiler, Steele, A. B., Storm, Sullivan, T. A., Sullivan, W., Tibbetts, Titus, Tucker, Turner, Vedder, Vogt, Wellington, Whitmyer, Woodward, President — 112.

Noes — Messrs. Bigelow, Campbell, Cassidy, Chipp, Jr., Cochran, Cornwell, Danforth, Davenport, Deyo, Emmet, Farrell, Forbes, Gilleran, Green, A. H., Green, J. I., Griswold, Hirschberg, Holcomb, Hotchkiss, Mantanye, Marks, McCurdy, McLaughlin, J. W., Parmenter, Peck, Rowley, Sandford, Smith, Speer, Steele, W. H., Towns, Veeder, Wiggins — 33.

The President — Mr. A. H. Green, of New York, now wishes to call up the resolution offered by Mr. Augustus Frank the other day, in reference to adjournment, and take it from the table. I suppose the consent of the Convention must be given to its being taken up now and thereby interrupting the order of third reading.

Mr. Cookinham — I would suggest to Mr. Green that he should defer that until this evening, when, perhaps, other matters will have been disposed of here.

Mr. A. H. Green — Certainly.

The President — The next business in order is the apportionment article.

Mr. Hamlin — Mr. President, I would like to present a report from the Committee on Printing.

The President — It will be received. Is the Convention ready to hear it read now. The Secretary will read it.

The Secretary read the report as follows:

"IN CONVENTION, *Sept.* 13, 1894.

"*To the Convention:*

"The Committee on Printing, to whom was referred the following resolution by Mr. Blake (No. 208):

"Resolved, That the Committee on Printing investigate and report to this Convention not later than Thursday noon of this week the cause of the delay in furnishing to the Convention the printed record of the debates, pursuant to a resolution heretofore adopted by the Convention,

"Do respectfully report that, on investigation, it appears that the official stenographer has performed his duties with all reasonable promptness, and that the Compiler has duly caused a copy of the proceedings to be delivered to the printer.

"That The Argus Company, the printer to the Convention, has failed to fulfill the conditions prescribed by the Convention in reference to its printing, which appears on page 226 of the Journal; that the alleged causes of such failure, as claimed by The Argus Company, are:

"First. That the copy of the proceedings comes irregularly to the office, badly mutilated and in large quantities, owing to the delay incident to the correction of the same by different members of the Convention.

"Second. That delegates call at the printing office to correct copy, and thereby further delay the execution of the work.

"Your committee are of the opinion that, while there is doubtless considerable force in the excuse offered by The Argus Company, it does not fully exonerate that company for its failure to perform the conditions above referred to, established by the Convention for its printing.

"All of which is respectfully submitted,

"F. H. HAMLIN,

"*Chairman.*"

The President — The report having been received, does the Convention desire to take any action upon it?

Mr. Kerwin — That communication states that for the want of copy The Argus Company cannot get out the work because delegates have been delaying them by revising their speeches. Now, I want to say, Mr. President, that Record No. 80 is on file, of Saturday afternoon, August twenty-fifth, and that I wanted to get a copy of it, and I find that there is not a copy of that record to be

obtained in the document room owing to the fact that the press work on it has not been done. Now, sir, I can state further, from my own personal knowledge, that employes of that printing concern have got all the copy piled up there in the composing room, and the people who have the contract to do this work refuse point-blank to put on men enough in their office to complete the work, which is in direct violation of the agreement they entered into with this Convention.

The President — The Secretary will proceed to read the first title of general order 74, on order of third reading.

Mr. Osborn — One moment, Mr. President. I would like to make an inquiry and to state a point of order: that under the orders, I think of Monday last, the Niagara Falls amendment should come in at this point. I believe the order was that after we got through with the propositions which were on the order of third reading we should take up the Niagara Falls matter. Now, this order No. 74, according to the heading, was ordered to third reading on September twelfth — yesterday.

The President — The Chair will look at the resolution referred to.

Mr. Kerwin — I would like to ask the President if the mere receipt of the report just read by Mr. Hamlin is all that is to be done in the matter?

The President — The Chair asked what action the Convention wished to take upon it, and nothing was suggested.

Mr. Kerwin — I move that the Committee on Printing be instructed to see the representatives of this printing concern and order the work done immediately, and if it is not done according to the contract that they have with this Convention, that we quit having any more work done there.

The President — The gentleman will write out his resolution and send it to the Clerk's desk.

Mr. Moore — Mr. President, did the committee make any recommendation in its report as to what should be done?

The President — I understood not.

Mr. J. I. Green — Mr. President, I was not here this morning when the Committee on Contingent Expenses made its report. I desire to have it stated on the record that I dissent from the report so far as it refers to the expenses of the Buffalo contestants.

The President — The Chair will state, in regard to the Niagara matter, that the record shows that on September tenth, No. 63

was ordered printed with the amendment, and made the special order immediately after the conclusion of third reading of the proposed constitutional amendment now on order of third reading. The Niagara matter is, therefore, now in order.

Mr. Osborn — Mr. President, I find upon my desk No. 74, on third reading No. 18. That contains a number of provisions which have not been hitherto seen in print by this Convention. A number of the delegates have not had an opportunity of studying those provisions. I, therefore, move that the rule for the third reading of the general orders placed upon the calendar be suspended, and that this third reading be set aside and be made a special order for to-morrow morning at ten o'clock.

The President — That has now for the time being been laid aside. You had better renew your motion when we come into Convention again. Mr. Cady will take the chair.

The Convention then resolved itself into Committee of the Whole on general order No. 63, and Mr. Cady took the chair.

The Chairman — The Convention is now in Committee of the Whole on general order No. 63. (O., I. No. 390 — P. No. 442-462.)

Mr. Barhite — Mr. Chairman, several amendments and amendments to amendments and substitutes have been offered in regard to this Niagara matter. I do not, at the present time, care to discuss the matter at length, as I have already expressed my views repeatedly on the floor of this Convention. I will say, however, that there have been one or two proposed amendments offered which, I think, substantially meet the difficulty aimed at. There is one offered by Mr. Bowers, which is substantially the amendment offered by Mr. Root. I think those two amendments cover the ground desired by the committee, and, so far as I am personally concerned, I should be pleased to see them adopted.

The Chairman — The question is on the amendment proposed by Mr. Bowers, and the Secretary will read it.

The Secretary read the same, 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, or for the use of the Erie canal, or of the ship canal at Buffalo, or for canal slips leading to docks and wharves.

"All corporations, companies and persons now vested with the right to divert such waters, or who, for upwards of twenty years, by themselves and grantors, have been engaged in the diversion of

said waters, 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 in regard to the diversion and use of such waters as shall be just."

Mr. McClure — Mr. Chairman, there is an amendment offered by me, having reference to Mr. Bowers's amendment.

The Chairman — I understand that, and the Secretary will read Mr. McClure's amendment for the information of the delegates.

The Secretary read Mr. McClure's amendment as follows:

"Amend Mr. Bowers's amendment by striking out of the second paragraph all after the words 'and persons,' and before the words 'shall be under the direction,' and insert in lieu thereof the words, 'if any, vested with the right to divert such water,' so that the sentence shall read:

"All corporations, companies and persons, if any, vested with the right to divert such water, 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 in regard to the diversion and use of such waters as shall be just.

"This section shall not affirm, enlarge or impair any existing claim of any person, company or corporation to divert such waters."

The Secretary then read the amendment proposed by Mr. Roche to the amendment offered by Mr. Bowers, providing as follows:

"After the words 'use of such waters,' add the words 'and the compensation to be paid to the State therefor.'"

Also a substitute offered by Mr. A. H. Green, as follows:

"The Legislature shall not, except for adequate compensation, grant, sell, lease or otherwise dispose of any right, title or interest in, or license or permission to use any of the waters of the Niagara river.

"Nor shall the Legislature grant, sell, lease or otherwise dispose of the right, license or permission to divert any of the waters of said river, if the volume of water passing over Niagara Falls is thereby diminished.

"The said river, and its waters, so far as the same are within the jurisdiction of the State, shall be and remain its property, under its control and management forever.

"All grants, sales, leases or other dispositions of any of said waters may be revoked by the State."

Also, a substitute offered by Mr. Becker, as follows:

"The right to divert the waters of Niagara river, above Niagara Falls, pursuant to any grant or license granted by the Legislature, and the right of any corporation, other than a municipal corporation, and of any person actually engaged, on the first day of September, in the year one thousand eight hundred and ninety-four, in the diversion of the waters of said river above said falls, for business or manufacturing purposes, shall be subject to regulation by the Commissioners of the Land Office, in such manner that the diversion of said waters shall not impair the beauty and grandeur of the American fall of said river, or of the State reservation at Niagara Falls. Said Commissioners of the Land Office may, from time to time, after notice to the Commissioners of the State Reservation aforesaid, and to all other parties interested, make such orders and give such directions in regard to said diversion and use of said waters as shall be just and proper. This section shall not be deemed to recognize any right, privilege or license under which any person or corporation may claim the right to divert the waters of said river, or to affect the power of the Legislature to regulate the diversion of said waters for the purpose of the Erie canal or the ship canal at Buffalo, or for ship canals leading to docks and wharves along the shores of said river, or for sanitary or domestic purposes."

Also, a substitute offered by Mr. I. S. Johnson, as follows:

"Sec. —. 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."

Also, a substitute offered by Mr. Forbes, as follows:

"Sec. —. The Legislature shall never sell or dispose of the waters belonging to the State. The right to use said water 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. Becker — Mr. Chairman, I simply call once more the attention of the Convention to the indisputable fact that every amendment that has been offered here, except the one I have offered, tends to create a monopoly in the use and diversion of the waters of the Niagara river. In no one of them is anything done to prevent

such a result. You find several corporations having licenses from the State, and other corporations exercising their riparian rights and taking water from the river above the falls, and turning it into the river again below the falls. Now, you say that that should be regulated by the Commissioners of the Land Office, and, as to all these other companies, you forbid any diversion of the waters. If this Convention wants to do that it is privileged to do so, but it seems to me that it is one of the most dangerous things to the prosperity of the State of New York. I protest against amendments of the character of those that have been submitted, which do not recognize the rights of the city of Buffalo to divert the waters for the purposes of its ship canal. All that water is returned again into the river above the falls. True, it is a diversion of the waters, but it is not such a diversion of the waters as will take away from the volume of the water that goes over the falls. Now, I have provided in my amendment for doing just what this Convention and this committee started out to do. The attempt was to preserve the grandeur and the natural scenery around the falls and on the State reservation. Some may object to the use of the term "divert" in the constitutional amendment. I think it is perhaps objectionable, but the question is, what term will you substitute for it? You cannot say that the water shall not be taken out of the river. You cannot use the word "divert" in any way, for the purpose of an absolute restriction, except in such a manner as to prevent any diversion. Now, we have been all over this matter before, and there is no use in reiterating the argument. Here is the reservation; here is the American Falls. You want to protect it. The State has spent two millions there. Private individuals have spent nearly five millions in developing the property under licenses heretofore granted. What you are trying to do now is to lock the stable door after the horse has been stolen. If there is any mischief, it has already been done, and now, in attempting to remedy that mischief, if you pass any of these amendments except mine, you are striking a blow at the commercial prosperity of the whole State. I protest against any form of amendment that has been suggested, except the one which simply limits any diversion of the waters to such an extent that it will not injure or impair the beauty of the falls or of the reservation property. That is what we are here to protect. I sincerely hope, first, that no amendment at all will be passed, and that this matter will be left where it belongs for adjustment, between the general government and the Dominion of Canada; and secondly, if you pass any amendment, that you will pass one saying just what you mean, and that is simply, that

any interference with the beauty of the falls and the utility of the State reservation shall not be permitted.

Mr. Hedges — Mr. Chairman, I move that the privileges of the floor be extended to the Hon. Edward F. Jones, of Binghamton.

The Chairman — That motion is not in order in Committee of the Whole. I have no doubt the privilege would be cheerfully extended by the Convention.

Mr. Countryman — Mr. Chairman, I am in accord with the remarks that have just been made on this subject by the gentleman from Erie (Mr. Becker); but whether the substitute which he has offered will reach the desired result, I am not able to say, as I have not had time to examine it. I have heard so much in the last week or two of attempts to recognize the supposed rights of corporations and individuals to divert the waters of the Niagara river for one purpose and another, that I have had the curiosity to look into the Session Laws a little, to see what has been done by the Legislature heretofore with a view of organizing corporations for any such purpose, and, to my amazement and surprise, I find that corporations have already been created which have the absolute power, if they are legal creations, to divert, if it is possible to do so, all the waters of Niagara river for business or private purposes of their own. Now, what is the effect of a prohibition at this time, if those be valid corporations, upon any future grants? The inevitable result must be the creation of a monopoly. The Legislature would have a right to give other corporations the same powers which they have given to those already existing. Therefore, it would have a tendency to enable them to compete with existing corporations in the way of furnishing power in one way and another originally created by the diversion of the waters from this river. If any prohibition is now passed upon the Legislature it will simply give these existing corporations forevermore unlimited power to divert the waters of that river to manufacturing, municipal and every other conceivable purpose. I submit that we should examine this question very carefully before we adopt any provision whatever, and it is very doubtful whether we ought to pass any prohibition at this time or put any provision in the Constitution limiting the power of the Legislature in this regard.

Mr. Forbes — Mr. Chairman, I desire to speak to my proposed amendment, which, it seems to me, obviates the difficulty which has been shown to us by the two speakers who have preceded me. The waters of the Niagara river are the property of the State. They should be treated as property. If it is more desirable to the people

of the State that we should keep these waters for the delectation of the people of the world who come to see the grand spectacle presented at Niagara Falls, then it is proper to preserve them intact as they are; but if we find that it is desirable to lease them for the purpose of power so that our manufacturing interests may increase, then we should do that. Now, the only purpose of my amendment is, that these waters shall remain the property of the State, and that they shall be leased or disposed of from time to time for business purposes. I tried to have this matter brought up in connection with the forest preserves of the State. I think it is proper that we should have in the State Constitution a provision that will protect the people from the Legislature and from the corporations who come up year after year asking for grants.

The Chairman — The Chair will state before recognizing any other gentleman that it finds on investigation that the limit of time fixed by the Committee on Rules for the discussion of this matter has expired.

Mr. A. H. Green — I move that the time be extended.

The Chairman — I think that motion cannot be entertained now.

Mr. Hottenroth — Mr. Chairman, I ask that the Secretary read the amendment proposed by me when this matter was up the last time. It was ordered to be printed, but I find that it has not been printed, and that is why I ask to have it read now.

The Chairman — Is not the order now printed as amended by your amendment?

Mr. Hottenroth — No, sir.

The Chairman — Look at printed number 462 and see if it is not so printed.

Mr. Barhite — Mr. Chairman, I understand that the time fixed by the Committee on Rules was one hour. Has that time passed since we went into Committee of the Whole?

The Chairman — The time had already expired, as a matter of fact, before we went into Committee of the Whole this morning.

Mr. Barhite — I would like to say that this matter was referred to the Committee on Rules, and their report, which was brought in last Monday, was to the effect that there should be one hour further time allotted for the discussion.

Mr. Root — Mr. Chairman, this matter is not properly in Committee of the Whole at all. The report of the Committee on Rules, which was adopted by the Convention, was that one hour should be

allowed to the discussion, the measure being in the Convention. It is not in Committee of the Whole at all.

Mr. Bowers — Mr. Chairman, I raise the point of order that the time fixed for the further debate was one hour and that should have been in the Convention, but by unanimous consent we have gone into Committee of the Whole. Now, there is no way of getting out of this unless some one moves that the Committee of the Whole do now rise and report progress.

The Chairman — The Chair holds that the point of order is not well taken. The Chair will consider itself bound by the order provided by the Committee on Rules in respect to this particular matter. One hour was fixed and that has expired.

Mr. C. B. McLaughlin — Mr. Chairman, I move that the Committee of the Whole do now rise, report progress and ask leave to sit again.

The Chairman put the question on this motion. A count was called for, and the motion prevailed, ayes, 58; noes, 38, and the President resumed the chair.

Mr. Cady — Mr. President, the Committee of the Whole have had under consideration the proposed constitutional amendment (printed No. 462), 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 having gone through therewith, have instructed their chairman to report that fact to the Convention and ask leave to sit again.

The President — Gentlemen hear the report of the chairman of the Committee of the Whole. The question will be upon agreeing to the report of the Committee of the Whole.

Mr. Bowers — Mr. President, I make the point of order that there is a motion pending on the previous report of the Committee of the Whole, to disagree with it, on which there have been several amendments made, and on that we were ordered to have one hour for debate, and I submit that that hour should now be taken up.

The President — The Chair decides that the point of order is not well taken.

The President put the question on agreeing to the report of the Committee of the Whole. A count was called for and the report was disagreed to — ayes, 21; noes, 43.

The President — Now the question is, what will you do with it?

Mr. Marshall — Mr. President, I move that we disagree with the report of the Committee of the Whole, and that it be referred back

to the Committee on Legislative Powers, with directions to report the following amendment:

"The Legislature shall not, hereafter, create any right or license to divert from their natural channel any of the waters of the Niagara river above Niagara Falls, except for sanitary, domestic or fire purposes or for the use of the Erie canal or the ship canal at Buffalo, or for canal slips leading to docks and wharves. All persons and corporations vested with the right to divert such waters shall be under the direction and control of, and all such diversion shall be regulated by, the Commissioners of the Land Office, after due notice to the Commissioners of the State Reservation at Niagara, and to the parties interested. This section shall not affirm, impair, or enlarge any existing claim of any persons or corporations to divert such waters."

The effect of this amendment is substantially this ——

Mr. Acker — Mr. President, I rise to the point of order that the Convention has refused leave for the committee to sit again on this proposition, and this amendment cannot, therefore, be offered or received.

The President — I think that rule has been changed.

Mr. Acker — It has been changed so as to allow that very thing. That ends it now.

Mr. C. B. McLaughlin — Mr. President, I move that the amendment made by Mr. Marshall lie on the table indefinitely.

Mr. Bowers — A point of order, Mr. President. The Committee on Rules fixed an hour for debate. If the effort is made in this way to deprive us of that right, it is simply another attempt of the majority in this Convention to shut off debate.

The President — The question is on Mr. McLaughlin's motion to lay Mr. Marshall's amendment on the table. There is no debate on that.

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

Mr. Acker — Mr. President, I would like a ruling on my proposition.

The President — Mr. Acker's point of order is well taken. Rule 29 provided originally that "should the Committee of the Whole not have completed the business before it rose, the chairman will report progress and ask leave to sit again," which may be refused, and the effect is then to bring the subject up immediately before the Convention. That was a radical alteration of the rule that has always, as the Chair understands, prevailed in parliament-

ary bodies, by which the refusal of the request of the Committee of the Whole to sit again kills the bill or amendment under consideration.

Mr. Acker — I now move that the Convention proceed with the regular order of reading propositions on their third reading.

Mr. A. H. Green — I move to amend that motion by taking up the matter of the waters of Niagara in the Convention.

Mr. Dickey — Mr. President, I move to reconsider the vote by which the Convention disagreed with the report of the Committee of the Whole and refused it leave to sit again, and on that I demand the ayes and noes.

Mr. Acker — Mr. President, I think I made a motion, and Mr. Dickey's motion is not germane to it. He cannot amend it.

The President — That is correct. I will put Mr. Acker's motion first. Mr. Acker moves that we take up the order of third reading.

The President put the motion, and it was determined in the negative. A count was called for and the motion was lost — ayes, 55; noes, 59.

The President — The question is now on Mr. Dickey's motion to reconsider the vote by which the Convention disagreed to the report of the Committee of the Whole and refused it leave to sit again.

Mr. McMillan — Mr. President, I move that that motion lie on the table.

Mr. Bowers — No, no; that will simply kill all discussion.

The President put the question on the motion of Mr. McMillan to lay Mr. Dickey's motion to reconsider on the table, and it was determined in the negative.

The President — The question is now on the motion of Mr. Dickey to reconsider. All those who are in favor of agreeing to the report of the Committee of the Whole, giving them leave to sit again, will rise and stand until they are counted.

Mr. Bowers — Mr. President, that is not the question.

The President — The Convention has voted to reconsider.

Mr. Bowers — No, sir; the Convention has not.

The President — The Chair is in error. The vote that was taken was not to reconsider, but was against laying the motion to reconsider on the table. Now, gentlemen will understand that the present question is: shall the Convention reconsider its vote by

which the report of the Committee of the Whole on the Niagara matter was disagreed to and leave to sit again refused.

The President put the question on this motion.

Mr. Bowers — I call for a count.

The President — Mr. McDonough and Mr. Countryman will please act as tellers.

Mr. McClure — I believe it is the usual parliamentary rule that there shall be one Republican teller and one Democratic teller, and I raise the point of order that in the person of Judge Countryman the Democratic party will not have a representative.

The President — The point of order is not well taken.

Mr. Countryman — Mr. President, I ask that Mr. Cochran take my place as teller.

The President — Mr. Cochran will please relieve Mr. Countryman.

The vote was then taken on the motion made by Mr. Dickey to reconsider the vote by which the report of the Committee of the Whole on the Niagara matter was disagreed to and leave to sit again refused, and it was determined in the affirmative — yeas, 78; nays, 41.

The President — The motion to reconsider is carried.

Mr. Marshall — Mr. President, I now move that we disagree with the report of the Committee of the Whole and recommit this matter to the Committee on Legislative Powers and Duties, with directions to forthwith report the amendment handed up to the Secretary by me.

Mr. C. B. McLaughlin — Mr. President, I move to lay the motion made by Mr. Marshall on the table.

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

The President put the question on the call for the ayes and noes, and it was sustained.

The President — The call for the ayes and noes is sustained, and the Secretary will proceed to call the roll.

Mr. Moore — Mr. President, I move that we do now take a recess, as it is one o'clock.

The President — The roll-call has been ordered, and I believe the rules require that a recess shall not be taken until the call is completed.

Mr. Moore — It has not been entered upon.

The President — The Secretary was proceeding to call it.

The Secretary then proceeded with the calling of the roll.

Mr. Abbott — Mr. President, I am opposed to the proposition of the gentleman from Onondaga (Mr. Marshall), because it seems to me that it is well calculated to secure to the existing companies an absolute monopoly, and I, therefore, vote in favor of the proposition to lay it on the table.

Mr. Barhite — I am surprised at the position which some of the delegates to this Convention take upon this question. They seem to be very anxious not to put themselves upon record, but try by dilatory motions in every way possible to smother the matter and not let it come to a vote on its merits. This cry with reference to a monopoly is the cry that I have heard day after day and week after week from these very corporations which will be affected by the action of this Convention. When you put a corporation under the control of the State of New York, does that create a monopoly? Every one of the corporations that now have licenses to draw water from the Niagara river will, by this proposed amendment, be placed within the grasp of the people of the State where at any moment they can be shut off from drawing one drop of water. Is that a monopoly? That is simply the cry of the corporations that are there at the present time. All I desire for this matter is to have it come up fairly on its merits, and let us all be put upon the record regarding it. I vote no.

Mr. Becker — More than half a dozen different amendments have been brought into these propositions, and no two of them seem to agree. You find in every one of them an absolute prohibition against the Legislature granting any further franchises. That will make the charters of the companies that are in existence to-day worth millions of dollars, and it prevents the people of Buffalo from having any competition against these corporations. Under the decision in the Broadway Railroad case, and according to the opinion of Attorney-General Rosendale, the grants made to these companies constitute a contract which cannot be interfered with by any such provision as this. All that can interfere with them is active competition, and that is all that we ask for; and I sincerely hope — not with a view of touching the main question, but because it seems to me that this Convention cannot agree on anything — that this motion will prevail, and that this entire discussion will end, and the matter be left where it belongs — to the Legislature of this State and to the Congress of the United States. I vote aye.

Mr. Bigelow — I cordially concur in the remarks of Mr. Becker.

I do not find in any of the amendments anything that I am willing to vote for, and I vote aye on this question.

Mr. Bowers — I want to explain my vote. I think an amendment, in substance the same as that offered by Mr. Marshall — which is substantially the one I offered the other day — ought to pass. We had an hour allotted within which to discuss this question, and an effort was made to take up that hour by this motion to lay on the table, which forced us to call for ayes and noes. I believe that Mr. Marshall should have had an opportunity to express his views, and that there should have been a full discussion within the hour allotted, and then we would have been enabled to determine this matter on its merits. I hope this amendment will fail, not only on the ground that we have not been allowed to discuss it, but also upon the ground that there has been made here an unjust attempt to shut off debate. I vote no.

Mr. E. A. Brown — Mr. President, I desire to explain my vote. It is a very strange thing if we are to go on and adopt measures in this Convention, and not give an opportunity for a full and fair discussion of a measure of this importance, and I desire to be recorded as voting in the negative.

Mr. Countryman — Mr. President, if these corporations now in existence were represented by eminent counsel on this floor, they could not have drawn up a proposition more directly in their interest, in order to prevent any future competition respecting the diversion of the waters of the Niagara river than this one. There is a direct provision in the statute which incorporated these corporations, giving each of them the right to take stock in the other, so that practically they are all one corporation; and it is a tremendous trust created, and attempted to be confirmed by this Convention, in giving them the power forever to control all the water taken from this river. I vote aye.

Mr. Crosby — I desire to explain my vote. If this is a subject so grave, if such large amounts of property are involved, if this question demands that a proposition should come before this Convention, an investigation had, a voluminous report of a committee prepared and printed, and that day after day of this Convention be consumed in discussing this matter, then, sir, it is a question that should be met upon the floor of this Convention and finally disposed of. The people of the State of New York are not skilled in the devious ways of parliamentary law, and they are entitled to a record of votes upon the main question. If it is a scheme to perpetuate the control of a great corporation, which ought not to be recog-

nized and confirmed by this Convention, then we should meet it like men, and not attempt to shirk the responsibility. While I am opposed to the propositions and amendments that have been offered, I am in favor of giving a fair opportunity to discuss this question before a vote shall be taken. I vote no.

Mr. Dickey — Mr. President, I desire to explain my vote. All the members of this Convention may not know that two of our number are members of the Niagara Falls Commission — Mr. Andrew H. Green being the president, and Mr. Bowers a member — and I think if these gentlemen want something done in this matter, we may well follow their lead, because they certainly have no motive more than the rest of us have, to do anything to injure that magnificent piece of nature's handiwork. Therefore, I vote no, in order that some further discussion may be had, so that some affirmative action may be taken looking to the preservation of the State reservation and the American falls.

Mr. Durfee — Mr. President, I have already expressed my views on this subject, when the propositions, in some form or other have been before this Convention. I have seen no reason to change the views which I have expressed; but I fully agree with the learned judge who, in part, represents the county of Albany, that the proposition which we have here now is precisely of the character which he indicated. Therefore, I shall feel compelled to vote to lay this proposition on the table, because it seems to me that it is directly in the interest of the creation of a gigantic monopoly.

The President — Will you allow the Chair to state that in his opinion the motion to lay this proposition on the table lays the original amendment on the table?

Mr. Durfee — I did not understand the practice in that regard to be as stated by the Chair. If it is correct, I will retract what I have just stated, for I do not want the whole proposition laid on the table. I want an opportunity afforded to Mr. Green and to Mr. Bowers, and others, to discuss this question. Therefore, under the ruling of the Chair, I vote no.

Mr. Hawley — Mr. President, I am quite amused with the suggestions which have been so frequent upon the floor this morning, and the plaintive appeals for an opportunity to discuss this question. No question that we have had up has been more extensively discussed than this, and the more we discuss it, the more different forms of propositions we get. What I have had to say upon this question heretofore has been quite disagreeable to my friend from Monroe, who has had this matter in charge, and I had thought that

I would not say anything more of my own, and that on this occasion I would make the speech of somebody else. Now, this is what the Rochester Democrat and Chronicle, published in his own city, says:

"The corporations and associations that are reasonably sure of the privilege of diverting water from the Niagara river still insist that the Constitutional Convention shall shut out all others and leave those on the inside in undisputed control. The Committee on Legislative Powers granted another hearing on the subject on Thursday and accepted the following as the substitute for the amendment which was published a few days ago. This proposed amendment assumes to grant some powers to the Commissioners of the Land Office, but these powers are circumvented in the interest of the rights of persons diverting water so limited that little authority can be exercised. The interests of the State are not protected in an effective way. If the Convention can do nothing better, the matter may well be left to the Legislature, which may be sufficiently sensitive to public opinion to serve the State's best interest."

And the New York World says this:

"About the most impudent request made to the Constitutional Convention by any monopoly, and they have been numerous and cheeky, is that for an amendment forbidding any further diversion of the waters of Niagara river for power purposes. The charter of the present company was obtained by secret and probably corrupt manipulation of the Legislature, and now it wants a monopoly forever. This is icebergian in its coolness."

Mr. President, I vote aye.

Mr. McIntyre — After hearing this discussion, and if this motion is to lay not only the amendment but the whole thing on the table, I think it ought to be done. The Legislature has seen fit to grant certain parties powers to take water from the Niagara river for certain purposes. So far as I am concerned, after a thing is once established, I think every other person that has a right to take it should do so, and if they can turn the waters of the Niagara river into use for the purpose of turning the wheels of industry, and for the benefit of the people, I think it ought to be done. I say, let the good work go on. If the people who live out there in the western part of this State can stand it, I am sure I can. Those parties that have the right now to divert the water and the parties that have succeeded in the securing the right to string electric wires along the banks of the canal, have already got what they want, and we might just as well let the vandalism go on, and we might just as

well stop discussing this matter and let the Legislature deal with it. I vote aye.

Mr. C. B. McLaughlin — Mr. President, I desire to explain my vote. I made this motion for two reasons, because I understand the legal effect of it is to kill this whole measure. There are two reasons why it should be killed. The principal one is because, in my judgment, it is a bad measure, and ought not to go into the fundamental law of the State. What does this proposed substitute do? It provides that the Legislature shall not hereafter grant the right to divert the waters of the Niagara river to any corporation. Then it is followed by the provision that the section shall not affirm, enlarge or impair any existing claim of any person or corporation. Now, if the legal effect of that is not to give a monopoly to the present corporations, I would like to have Mr. Marshall, or any lawyer here, tell me what the legal effect of it is. It simply provides that the Legislature shall not in the future grant any right to any corporation to take waters from that river, but that as to the corporations now in existence, it shall not interfere in any way. The second reason is, that we have already devoted many hours to the consideration of this proposition. There is no demand anywhere existing throughout this State, so far as I know, that we should insert in the fundamental law of the State any such provision. I believe it ought to be killed, and I believe that if we vote aye on this proposition, it will end it. I vote aye.

Mr. Moore — Mr. President, had I not been a member of the Committee on Legislative Powers and Duties, I would allow this to pass with simply voting upon it; but, sir, we devoted a great deal of time to this measure, in hearing people who were in favor of it, and people who were against it, and we went out to Niagara Falls and made a personal examination there, and the subject has been up time and again in this Convention, and I think time enough has been given to it. I vote aye.

Mr. Roche — Mr. President, I desire to explain why I shall vote no upon this motion, although I am opposed to Mr. Marshall's proposition. Mr. Marshall's amendment, in effect, creates a monopoly in the use of the waters of the Niagara river, in favor of the persons and corporations now diverting that water; but the motion to lay this proposition on the table, as I understand it, carries the whole matter with it, so that we cannot amend this proposition, nor pass anything relative to securing the reservation or the body of the falls. I believe the best proposition is general order No. 63, last No. 459, which recognizes the right of the Legislature

to make future grants, but which surrounds those grants with such safeguards that there was no likelihood of any injury to the reservation or to the falls, and which also provided that compensation should be exacted from existing corporations, and from any future corporation for the use of the waters. If this motion to lay on the table is defeated, we can perhaps get that before the Convention in Committee of the Whole, or some similar proposition; and it is because I am in favor of inserting in the Constitution something upon this subject and of throwing around the subject safeguards in a proper manner, that I vote no.

Mr. Schumaker — Mr. President, this committee asked for three hours on this subject. It took nine. It seemed to me that the more they debated it the longer it would be before this Convention. Now they want more time. For one, sir, I want to go home. The hour has come when this Convention ought to end, but if this debate continues we won't get through until snow flies. The English government is on the other side of the falls. They can control the waters on their side. Now, I think a treaty would be the proper thing and I would suggest to my energetic friend, Mr. A. H. Green, to enter into communication with the kingdom of Great Britain, or the Dominion of Canada, in relation to a treaty to fix upon the use of the waters on both sides of the river, so that speculators and manufacturers and other people cannot render those great falls dry. I have not a great deal of confidence in the amendment introduced Mr. Marshall. It looks to me like a special plea for the men that have already been granted privileges at the falls, and it will keep out those who want to get in. I vote aye.

Mr. Spencer — Mr. President, when this matter was before the Committee of the Whole I expressed the opinion that it was a matter that should be left to the Commissioners of the Land Office and that this Convention should not deal with it. Since then I have examined all the amendments proposed, and I am satisfied, after the length of time that has been spent here in discussion, that this Convention is not prepared to deal with this subject in a proper way. I am satisfied that the amendment now proposed is vicious in its character, and I am not sure but that every one of the proposed amendments that have been printed is of the same character. I am of the opinion that it is a matter that may be safely left with the Legislature to deal with. In any event, I see nothing from the report of the committee or from any of these proposed amendments that will remedy the evil if evil there be. In common with most

of the delegates, I should be sorry to see anything done that would detract from the beauty and grandeur of Niagara Falls, but that is a matter that I think the people of this State can take care of. I am in favor of voting to lay the entire matter on the table, and bid farewell to it. I vote aye.

Mr. Titus — Mr. President, because I am in favor of having a full and free discussion of this matter, and letting it come up regularly before the Convention, I vote no.

The President — In explanation of my vote I will state that I have great confidence in Niagara Falls, and believe they will be able to take care of themselves without any aid from this Convention. I, therefore, vote aye.

The motion to lay on the table was lost by the following vote:

Ayes — Messrs. Abbott, Acker, Ackerly, Banks, Barrow, Becker, Bigelow, Cady, Cassidy, Countryman, Davis, Dean, Doty, Forbes, Hawley, Hill, Holcomb, McCurdy, McIntyre, McKinstry, McLaughlin, C. B., McMillan, Moore, Nichols, O'Brien, Parkhurst, Pool, Putnam, Root, Schumaker, Spencer, Sullivan, T. A., Tekulsky, President — 34.

Noes — Messrs. Arnold, Baker, Barhite, Bowers, Brown, E. A., Church, Clark, H. A., Cochran, Coleman, Cookinham, Crosby, Danforth, Deady, Deterling, Dickey, Durfee, Emmet, Faber, Floyd, Foote, Francis, Frank, Andrew, Frank, Augustus, Fuller, C. A., Fuller, O. A., Galinger, Gibney, Gilleran, Goeller, Goodelle, Green, A. H., Hecker, Hedges, Herzberg, Hotchkiss, Hottenroth, Johnson, I. Sam, Johnson, J., Kerwin, Kimmey, Kinkel, Lauterbach, Lester, Lewis, C. H., Lincoln, Lyon, Manley, Mantanye, Marks, Marshall, McClure, McLaughlin, J. W., Mereness, Morton, Nicoll, Nostrand, Parmenter, Pashley, Peck, Platzek, Porter, Roche, Rogers, Sandford, Springweiler, Steele, W. H., Sullivan, W., Titus, Towns, Tucker, Turner, Vedder, Wellington, Whitmyer, Williams, Woodward — 76.

The President — Before we take recess, the Chair will state that a communication has been received from Samuel Gompers claiming and contesting the seat not yet occupied by Joseph Koch, of New York, chiefly upon the ground that Mr. Koch is an officer under the municipal government of New York city, and is, therefore, disqualified from sitting in this Convention. The communication will be referred to the Committee on Privileges and Elections. The Convention will now take a recess until three o'clock.

The Convention here adjourned until 3 P. M.

AFTERNOON SESSION.

Thursday Afternoon, September 13, 1894.

The Constitutional Convention of the State of New York met pursuant to recess, in the Capitol, at Albany, N. Y., September 13, 1894, at 3 P. M.

President Choate called the Convention to order.

The President — The pending question this morning, at the time the Convention took recess, was upon the motion of Mr. Marshall, to recommit the proposed constitutional amendment (printed No. 462), relating to the diversion of the waters of Niagara river, with instructions to amend.

Mr. Marshall — Mr. President, I desire very briefly to state my position in regard to this matter, and I will first make a short statement concerning the history of this measure. After this matter came up in Committee of the Whole there were several amendments introduced, one by Mr. Barhite, another by Mr. Root, and one by myself. The committee subsequently reported a new measure, which, to a certain extent, consolidated the substitute of Mr. Root with the one I introduced. That was subsequently amended by Mr. Bowers, as indicated in the proposed amendment, introductory No. 390, on page 3 thereof, as it appears upon the files of the Convention calendar. Mr. Bowers is a gentleman in whom we all have the greatest confidence, whose integrity is unquestioned, who has the respect of every member of the Convention. He is a member of the Niagara Falls Commission, and officially interested in the preservation of the pride of the world. I thought that a measure coming from such a source could be inspired by no other motive than that of protecting the interests of the State. It seemed to me, however, that, as framed by Mr. Bowers, the measure contains some unnecessary language, which might properly be stricken out, and that it also, through inadvertence, embodied words which might appear to recognize asserted rights, which should not be the subject of reference in the Constitution. I suggested these changes to Mr. Bowers, he approved of them, and requested me to propose them as an amendment, or a substitute for his proposed amendment. This I have done, and this is the extent of my interest in this subject.

The words to which I refer are "or upwards of twenty years by themselves and grantors have been engaged in the diversion of such waters," etc. These were claimed by some to be a recognition of the claims of those who, for twenty years, had taken waters

of the river without legal rights. The position I take, in reference to this proposition is, first, that no right can in any way be acquired by any citizen in the waters of the Niagara river by twenty years' use, or by use for any period, however long, because it is a public navigable stream, a public highway, and the principle applicable to encroachments upon public highways applies to such a stream. This question arose in the case of Verbank v. Fay (65 N. Y., page 57), and in that case the Commission of Appeal, Commissioner Dwight, writing the opinion, used this language: "The principles laid down as to highways on the land are plainly applicable to navigable waters, in the case of a river which is a public highway, twenty years' enjoyment of the waters is not conclusive as to the right. And if a river has been a public highway, even if it should not be used as such for the period of twenty years, and during that time has been in a condition inconsistent with its use as a public highway, the public right is not extinguished if it existed previously to that time." Hence, the words which I have moved to strike out are words which should have been stricken out. They might have been made the basis of a claim of recognition by the Constitution of a prescriptive right in the waters of the Niagara river, when no such right in the waters of a navigable stream can exist at common law.

In the next place, it seemed to me that in this Constitution we should not recognize the existence of any right. If any person or corporation is not in fact vested with a right in the waters of the Niagara river, and had the right to divert such waters, it seemed to me that there should be some State authority, and State board, which should have the control of that person or corporation, and should have right to regulate any diversion which may be made of the waters of that river. The purpose is that a person or corporation who may have, or claim to have, the right to divert sufficient water to develop 100,000 horse-power per day, should not be permitted to steal the quantity of water necessary for the development of 200,000 horse-power per day. There is such regulation in respect to every non-navigable stream for the protection of the right of those who may have an interest in the uninterrupted flow of the waters; it is proper that in this Constitution that there should be a provision for the regulation of the waters of this wonderful river, assuming, for the sake of the argument, that any one has or can have the right to take or divert its waters.

As matter of law, I believe that there is not existing to-day a single right on the part of any person or corporation to take a drop of water from the Niagara river, except for the purposes which are

stated in this provision, viz., the Erie canal, or the ship canal at Buffalo, or for slips leading to docks and wharves. My reason for this statement is, that Niagara river is a public navigable stream. The State of New York is the trustee for the benefit of all the people of the State, of the waters of that stream, and the Legislature of the State has no right to interfere with a trust which is reposed in the State by its people to preserve the waters of that river, for the great purpose of which they are held in trust, viz.: navigation.

The Court of Appeals so held in the case of Smith v. The City of Rochester (92 N. Y.), where the attempt was made to divert the waters of Hemlock lake, which was a navigable lake, and the late Chief Judge Ruger said:

"The diversion of these waters for the purpose of furnishing the inhabitants of a large city with that element for domestic uses, and especially to lease them for manufacturing and other purposes, is an object totally inconsistent with their use as a public highway, or the common right of all the people to their benefits. Due regard for the distinctions existing between a public right and a public use, and also those between a sovereign and a proprietary right, is essential to a just consideration of the rights of parties in navigable watercourses. While a sovereign may convey its proprietary rights it cannot alienate its control over navigable waters without abdicating its sovereignty. This and the other propositions of law which I have asserted, are sustained by numerous authorities."

Under the decision of the Court of Appeals in that case, the State itself had no right to make any grant, and there is not now in existence, in my opinion, any valid grant. All that the State has heretofore created are mere licenses. That was held in the case of Sweet v. The City of Syracuse (129 N. Y., page 340), where the question arose as to the diversion of the waters of Skaneateles lake, under an act of the Legislature, which permitted the city of Syracuse to take the waters of that lake for its purposes. In that case Judge Earl says that the statute — which is similar in scope to the statutes under which these corporations draw the waters which they claim they have the right to draw, that "such a right operates merely as a license to take the water from the lake and conduct it to the city, subject to the paramount right of the State to resume it at any time."

The provisions of my amendment amount, therefore, to this: first, that the Legislature shall not hereafter grant any right to divert the water of the Niagara river, except for sanitary, domestic or fire purposes, and the uses of navigation and commerce; secondly, it provides that all persons and corporations which are

vested with the right to divert the waters, if they have any right, shall be under the direction and control of somebody, and the persons designated are the Commissioners of the Land Office, who shall act after due notice to the Commissioners of the Niagara Reservation to all persons interested; thirdly, this section shall not enlarge, affirm or impair any existing claims of any persons or corporations. It does not grant or recognize any right. It does not ratify or confirm any right. The only effect of it is, to leave matters as they now are, with respect to all such persons or corporations. If they have a mere license, the State of New York can at any time revoke it. If the grants from the Legislature are void, they remain void. If, on the contrary, they have any legal right, why, then, of course, such vested right should be protected and preserved. All that I hope to accomplish is to preserve in its grandeur that great wonder of nature, that marvel of the universe, the awe-inspiring cataract of Niagara.

The President — The Chair would remind the Convention that only five minutes remain of the time allotted to this business.

Mr. McMillan — Mr. President, I offer the following amendment as a substitute for Mr. Marshall's instructions to the committee:

To amend by substituting the following: "All corporations, companies or individuals now or hereafter engaged in diverting any of the waters of the Niagara river above the Falls of Niagara for business or power purposes, shall be under the direction and control of the Commissioners of the Land Office as to the use of such water."

Mr. C. B. McLaughlin — I rise to a point of order.

The President — Mr. Marshall's motion is to disagree with the report of the committee, and to recommit to the Committee on Legislative Powers, with instructions to report, as stated by him.

Mr. McMillan — Yes, sir; and now I offer this as a substitute for the matter which he asks to have the committee report upon.

Mr. C. B. McLaughlin — Mr. President, I desire to speak upon this proposition, and I do not think the time should all be occupied by the gentlemen who are in favor of this proposed amendment, for I desire to speak against it.

The President — You have five minutes, sir.

Mr. Roche — Mr. President, within that five minutes I would like to offer the following amendment.

The President — Send it up to the Secretary's desk, and Mr. McMillan has the floor.

Mr. McMillan — One of the companies has been engaged in diverting the water of the Niagara river without any charter or grant from the Legislature since 1843, and upon the right of way where this water is diverted many millions of dollars worth of property has been located. All that I ask about this is, that all the corporations that have received charters and those that have rights under their riparian interests shall be treated alike. I am perfectly willing to take Mr. Bowers's amendment, from which Mr. Marshall wishes to strike out certain words, but I simply ask that all the companies shall be under the same protection and treated in the same way as the Niagara Falls Power Company is, and other companies that have charters from the Legislature. It seems to me that the company which for upwards of fifty years has taken the water from the river to their own property and have returned it to the river again above the falls, should be protected in their large commercial interests the same as are these other concerns, and the amendment which I offer does not shut off hereafter the granting of any charters, but it provides that every corporation, company or individual, now or hereafter engaged in diverting these waters, shall be under the control of the Land Board as to the quantity of the water which they may take.

Mr. C. B. McLaughlin — Mr. President, I move that the time on this subject be extended for ten minutes.

The President put the motion to extend the time ten minutes, and it was determined in the affirmative.

Mr. McLaughlin — I now move as an amendment to the motion made by Mr. Marshall, to strike out all after the word "party," in line 4 of Mr. Marshall's amendment, and insert in place thereof the following: "And all existing grants of the right to take or divert from the natural channel any of the waters of the Niagara river, above Niagara Falls, except for sanitary, domestic or fire purposes, are hereby revoked, canceled and annulled." So that the amendment which I make to the pending amendment will 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, and all existing grants of the right to take or divert from their natural channel any of the waters of the Niagara river, above Niagara Falls, except for sanitary, domestic or fire purposes, are hereby revoked, canceled and annulled."

Now, sir, there can be no question as to the force of the proposition offered by me. If this is adopted, then the Legislature hereafter is prohibited from making any grant; and if, as claimed by Mr. Marshall, the existing rights are mere license, that license is canceled and revoked. My amendment will preserve that river in all its grandeur. No corporation, then, whether now existing or created in the future, can ever take any water from that river. It is a singular feature, sir, that the Niagara Power Company, organized but a few years ago, with a capital of $200,000, has been increased to $3,000,000. On one of the very days when we sat here, discussing this proposition, April first, when an amendment was about to pass this body, the Niagara Falls Power Company, for reasons known to the directors of that company, probably, filed in the office of the Secretary of State a certificate increasing its capital stock from $2,600,000 to $3,000,000. It is not for me to say that there are any bad motives connected with this measure. I think they are misdirected motives. It seems to me that the only effect which the proposed amendment could accomplish would be to perpetuate the present corporations, and, if my amendment is adopted, there can be no such claim made against it. If the old corporations which have been organized, and which are now permitted to take water from that river, are permitted to continue doing so, I would like to have somebody tell me why other corporations should not have the same rights. I supposed that in the State of New York all citizens were treated alike. I did not suppose that in a Constitutional Convention we would insert in the fundamental law that a corporation having the right to take water from the Niagara river should be perpetuated for all time to come, while other citizens or corporations should be denied that right. I say it should not be done. If we are going to permit existing corporations to take that water, then let us leave it to the Legislature, so that they can handle it and let others use it. I have as much right as a citizen to join with other citizens and go to the Niagara river and take that water as other gentlemen who have secured that right. When we put in the Constitution a provision perpetuating the right, and saying that no one else shall have it, it is simply, in legal effect, giving to those corporations now existing an absolute monopoly.

Mr. Countryman — I would like to ask Mr. Marshall what his object is in inserting in his proposed amendment this clause: "For the use of the Erie canal, or the ship canal, at Buffalo, or for canal slips leading to docks and wharves?"

Mr. Marshall — Because the Erie canal is supplied with water from the Niagara river above the falls, and that has been declared by the Court of Appeals, in the case of People v. Canal Appraisement (33 N. Y.), to be a diversion of the waters for the purposes of navigation, and, therefore, within the power of the State.

Mr. Countryman — Does not that clause operate to recognize a contract which is said to have been made during the last session of the Legislature for the purpose of controlling the exclusive right to operate boats on the Erie canal?

Mr. Marshall — I do not so understand it.

Mr. Countryman — Is it not for the purpose of recognizing a contract which is said to have been made under circumstances extremely suspicious, if not actually fraudulent?

Mr. Marshall — No, sir; not as I understand it.

Mr. McMillan — I desire to ask Mr. Marshall what the effect will be of diverting the water of the Niagara river through the Erie canal, which produces all of the water-power at Lockport?

Mr. Marshall — I have used this language, as I understand it, because it was put in here by Mr. Bowers, and my recollection is that during one of the discussions in Committee of the Whole, the gentleman from Erie was frantic in his desire to protect the Erie canal, and said that it was necessary that we should have water from the Niagara river to supply the canal.

Mr. McMillan — And the gentleman from Erie still says so; but I am asking Mr. Marshall what the effect of his amendment will be when all the water-power at Lockport comes through the Erie canal?

The President — The gentleman has made the best answer he could, I suppose.

Mr. Countryman — I understand that it is now claimed that there is a contract in existence with a corporation, made under very suspicious circumstances, by which that corporation is given the exclusive right for fifty years to move and operate all boats along the line of the Erie canal by electrical power, and that power is to be obtained through another corporation in league with the one under contract with the State, to furnish that power from the waters diverted from the Niagara river, and that the effect of this clause in this provision will be to confirm that claim of exclusive right which is now, to say the least, open to litigation and may, perhaps, be set aside. That, it strikes me, is the main motive in inserting this and other similar clauses.

Mr. Becker — I desire to say to Mr. Countryman that the Assembly investigation which was held developed the fact that the company which he refers to is the Cataract General Company, of Rochester, and that it had no contract with any of the Niagara Falls Company; and what I claim is, that if it has any effect at all in the way of creating a monopoly it will put any company that tries to develop power for the propulsion of boats by electricity entirely at the mercy of existing corporations. So far as Mr. Marshall's amendment is concerned, it simply refers, as I understand it, to the actual diversion of waters into the Erie canal itself at Buffalo and at Tonawanda. I want to say one word to my friend, Mr. McLaughlin, and to those who have been led by their desire to do what we all think is a good thing to go far beyond what ought to be done, that for one hundred years there has been talk of using the waters of the Niagara river for power. Prizes were offered for the best plan of developing that power. The city of Buffalo offered a prize through its Business Men's Association of $100,000 for some plan that would utilize that power and bring it to the city of Buffalo. Several plans were devised for the purpose. This plan of having a tunnel to run far below the falls and then making a surface canal with shafts leading down to the tunnel was taken up by the leading engineers of the whole world, who were employed for that purpose, and they pronounced it feasible. It is still in an experimental state, but, nevertheless, a company has there expended, in digging that tunnel, over $1,400,000; in erecting a power-house, $500,000, and in other improvements a considerable sum, until there have been invested there altogether upwards of $4,000,000, and very little return has yet been received from it, the total power being taken from the river under any of those plans being less than 5,000 horse-power. Now, the stock of that company has been sold throughout the country, and purchased by many innocent holders; the people of Buffalo have built out streets into the surrounding country; real estate has been improved, on the theory that that power will be brought to Buffalo. We all recognize the fact that we cannot prevent its being brought to the Canadian side. In fact, this same company has a charter from the Dominion of Canada. If you put this clause in the Constitution, and if the people adopt it, then you break down that company, and you throw all that development over into the hands of our Canadian neighbors.

The President — The time allotted for this debate has expired, and the Chair will now state the position of the matter, so that gentlemen will understand how to vote upon it. The Committee

of the Whole reported progress, and asked leave to sit again. Mr. Marshall moved to disagree with that report, and to recommit the amendment to the Committee on Legislative Powers and Duties, with instructions to amend it by reporting a certain written matter, which was read. Mr. McLaughlin moved to amend Mr. Marshall's motion by an alteration of the substance of that matter. Mr. McMillan offered an entire substitute for Mr. Marshall's motion. The first question must be taken on Mr. McLaughlin's motion to amend Mr. Marshall's motion.

Mr. C. B. McLaughlin — And on that I call for the ayes and noes.

The President — If the gentleman insists on that we shall never get through.

Mr. Durfee — May I inquire whether Mr. Green's proposition is before the House in any form?

The President — The Chair has not heard of it.

Mr. Durfee — I understood him to offer an amendment that the committee be instructed to report his proposition.

The President — I do not think that can be entertained until this matter is disposed of. Does Mr. McLaughlin press his call for the ayes and noes?

Mr. C. B. McLaughlin — Yes, sir.

The President put the question on the call for the ayes and noes, and the call was sustained.

The President — The Secretary will read the amendments which have been offered.

The Secretary read the amendments offered by Mr. Marshall and Mr. McLaughlin.

Mr. Hottenroth — Mr. President, I rise for information. I do not quite comprehend the situation. If these amendments are defeated, will the position of the matter be the same as on the tenth day of September?

The President — If Mr. McLaughlin's amendment is defeated the question will then arise between Mr. McMillan's substitute and Mr. Marshall's motion. If both of those are defeated, the question will recur on agreeing to the report of the Committee of the Whole.

Mr. Roche — Is not the Chair forgetting the amendment which I sent up?

The President — That will be considered afterward. The Secretary will call the roll.

The Secretary proceeded to call the roll.

Mr. Abbott — I am opposed to sacrificing the great business interests of the State to a sentiment, and I, therefore, oppose all these propositions and vote no.

Mr. Acker — Mr. President, I believe if this debate has taught us anything it is this: that you have been debating a subject which you do not know how to deal with, and if you apply the ordinary rule of common sense in dealing with this subject that you do in ordinary business, when you meet with a proposition that you do not know how to diagnose, and all that you can say is that something ought to be done, you will leave it alone. The people of this State owe to the genius of its people, to the infant industry of electricity, the letting alone of this entire subject, so that the people can go to work and do something. The idea of standing around Niagara Falls in order that it may be a resort for pleasure seekers and tourists and driving away the work of thousands of men that might find employment there, is all sheer nonsense. You have been trying to crystallize nonsense here, and taking up time that ought to be devoted to something else. Talk to me about a great lobby hanging around this Capitol. Give me the rights that these gentlemen have who are now operating at Niagara Falls, and prohibit all the rest of the people from getting a foothold there, and I will be one of the people crowding around here and acting as a lobbyist in favor of nearly every one of these amendments. If we do as we ought we will put this infernal subject at rest, and every one of us will vote no on every amendment. Mr. President, I vote no.

Mr. Ackerly — Mr. President, without giving my reasons therefor, I will indorse what has been said, and state that I do not believe it is necessary or proper for this Convention to entertain this proposition, and I shall vote no on everything connected with it.

Mr. Countryman — It is said that the existing corporations have nothing but a license. If they have nothing more than a license, it is high time, before that license ripens into a grant or claim of greater consequence, to take it away and resume all the powers originally belonging to the State. I vote aye.

Mr. A. H. Green — Mr. President, I want to make a single suggestion on this subject. I understand the purport of this amendment to be to allow future diversions of the Niagara river water for domestic, fire or sanitary purposes, and a refusal of all grants that have gone before. I think it comes nearer doing what should be

done than anything that has been proposed. My own amendment would have suited me better, but this one of Mr. McLaughlin substantially prevents further diversions of that water except for the purposes specified, and it is unnecessary to say that the State may, of course, take water for its canal. The State has a right to do what it pleases with the water for its own purposes. I vote aye.

Mr. Hottenroth — I think the President well said a short time ago that we were rapidly becoming a repudiating Convention. On the eighth day of this month, in Committee of the Whole, by a large majority, we adopted a plan that I believe satisfactorily answered the purpose of this proposed amendment. In my opinion the object is not to deprive the Legislature from making grants, for that would create monopoly, and would practically give to existing corporations the same rights that the Legislature exercises to-day. If anything should be done, it should simply be in the nature of a check upon the Legislature, so that the promiscuous granting of franchises of a limited control should not longer exist. I believe something ought to be done, but it seems to me that the present amendment is too broad and sweeping, and, therefore, I vote no.

Mr. McClure — I desire to explain my vote. I introduced an amendment to a proposition submitted here, part of which Mr. Marshall has adopted, and that was the part striking out the recognition of a right in the parties who have been in actual possession without any grant or license. I, therefore, cannot be put in a position of having the people who are there now held there; yet, sir, I am not prepared to go to the extent of Mr. McLaughlin's amendment, without a hearing or a trial, to divest corporations or parties who may have vested rights, given by grants or licenses in some way that ought not to be disturbed. I, therefore, vote no.

Mr. C. B. McLaughlin — I desire to say but a few words in explanation of my vote. I tried this morning to kill this measure. I agree with Mr. Acker, that we have spent too much time in its consideration. It is not a proper subject to go into the Constitution. It should be left entirely in the control of the Legislature, and I made this motion in order that it might come properly before the delegates of this Convention, so that if it is not in the interest of present corporations, then they will support my amendment, and, if they desire to kill the whole measure I hope they will vote against it. I do not believe such a provision should be inserted in the Constitution, but I do not think that, if we are going to put anything in the Constitution, we should treat the present corpora-

tions just as those that may be organized in the future, and not perpetuate, by a constitutional provision, existing corporations. I vote aye.

Mr. Mereness — Mr. President, it seems probable that this Convention will arrange matters so nicely that the Legislature will hardly have anything to do, and I think they can do about as little harm to Niagara Falls as any other thing, and, therefore, I think we had better kill this whole matter. I am confirmed in my opinion by the suggestion of our President, that probably Niagara Falls will be able to take care of itself against the assaults even of the Legislature. I vote no.

Mr. Platzek — I desire to explain my vote. The question was asked this morning who was here asking for this amendment to the Constitution. I answered Mr. Green and Mr. Bowers, the Commissioners of the Niagara Reservation are here, asking for it on behalf of the State, whose interests they are required to protect, as officers of the State. Besides, it was stated here that there are two monopolies, one already in existence, and another about to be created. For that reason I am prepared to vote in the affirmative on Mr. McLaughlin's proposition, and if that is defeated, I am ready to vote in the affirmative on Mr. Marshall's proposition, which does not go quite so far. I vote aye.

Mr. Putnam — Mr. President, I believe that if this proposition is carried it practically violates the principles of that grand old instrument which we all revere, the Constitution of the United States. I am opposed to any of these proposed amendments. I believe there is too little scientific knowledge in this assemblage of lawyers to deal with the question of electrifying the world from Niagara Falls without destroying the grandeur of the scenery there exhibited. I, therefore, vote no.

Mr. Vedder — Mr. President, I wish to explain my vote. From the moment the resolution of Mr. Green was sent to the committee, of which I am chairman, until this present hour, I have never made a suggestion to any delegate in the Convention, or to any gentleman outside of it, in regard to what this constitutional amendment should be, nor what any change should be. And I had a motive in doing it. It was well known to many that I belonged to that company which was organized, as Mr. Countryman said, under suspicious circumstances, and so I purposely took no part in framing this constitutional amendment, nor making any suggestions with reference to it, for fear that would happen which has just occurred, that some who wanted to parade their pretended virtue and

exalt themselves at the expense of others, might make the claim that has been made here by Mr. Countryman. I say to him that that company was not organized under suspicious circumstances, and that all the gentlemen connected with that company are as honest and high-minded as he is. The company was organized under the provisions of chapter 399 of the Laws of 1893, which was passed by twenty-four Senators — the best men in the Senate voting for it — and by seventy-six members in the Assembly, the elect of the people. We spent our money in demonstrating that it was possible to propel canal boats on the Erie canal by electricity. Now, Mr. Countryman just said to me, when I asked him in private conversation, what were the suspicious circumstances under which that company was organized, that there was an act pending at the time for the repeal of the bill. Mr. President, we began these negotiations in November, 1893, and we put in our bid for the contract the same as other electrical companies had the right to do. Those negotiations could not be closed in a moment, because the subject-matter was important, and the interests vast, and they continued until the twelfth of March. On the sixteenth of February, a gentleman representing the Erie district introduced a bill repealing the act of 1893. Would the gentleman from Albany, Mr. Countryman, if he had been engaged in a legitimate enterprise, fail to go on with it simply because one man out of seven millions of people had introduced a repeal bill? Had we not the right, under the law, to go on?

The President — The Chair would say that the gentleman seems to be going outside of the limits of rising to explain his vote.

Mr. Vedder — I have not another word to say, sir; I vote no.

Mr. Woodward — It is somewhat fashionable for delegates to get up and give their reasons for their votes, and I want to be in the fashion. We have been paddling in the waters of the Niagara river all day, and we have not got out yet. It seems to me that the members of this Convention forget the great volume of water that flows down the Niagara river. There are Lake Superior, and Lake Huron and Lake Erie, with all the great rivers pouring their waters into these great lakes and all their waters flowing through and down the Niagara river; yet some of the gentlemen are afraid that there may be too much water diverted at Buffalo and at Niagara Falls, and that possibly the river may be drawn down dry. I think we might as well propose an amendment that Canada shall not take any water out of that river, because they might build up a great manufacturing city over there and we on this side would not have

the privilege of doing so. Why, if gentlemen are afraid that a great city of a hundred thousand inhabitants below the falls engaged in manufacturing industries is going to spoil the beauty of Niagara Falls, why, they can have a picture of the falls taken as they look now, and then hang it up in their houses and feast their eyes on it. I say it is all foolishness trying to prevent the water being diverted — such an incalculable amount of water as would be diverted for these purposes. There is an immense amount of water flowing over there, water to spare. I vote no.

Mr. E. A. Brown — Mr. President, I vote no on this proposition for the reason that I believe that this proposed amendment is outside of the province of this Constitutional Convention. This Convention has no power to cancel a charter granted by the Legislature of the State.

Mr. Cochran — In view of the fact that the constitutionality of the existing companies is in question, it seems to me that we should not put into the Constitution any provision which would give them an apparent standing. It seems to me that we should leave this matter to future legislation, and vote down all proposed amendments. I vote no.

Mr. McLaughlin's amendment was lost by the following vote:

Ayes — Messrs. Banks, Barhite, Barnum, Barrow, Cookinham, Countryman, Crosby, Dean, Fraser, Green, A. H., Holcomb, Jenks, Kerwin, Lewis, C. H., Lyon, Mantanye, Marshall, McLaughlin, C. B., O'Brien, Parmenter, Peck, Platzek, Pratt, Redman, Rogers, Steele, A. B., Steele, W. H., Tucker, Whitmyer — 29.

Noes — Messrs. Abbott, Acker, Ackerly, Allaben, Arnold, Baker, Becker, Bowers, Brown, E. A., Burr, Cady, Carter, Cassidy, Chipp, Jr., Church, Clark, G. W., Clark, H. A., Cochran, Coleman, Cornwell, Danforth, Davenport, Davis, Deady, Deterling, Deyo, Dickey, Doty, Durfee, Durnin, Emmet, Faber, Floyd, Foote, Forbes, Francis, Frank, Augustus, Fuller, C. A., Fuller, O. A., Galinger Gibney, Goodelle, Griswold, Hamlin, Hawley, Hecker, Hedges, Herzberg, Hill, Holls, Hotchkiss, Hottenroth, Johnson, I. Sam, Johnson, J., Kimmey, Kinkel, Lauterbach, Lester, Lewis, M. E., Lincoln, Manley, Marks, Maybee, McClure, McCurdy, McDonough, McIntyre, McKinstry, McMillan, Mereness, Morton, Mulqueen, Nichols, Nicoll, Ohmeis, Osborn, Parker, Parkhurst, Pashley, Peabody, Phipps, Pool, Porter, Powell, Putnam, Roche, Root, Sandford, Schumaker, Smith, Spencer, Springweiler, Storm, Sullivan, T. A., Tekulsky, Tibbetts, Titus, Truax, C. H., Turner, Vedder, Veeder, Vogt, Wellington, Wiggins, Woodward, President — 105.

The President — I have examined Mr. Roche's resolution, and it is strictly a substitute. The question must now be taken on Mr. McMillan's substitute.

Mr. Barhite — Mr. President, on that I ask for the ayes and noes.

The call for the ayes and noes was not sustained.

The President — Mr. McMillan's substitute will be reported. It proposes to recommit, with instructions to insert and report this amendment.

The Secretary then read Mr. McMillan's substitute, as follows:

"All corporations, companies or individuals now or hereafter engaged in diverting any of the waters of the Niagara river, above the Falls of Niagara, for business or power purposes shall be under the direction and control of the Commissioners of the Land Office as to the use of said waters."

The President — The question is upon Mr. McMillan's substitute.

The question being put on the adoption of Mr. McMillan's substitute, it was decided in the negative.

The President — The question will now be taken on Mr. Roche's substitute. He moves to recommit, with instructions to report this as an amendment.

The Secretary read the substitute of Mr. Roche, as follows:

"Article —, section —. The right to divert the waters of the Niagara river, above Niagara Falls, pursuant to any grant or license heretofore or hereafter given by the Legislature, and the use by any person or corporation who was, on the 1st day af September, 1894, actually engaged in the diversion of the waters of said river, for business or manufacturing purposes, shall be regulated by and under the direction and control of the Commissioners of the Land Office, who shall, from time to time, after notice to the Commissioners of the State Reservation at Niagara, and to the parties interested, make such orders and give such directions in regard to the diversion and use of such waters, and the compensation to be paid therefor to the State, as shall be just and proper. This section shall not be deemed to recognize or affect any right, privilege or license under which any person or corporation may claim the right to divert the waters of said river, or to prevent the use of such waters for the canals of the State; or for a ship canal, or for canal slips leading to docks and wharves, or for sanitary, fire or domestic purposes."

The question being put on the substitute offered by Mr. Roche, it was determined in the negative.

The President — The question is now on Mr. Marshall's motion, disagreeing with the report of the Committee of the Whole, and to recommit, with instructions to report the matter offered by him.

Mr. Marshall — On that I call for the ayes and noes.

The call for the ayes and noes was not sustained.

The question being put on the motion of Mr. Marshall, it was determined in the negative.

The President — The question now recurs on agreeing to the report of the Committee of the Whole, asking leave to sit again.

Mr. Mereness — Mr. President, I move that that report be amended and that the proposition be rejected as a whole.

The President — The effect of a negative vote on the question of sitting again will make this matter as dead as Julius Caesar.

The question being put on agreeing to the report of the Committee of the Whole, and asking leave to sit again, it was decided in the negative.

Mr. Vedder — Mr. President ——

Mr. Countryman — I rise to a question of privilege. I wish to say that if I said in the course of my remarks during the debate on the question which has just been decided, that the corporation was organized under suspicious circumstances, I did not mean to say that. What I did mean to say was, and what I repeat, with a full sense of my responsibility in saying it, is, that the contract between that company and the State officers was made under exceedingly suspicious circumstances.

Mr. Vedder — Mr. President, I rise to a question of privilege. Mr. Countryman has reversed himself. He did say that the Cataract General Electric Company was organized under suspicious circumstances. Now he changes from that into the statement that the making of the contract was suspicious. This Convention now ought to know, but they possibly cannot at this juncture know what that contract is. I have a copy of it which I will bring to-morrow and show to any member who wants to see it — yes, and I will have it printed, as somebody suggests. I prefer to do that, so that the Convention may see what it is. There never was a better contract made, I believe, for the interests of the State of New York than the very contract which the Superintendent of Public Works made with the Cataract General Electric Company. Under it canal boats can be towed from Buffalo to the city of Albany five times as

cheaply as it costs to tow them to-day, and can come to Albany and Buffalo two or three times as quickly, and with less wash to the banks.

Now, then, so far as the contract being made under suspicious circumstances is concerned, I can only answer generally about that, because I have to say that I never have met Superintendent Hannan in my life. I would not know him if he were sitting next to me here, for I never have seen the gentleman to my knowledge; but the bill which was introduced by the Senator from Buffalo to repeal the act of 1893 was passed by both branches of the Legislature, and in that behalf I desire to say precisely as I say about this bill here to-day, that I wrote the Senator from my district in this language: 'I do not care whether it is voted up or voted down"—precisely the same position in which I stand to-day in regard to this measure, and I repeat that I do not care a picayune whether it is voted up or voted down. The repeal bill passed, and Governor Flower opposed it by an exceedingly able veto message. Not only that, but in his veto message, and at other times, the Governor stated that the contract was drawn with the Cataract General Electric Company, so far as the part of Superintendent Hannan was concerned, under his supervision, and under his watchful eye, and he approved of the whole of it, and vetoed the bill upon the ground that the contract with the Superintendent of Public Works made was the best contract that possibly could have been made, or ever was made for the State of New York; and if there is anything suspicious about the making of that contract, then let the gentleman from Albany charge it to the executive of this State and to his Superintendent of Public Works. So far as that is concerned——

The President—I think Mr. Vedder is going beyond the question of privilege. It is no part of his privilege to interfere with the executive of this State.

Mr. Vedder—Not at all. I am explaining that when a Democrat upon this floor, a *quasi*-Democrat (by Democrats, no, no); no, no, a pretended Democrat——(Laughter.)

The President—Mr. Vedder is out of order in any personal remarks.

Mr. Vedder—I am trying to call him a Democrat, and the Democrats are saying no. I am trying to get some term that they will agree to. When he attacks the Governor of the State, it is my duty, and the duty of every manly man, if he believes the Governor is right to defend him, and I believe he was right.

Mr. Cookinham—Mr. President, I do now rise to a question

of privilege, and I move that we proceed with the third reading of amendments offered.

The President — The next order is general order No. 74, third reading 18 (introductory No. 376, printed No. 454). The Secretary will read the title.

The Secretary then read the title of the constitutional amendment proposed by Mr. E. R. Brown, as follows:

" Proposed constitutional amendment, to amend article 3 relating to the apportionment of Senate and Assembly districts."

Mr. Dean — Mr. President, this proposed amendment is conceded on the part of fair-minded men to be an extremely dangerous thing for the Republican party to identify themselves with to-day. Many Republicans on this floor have stated to me that in their judgment we should go no further than to lay down the principles upon which future apportionments should be made, and leave it to future Legislatures to determine the exact lines on which this apportionment should be made.

I have been criticised because I refused to abide by the action of a Republican caucus. I am willing to abide by the judgment of the majority when I believe that the majority is right, when I believe that the judgment of that majority is dictated by sound party principles. I am not willing, however, to sacrifice my judgment on that question to gentlemen who were elected to this Convention by accident, who owed their nomination to the fact that it was thought a respectable way of burying a considerable number of gentlemen on this floor who have assumed to make this a party measure. For Mr. Becker, Mr. Lincoln, the gentlemen who make up the Apportionment Committee, I have very profound respect. I believe that they are gentlemen who have conscientiously endeavored to do that which they believed to be right.

Conceding that it is necessary to have fifty members of the Senate and 150 members of the Assembly, I believe that this is a fair and just apportionment. I do not believe, however, that there is any demand on the part of the people of this State for an increase in their representative legislation. I do not believe, considering the fact that the congressional districts of this State must remain for a considerable number of years approximately at their present number, that it is wise to increase the number of senatorial districts so that the senatorial and congressional districts must, of necessity, constitute different territorial districts. It proposes to disfranchise or to shut out from participation in politics the counties which are in the minority in either the senatorial or con-

gressional districts, and that, in my judgment, must be taken into consideration in making up a fair apportionment.

The greatest objection, however, is from a political standpoint, and I am discussing it from that standpoint, because there is no principle involved in the measure. It is simply a matter of expediency, and, therefore, not to be considered as a question of principle, but purely as a matter of expediency.

If we are to go to the people this fall on this proposition, and are defeated, as I believe we will be, we have placed ourselves in exactly the same position in which we find the Democratic party to-day. In 1892 that party, by very high-handed methods, put itself in position to call down the contempt of the honest people of the State of New York. It makes no difference that this is approximately a fair apportionment; it is still dangerous, because it is open to objection in many of its details. We must, of necessity, defend every line in this proposed amendment. For the purpose of giving the gentlemen of this Convention an opportunity to vote upon a proposition which simply lays down a fundamental proposition in the apportionment, I move that the proposed amendment be recommitted to the Committee on Legislative Organization, with instructions to report forthwith the following amendment:

The President — Mr. Dean will send it to the desk and the Secretary will read its title.

The Secretary read the title of the proposed substitute of Mr. Dean, as follows:

"Proposed constitutional amendment, to amend sections 3, 4 and 5 of article 3 of the Constitution, to provide a non-partisan legislative apportionment."

The President — Mr. Dean, is this an amendment, or is it a substitute for the whole bill?

Mr. Dean — It will probably operate as a substitute. It covers the entire question.

The President — The Secretary will read it.

The Secretary read the proposed substitute as follows:

"Sections 3, 4 and 5 of article 3 of the Constitution are hereby amended so as to read as follows:

"Sec. —. The State shall be divided into thirty-two districts, to be called Senate districts, each of which shall choose one Senator. The districts shall be numbered from one to thirty-two, inclu-

sive, and shall remain as at present constituted until changed pursuant to the provisions of this Constitution.

"Sec. —. 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 ninety-five and at the end of every ten years thereafter; and the districts shall be so altered by the Legislature, at the first regular session after the return of every enumeration, that each Senate district shall contain, as nearly as may be, an equal number of inhabitants, excluding aliens; and shall remain unaltered until the return of another enumeration, and shall at all times consist of contiguous territory; and no county shall be divided in the formation of a Senate district, except such county shall be equitably entitled to two or more Senators. In apportioning the Senate districts, the Legislature shall be governed by the figures of the enumeration hereby provided, and the apportionment shall be made by dividing the whole number of persons returned in such enumeration by thirty-two, and grouping the counties in such manner that a contiguous territory shall approximate, with the greatest possible degree of accuracy, the ratio of representation thus established. In counties entitled to two or more Senators the apportionment shall be made in such a manner as to equitably divide the representation among the people, having regard to the number of such persons in each of the several districts as established by the enumeration provided for in this article.

"Sec. —. The Assembly shall consist of one hundred and twenty-eight members, elected for one year. 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, as established by the enumeration provided for in this article, and shall be chosen by single districts. The Assembly districts shall remain as at present organized, until after the enumeration of the inhabitants of this State in the year eighteen hundred and ninety-five. The Legislature, at its first regular session after the return of every enumeration, shall apportion the Members of the Assembly among the several counties of the State in the manner aforesaid, and the boards of supervisors in such counties as may be entitled under such apportionment to more than one member, except the city and county of New York, and in said city and county the board of aldermen of said city shall assemble at such times as the Legislature making such apportionment shall prescribe, and divide their respective counties 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 county 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 shall be made as herein provided. All surplus members, after having provided for one member from each county, with the exception of Hamilton, and after each county entitled to more than one member under the ratio, which shall be determined by dividing the whole number of persons returned at the last enumeration, exclusive of aliens, by one hundred and twenty-eight, shall have been given its full quota, shall be apportioned to the counties having the largest final fraction above the ratio. No town shall be divided in the formation of Assembly districts. Every county heretofore established and separately organized, except the county of Hamilton, shall always be entitled to one Member of the Assembly, and no new county shall be hereafter erected, unless its population shall entitle it to a member. The county of Hamilton shall elect with the county of Fulton until the population of the county of Hamilton shall, according to the ratio, be entitled to a member. But the Legislature may abolish the said county of Hamilton and annex the territory to some other county or counties. Nothing in this section shall prevent division at any time of counties and towns, and the erection of new towns and counties by the Legislature."

Mr. McClure — Mr. President, I would like to ask the gentleman a question. I would like to ask the gentleman whether this proposition submitted by him is not virtually the Constitution as it now is written and in effect?

Mr. Dean — Mr. President, I will say that this is substantially the Constitution as it now is. It simply provides that a reapportionment must be made at a regular session instead of a special session, as called in 1892, and it provides, also, that the counties having the largest final ratios shall have the excess of members, instead of putting four into the county of Albany, as was done in 1892. I think it simply carries out the honest intent of the Constitution as it now is.

Mr. Bush — Mr. President, this amendment, as it now appears upon our files, is substantially an entirely different scheme of apportionment from that which we debated in this body for five

days, and the reason of that is, that after the debate had closed this apportionment scheme was again amended by Mr. Vedder's proposed amendment, and the effect of that amendment, for though it was offered by Mr. Lincoln, it was in reality Mr. Vedder's amendment, changes the whole scope and effect of the apportionment. The effect of that amendment, which will be found in section 4, is simply this: that it absolutely prohibits another apportionment being made in the State of New York while this proposed Constitution lasts. There never can be another apportionment. This is no figure of speech; it is a literal fact which will become apparent by reading section 4 of the amendment which was placed in this bill.

In addition to that, the gentleman who proposed it does not deny that that is the effect, and the effect sought by that amendment. The apportionment, as it was first introduced, gave the country districts and the Republican party a large majority of the Senators and Members of Assembly. Now, this additional amendment absolutely prohibits the Legislature in the future from reapportioning the State. It provides that when in counties having four or more Senators the population increases so that an additional Senator may be had, they shall be added to the total number of Senators. And I will illustrate; we will assume that ten years from now the State of New York has six millions of people. That divided by fifty, the manner in which the ratio is to be here determined, will give 120,000 for each Senator. If the city of New York at that time shall have 1,800,000 inhabitants, it will be entitled to fifteen members. That is three more than it has under this apportionment. Therefore, all that can be done will be to give New York three additional Senators and add three to the total number of Senators in the State. And it will not, in any way, change the country districts. In other words, this scheme contemplates simply that the present apportionment may always remain, but you may add on to a district when it has sufficient to give it another Senator. You can never apportion the districts as this bill now apportions them, but you may add on until New York may have sixteen Senators, and then it cannot have another Senator, no matter how much the population may increase.

The effect of this is that a minority of the people of the State of New York shall always in the future make its laws in the halls of its Legislature. The effect, then, is to substitute government by the Republican party for a republican form of government. It is contended by gentlemen of the majority (in private conversa-

tion a half a dozen of them have told me this to-day) that it would be extremely dangerous to the people of the State to ever permit New York and Kings county to have a majority in the Legislature, and the scheme of this apportionment is to prevent that. In other words, no matter where the majority of the people may be, the cities of New York and Brooklyn, though they may have two-thirds of the population of the State, they together shall never have more than one-half the members of the Legislature.

Now, Mr. President, it seems to me while you talk against gerrymandering, while you talk of right and against wrong, while you talk of equality of representation by the electors of this State, you have departed entirely from what is right and just in this measure. Now, you depart from it much further than you did in that apportionment which was offered to this Convention, and, in effect, have said that a majority of the people shall no longer rule the State of New York.

Now, Mr. President, it is utterly impossible for any man to discuss this question in five minutes, because we had never seen it in print until it was placed on our files at one o'clock; and yet it does seem to me, if a majority of this Convention can vote for this proposition now on this calendar, that any debate on this side of the question will be absolutely useless. We must appeal to some other body than this Constitutional Convention. It seems to me the majority of this Convention have surely run mad. They have sacrificed everything which this Convention might have done for the people for the one purpose of passing this apportionment which will give them the control of this State so long as this Constitution exists. They come to the Democrats and say: "We will give you what you want on the charity question, we will give you what you want on the public school question." They say to the labor organizations: "We will give you anything that you want." Anything that any clique or faction in the State wants, they can now have in this Constitution, if they will tack it on to this apportionment, so that they may pass together. There is nothing that the majority of this Convention desires so much as to pass this apportionment bill, as it is presented here, and all the long weeks and months we have sat in this Convention, working and trying to improve the Constitution of this State, have been sacrificed that this iniquitous scheme for supplanting majority rule in the State shall be adopted. Mr. President, all that I can do, all that any member of this minority can do is simply to protest against this scheme. The amendment proposed by Mr. Dean is one which any man who asks for simple fairness

and decency can vote for. It provides for an enumeration in 1895, and the Legislature then elected may apportion the State in accordance with the amendment which he proposes, which is substantially the present Constitution, with a few amendments. Any man, who votes to vote that down, votes to supplant a republican form of government for the State.

Mr. Nicoll — Mr. President, I want to say just one or two words as a last expiring protest against this proposed amendment. I want to utter a last objection to the amendment which was introduced by the gentleman from Erie, and adopted as a part of this scheme, when the debate upon the main proposition had been concluded. I want to protest on behalf of the city of New York, and, I think, also, on behalf of the city of Brooklyn against that provision which says that no county shall have more than one-third of all the Senators; that is, no matter how large New York grows, no matter how many millions dwell under her government, no matter how much the population of Brooklyn increases, no matter if the time arrives when that city or the city of New York has grown a third or more than a half apiece of the population of this State, they shall never have in the Legislature of this State more than one-third of the representation.

Now, gentlemen, there is nothing new in history; there is nothing new about this proposition; but this is the first time in any Constitutional Convention where this attempt to discriminate against the cities of the State, as to their representation, has actually gained a foothold in the Constitution itself. It was attempted in the Constitutional Convention of 1821, and, with your permission, I will make one or two references to show how history repeats itself.

In the Constitutional Convention of 1821 a gentleman by the name of Root introduced an amendment, which provided that no county should have more than six Members of the Assembly of this State. That was an attempt to discriminate against the then growing city of New York. That came under discussion in that Convention, and upon that subject Chancellor Kent, whose reputation entitles his judgment to great respect in this Convention, said:

"The city of New York is the pride and glory of the State, and, although discretion is required in its governance, it is entitled, and ought to enjoy, its full and proportionate weight and influence." and on another occasion he said he "did not know that the city or her representatives had ever possessed greater influence in the Legislature or the Convention than her character entitled her to possess." It was, therefore, unjust at this time to endeavor to

oppress them. If that influence had ever existed, it was in consequence of the superior talents of her representation. It was true that that city paid a large share of the taxes in the State, and it was a maxim that taxation and representation should go hand in hand.

And another gentleman, Mr. Edwards, spoke language which is so appropriate and pertinent to this discussion to-day that I must just read it to the gentlemen from the rural districts. He said:

"Pray, sir, what is the city of New York, and who compose it? Why, it is the great mart of your State; it is that place where you send the produce of your farms and your manufactories; the inhabitants of it are your agents, your factors. They purchase your produce, and explore every sea in search of markets for it, and return with the products of every clime to minister to your necessities and comfort. It is true that they have accumulated great wealth, but this wealth is necessary to enable them to transact your business to your advantage. The inhabitants of that city enjoy no exclusive advantages. You, and your sons can, at your pleasure, participate in all the benefits attendant upon their local situation. There is, sir, throughout, a community of interest between them and you; the city and country are equally necessary for each other, and equally dependent upon each other; and, as well might the head of the human body jangle with the other members, as the country with the city. If great wealth is there concentrated, the country enjoys the benefit of it; for the city now pays one-fourth of the taxes of the whole State."

That was in 1821. And then he adds:

"We ask no exclusive privileges. All we ask is justice; equal and exact justice; we want nothing more. And you can, as consistently with justice, provide in express terms that the country shall be represented in proportion to its population, and that the city shall only be represented in proportion to two-thirds of its population, as to adopt the propositions now made, for the effect will be the same."

The President — The gentleman's time has expired. I dare say the Convention will allow him to proceed by unanimous consent.

Mr. Becker — I hope, Mr. President, that Mr. Nicoll's time will be extended for five minutes.

The President — No objection is made, and Mr. Nicoll will proceed.

Mr. Nicoll — I only wish to say, gentlemen, that that proposition was adopted and discussed in the Constitutional Convention

of 1821 by the great men who composed that Convention, and it was voted down by a vote of 82 to 23. It was repudiated as an unjust proposition in the first quarter of the nineteenth century, and now in the last ten years of it it is proposed to be taken up again and incorporated in our Constitution.

What would have been the consequences to the city of New York or to the city of Brooklyn, if that proposition had prevailed in the Constitutional Convention of 1821? Would New York have grown as she has grown to-day? Do you believe that people would have flocked to a city which, under no circumstances, could have an equal voice in the legislation of the State or a proportional share of representation? You strike a blow at that great metropolis of which you are proud and which is as necessary to you as it is necessary to her own citizens. The conditions of 1821, curiously enough, are the conditions of to-day, except that under a fair share of proportional representation New York has grown in greatness beyond the dreams even of those great men who composed that Convention. To-day, according to the statistics which appeared in the morning papers, out of a tax of $9,155,742, she actually pays $4,173,712, almost one-half of the taxes of this State. With Brooklyn, she pays over half of the taxes of this State. And yet you are now proposing to take up and put in the Constitution the unjust discrimination against her which was discarded seventy-five years ago. I protest against it, gentlemen, in the name of justice and fair play. By the light of history it is an unjust attack upon the liberty and rights of the city which I represent, and her sister city across the right. (Applause.)

Mr. Tekulsky — I offer the following amendment, Mr. President.

Mr. Veeder — Mr. President, I ask for the ayes and noes. I think it is a fair proposition to let the people of the State know how we vote.

Mr. Holls — Mr. President, I would like to ask whether the time used in calling for the ayes and noes comes out of the time allowed for debate?

The President — It does, certainly.

Mr. Roche — Is not the hour allowed for debate simply?

The President — The hour is allowed for debate, and as much more time as the Convention will permit. There is no time limit. The previous question cannot be put under one hour. That is the rule. Does any other gentleman desire to be heard?

Mr. Roche — Mr. President, I offer an amendment.

The President — Mr. Roche will send his amendment to the desk and it will be read. The Secretary will now read the amendment offered by Mr. Tekulsky.

The Secretary read as follows:

Mr. Tekulsky moves that the proposed constitutional amendment under consideration, being general order No. 74, be recommitted to the Committee on Legislative Organization, with instructions to amend as follows and report the same forthwith to the Convention. General order No. 74, third reading No. 10. Proposed constitutional amendment, to amend article 3 on page 3, line 4, by inserting before the word "Broome" the words "Dominick street, Varick street," and on page 4, line 3, insert before the word "Broome," the words "Dominick street, Varick street."

Mr. Tekulsky — Mr. President, I desire to have that change made, as it covers a portion of the district which I represent. The map which has been exhibited here shows a zig-zag way of cutting up one end of my district by taking in this block which only consists of a very few families, most of them private families. There are no large tenement houses or anything of the kind in that block. It will make no difference to speak of in the number of people in the district, and it will accommodate a large number of people living in the district. I, therefore, desire to have that alteration made.

Mr. Jenks — Mr. President, I offer the following amendment:

The President — It will be read. The Chair suggests that gentlemen having amendments or motions send them up and have them read. The amendments offered by the gentlemen will be read in their order.

Mr. Mereness — I would like to send an amendment up and have it voted upon.

The President — The Secretary will read the amendment offered by Mr. Jenks.

The Secretary then read the amendment of Mr. Jenks, which is to instruct said committee as follows:

"To amend section 4, on page 10, by striking out lines 22, 23, 24 and 25 of said page; also lines 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 on page 11."

The President — The Chair concedes that to be a motion to recommit to the Judiciary Committee, with instructions to report.

The Secretary then read the resolution offered by Mr. Roche, which is to instruct said committee to amend as follows:

"Strike out '1905' on lines 3 and 4, page 10, and insert instead '1895.'"

The Secretary then read the amendment proposed by Mr. Mereness, as follows: Add the following section:

"Sec. 6. Each member of the Legislature elected after January 1, 1895, shall receive for his services an annual salary of $1,200, and shall also receive the sum of one dollar for every ten miles he shall travel in going to and returning from the place of meeting once each session, on the most usual route. Senators, when the Senate is convened in extraordinary session, or when serving as members of the court for the trial of impeachments, and such Members of the Assembly not exceeding nine, as shall be appointed managers of an impeachment, shall receive an additional allowance of ten dollars for each day necessarily engaged."

The President — The motion made by Mr. Becker will now be read.

The Secretary read Mr. Becker's motion as follows:

"On page 9, line 12, after the word 'first,' insert the word 'second,' and in line 12 strike out the word 'sixteenth;' also on same page, line 17, strike out the word 'second,' and in line 18, after the word 'fourteenth,' insert the word 'sixteenth.'"

The President — I would say the time the gentlemen occupy in the reading of these various amendments will not be counted as part of the hour of debate.

Mr. Becker — Mr. President, I simply desire to say, with reference to that amendment, that the forty-seventh and forty-eighth districts in Erie county lie along the lake front; that as at present constituted the population of the forty-seventh district is 98,458, and of the forty-eighth district 102,282, making a total of 200,740. As amended, it will make the population of the forty-seventh district 99,785, and the population of the forty-eighth district 101,898. It changes the Second Ward and the Sixteenth Ward simply in the two districts, one to the other. It is an amendment requested by our people, and I understand it is not objected to by anybody from Buffalo on the other side.

Mr. Roche — Mr. President, this apportionment is based on the enumeration of 1892, excluding aliens. Now, it appears by the documents which are on file here that after that enumeration was taken and in 1892 there were 30,000 persons who were admitted

to citizenship in nine counties of this State alone. Nearly that entire number were residents of Democratic districts. In the year 1893 there were about 20,000 persons admitted to citizenship. These persons are entirely ignored in making this computation and in making this apportionment. If an enumeration was taken in the year 1895 according to the present constitutional requirement, of course, those persons and those who might be admitted to citizenship during the present year would be taken into account. Now, this apportionment proposes to do something which has never before been done by any Constitutional Convention held in this State, namely, to postpone for so long a period an enumeration of the inhabitants of the State and an apportionment following that enumeration. The longest period that such an enumeration was postponed after any Convention was eight years from the time that the Constitution was to take effect. But here you provide that no enumeration shall be had until eleven years from this and no apportionment can be had until the year following that enumeration, or at least the first legislative session after the enumeration is taken.

Now, I submit that if this is a fair apportionment, if the numbers and the ratios upon which future apportionments are to be based and by which they are to be governed are honest, why is this enumeration postponed for the period of eleven years? Why not take it at the usual period, the period named in the present Constitution, namely, 1895? If gentlemen are not fearful that that enumeration may disclose a state of affairs which will be beneficial to the Democratic districts of this State, why, then, hesitate to provide that an enumeration shall be taken at that time? What is the purpose of postponing it for this extraordinary long period?

There is another thing, Mr. Chairman. Early in this session there was sent to each of the delegates to this Convention a pamphlet, issued by the Republican Club of the city of New York, containing a report of the Committee on Constitutional Revision. The other day the gentleman from Cattaraugus county passed a most eloquent eulogium in which he denominated as a distinguished triumvirate from New York, Mr. Choate, Mr. Root and Mr. Lauterbach. Presumably these gentlemen are members of the Republican Club of the city of New York.

The President — I beg to correct the gentleman.

Mr. Roche — I am very sorry, then, that the President is not sufficiently partisan to identify himself with such a high-toned organization in his own city. But, Mr. President, why this pro-

duction of this club has been ignored in the making of this Constitution I do not know, unless it is that the production contained an element of fairness and that fairness is not what is wanted in this apportionment. Now, what did they propose? In order to obviate the objection that the Legislature might be expected, whether Democratic or Republican, to make gerrymanders or to make unfair apportionments, this club presented the following scheme:

"Sec. K. The board of apportionment shall consist of the Governor, Secretary of State and two citizens to be appointed by the Governor, in such manner that two of the said board shall belong to and represent the political party which cast the highest number of votes for Governor at the last preceding election, and two of them shall belong to and represent the political party which cast the next highest vote for Governor at said election. The said board shall, at least six months prior to the November election, in the year 1896, and at each decennial period thereafter, ascertain and determine the ratio of representation according to the last preceding decennial enumeration, and the number of Senators and Assemblymen each county and senatorial district shall be entitled to elect for the ensuing ten years, and the Governor shall cause the same to be published in such manner as shall be directed by law.

"Sec. L. The board of apportionment shall, immediately thereafter, proceed to divide such counties and senatorial districts as may be entitled under the apportionment to more than one Senator or Member of Assembly, in the Senate and Assembly districts, as the case may be, equal to the number of Senators or Members of Assembly to which said counties and districts shall, respectively, be entitled, which district shall consist of compact and contiguous territory, and be equal in population (excluding aliens)."

In other words, they laid down the true democratic principle, that population should govern this apportionment, and not territory, and made no discrimination whatever, as is now proposed by the partisan majority in this Constitutional Convention, to the injury of the populous localities of this State. And they further provided ——

The President — The gentleman's time has expired. If there be no objection, he may proceed.

Mr. Roche — It further provided:

"Sec. N. The duties of the board of apportionment may be enforced by the Supreme Court by appropriate remedy at the suit

of any citizen, under such reasonable regulations as the Legislature shall by law prescribe."

Now, gentlemen, when you assembled, day after day and week after week, on your apportionment, you had before you a reasonable proposition, emanating from a club of intelligent and respectable citizens of your own party, intended to do away with all possibility of future gerrymanders, placing both parties on an equality and providing for a non-partisan board, which would make a fair and honest representation of the senatorial and Assembly districts of this State according to population.

Why did you not adopt it? Why were you afraid to take it up? Why not put it in this Constitution, and let us go before the people practically as one, saying to them: "Here is a document, here is a proposition which should commend itself to your judgment and to your sense of fairness, as it does to that of the delegates of this Convention?" I submit, Mr. Chairman, that this proposition as it stands now is condemned by every sense of fairness, by every constitutional precedent. It is marked all over with the stamp of politics. It is unfair and iniquitous in the extreme, and there is no justification whatever for it when we have a proposition or suggestion such as was submitted by the Republican Club of the city of New York, which would provide for taking an enumeration at an early date, which would secure fairness in the distribution of the Senators and Assemblymen, and which would give us a non-partisan board of apportionment, so that neither you nor we could be attacked in the future, nor our party be attacked, on the ground that we had taken advantage of our victory, of the circumstances in our power, to unduly and unjustly perpetuate a political machine for the advantage of our own party.

Now, I submit, Mr. Chairman, that it is worthy of consideration upon the part of these gentlemen, whether, if the principles laid down in this apportionment are correct, we should not have an enumeration in 1895, and a provision be inserted here whereby a non-partisan board of apportionment shall be created, and the distribution of the senatorial and assembly districts shall be arranged according to population.

Mr. Root — Mr. President, I move that this afternoon's session be extended until six o'clock, unless this matter is sooner disposed of.

The question being put on the motion of Mr. Root, Messrs.

Bowers and Cochran were appointed as tellers, and announced the result as, ayes, 74; noes, 23, and the motion was declared carried.

Mr. Tibbetts — Mr. President, I move to strike out all matters relating to apportionment, so far as it actually apportions the Senate and Assembly districts, and report a general proposition to prevent unequal and unjust apportionments; also, giving the Legislature power to increase the membership of the Senate and Assembly.

Mr. Mereness — I want to say simply this in regard to the amendment I have proposed. The only object of the amendment which I submit is to change the compensation in the phraseology from $1,500 to $1,200. This will make the total legislative expense, with some two hundred members of the Legislature, the same as it is now, with one hundred and sixty. I think it will remove a very serious objection in a large section of the State, if this amendment should be adopted.

Mr. Becker — Mr. Chairman, I merely wish to say that the subject of an apportionment in 1895 was fully considered by the committee, and we found that there had been an enumeration in 1892, which should have been had in 1885. We found also very strong evidences that that enumeration was made in such a way as to grossly exaggerate the population in the great cities. We did not deem it advisable to put the people to the expense of upward of $300,000 in taking another enumeration in 1895. That is a sufficient answer to the gentleman's amendment. It will be but ten years from the time this amendment goes into operation, which is the constitutional time that has always existed, before another enumeration can be had. The principle has been embodied in our Constitution from time immemorial that this enumeration shall only be taken at a period of ten years. The same principle exists under the federal Constitution that an enumeration of inhabitants shall be taken every ten years. This amendment, as to the election of Senators and members, will not take effect until next year, so the period of ten years will elapse before another enumeration is required.

In regard to the suggestions made by Mr. Nicoll and Mr. Bush, we deny that this amendment discriminates unjustly against the cities or the people of the State. It was stated openly by one of the leading Democrats the other day, Mr. Mulqueen, of New York, that "caucus was king." I call attention to the fact that in those great cities the command of the "boss" can send to the Legislature or keep away from it anybody he pleases. In the proposed

amendment fifty Senators are allowed, of whom twenty-six is a majority. The strongest claim made is that there is a possibility under this apportionment that the Republicans may get two Senators from New York city. That would leave ten for the Democrats. It is said also that the most that could be hoped for was that the Republicans might possibly get three Senators from Brooklyn. That would leave five for the Democrats; consequently there would be ten Senators in New York and four or five in Brooklyn, making fourteen in all, which is more than half of one-half of the Senate. In other words, if there were only a majority of one or two in the Senate, the Senators from New York and Brooklyn would still have a majority in the caucus. They could throttle the country members, whether they be Democratic or Republican. The same rule prevails in the Assembly. One-half of one hundred and fifty members is seventy-five, the half of seventy-five is thirty-eight, and under no possibility could the Republicans get more than three Members of Assembly in Brooklyn, or four at the outside, and in New York probably not more than three at the outside. This would give New York and Brooklyn some thirteen or fourteen, more than half and more than enough to control any party caucus. I commend this to the attention of the Democrats in the rural districts, whether they propose to be throttled by boss rule, unless they consent to what the majority from the great cities demand in caucus. Nearly every State in the Union has recognized the danger of centering in the great cities such a large number of its members. In 1846 the great corporations were in their infancy. The control of wealth is now vested in the great cities. Last year New York distributed over $25,000,000 through its office-holding people. This is what perpetuates boss rule. Brooklyn distributed over $12,000,000, and in Buffalo over $2,000,000 were spent. Under these circumstances has grown up the system of boss rule, against which the people of this State have revolted and will revolt again.

Mr. Jenks — Mr. President, the time for speech-making and rhetoric has gone by. I wish to say a few very plain, simple words as to how the matter presents itself as a residuum. If this bill be carried, it is a declaration that we do not live under a democratic or a republican form of government; that there is to be taxation without representation; that a man because he happens to live in a city is not entitled before the law to the same rights as a man who lives in a rural district; that no matter how many men may live together in cities, those cities shall never have representation beyond a certain fixed number.

We came here as members of a Constitutional Convention. We end here as the mere victims of a party caucus. The serried line of bright faces have become as dull as the grey ranks of a line of Russian infantry. In the face of heaven, and before Almighty God, I never believed that the day would come in the State of New York, when the party which was conceived for freedom and which worked its way to life through war, with banners that were blazing with the achievements of great and heroic deeds, would, at the dictates of mere petty, partisan, dirty, political supremacy, take freedom by the throat and make the Republican party a by-word and a hissing in the ears of every honest man. (Applause.)

Mr. E. R. Brown — Mr. President, the hour has come, as it most always does come, when the Democratic party is in the minority that it announces that it will secede. This is not the first time or the first place that it has made that announcement. Does the gentleman think that because in the Convention of 1867 after participating in the labors of that Constitutional Convention until its close, largely shaping the measures which it recommended to the people, the Democrats retired to the residence of Erastus Corning, and under caucus rule decided to issue to the people of this great State an address against the work of that Convention, that they can safely follow that precedent? Not every ship that is caught in a storm founders, and it is not every time, gentlemen, that you can play that little game with impunity. Why, Mr. President, I believe that the gentlemen have entirely failed to state the principle upon which they base their action. Every objection that they have made to this measure has been either trifling or specious; trifling on the matter of the variation from equality; insignificant and unavoidable according to the rule of county lines which your own party laid down and have always maintained; specious on the question of limiting the representation of the great cities of the State. That principle, so far as it is asserted in this amendment, would not change a single representative that we have allotted to the great cities of the State. It only relates to the future. But there it comes in conflict with a principle to which the Democratic party has been devoted since the foundation of the government. When the first federal Constitutional Convention met Yates and Lansing were there as your predecessors to frame the federal Constitution, and, rather than submit to the restraints upon the State's authority, which the federal Constitution now contains, they deserted and went home to their people, and left it to Alexander Hamilton alone to wrestle with the interests of New York State.

You are willing now to take a similar position. Why, Mr. President, notwithstanding the adoption of the federal Constitution, the fidelity of the Democratic party to the principle of decentralization reduced nationality to so low a point that it was only saved in this country by the reverses of 1812, by the conquests of 1847, and that same sort of decentralization — and I say it without a single reflection upon the loyalty, the patriotism, the honor, the intelligence of you or of your fathers in this loyal Empire State — was exemplified by the secession of 1861, which carried to its logical conclusion this same doctrine of decentralization.

This principle is a valuable one. It has made a large contribution to the constitutional and the statute law, not only of the State of New York, but of all the States and of the United States. So far as it is valuable, you cannot deprive us of it; neither can you compel us to go to unwarranted lengths in the assertion of that principle. The Constitution of the United States, the war of 1861, the statutory enactments, the national practices have made all these things to far as the federal Constitution is concerned, secure.

We come now to the State government. We give you the representation to which you are entitled, and because we say that in the Senate, which is not strictly the popular branch, the Assembly being the popular branch — because we say that two counties in the State shall not have more than fifty-eight counties in the Senate of the State, you say that we are not giving you a proper and popular representation. Do you want to weigh down Manhattan Island and Long Island with political power, until from their very weight they drop off? The southern States, south of Mason and Dixon's line, dropped off from the overweight of local power and excessive local self-government. The balance of power is never dear to you, unless you are on the long arm of the lever.

The President — The gentleman's time has expired. Does any gentleman object to Mr. Brown proceeding? No gentleman objecting, Mr. Brown may proceed.

Mr. E. R. Brown — No, Mr. President, in this matter the Democratic party has at least been consistent; consistent with the practices which it has followed since the foundation of the government; devoted to a principle which has been valuable, but following it now as on many former occasions to an extreme which would be dangerous to the welfare and integrity of the State. I do not believe, Mr. President, that when the State of New York exercises a liberality toward the great cities of the State beyond the liberality of Rhode Island toward Providence, beyond the liberality of Maryland toward Baltimore, of Kentucky toward Louisville, of

Missouri toward St. Louis, of Ohio toward Cincinnati and Cleveland, she can be accused of narrowness and of unfairness and of taking a back track in the development of representative government. No, Mr. Chairman, if the gentlemen will reflect, they will perceive that they have clothed this subject with arguments which are not the real reasons for their opposition. They have clothed it as their idol, with the same shroud that they covered it with in former contests, and, if they will strip off that shroud, they will see that that old doctrine of extreme popular representation, regardless of territorial interests, has been battered, if not quite destroyed, and that the time has come for a fair, generous recognition of those great cities of which I am as proud as they, but it has also come for a fair, just and honorable recognition of the various territorial divisions of this State. (Applause.)

Mr. Bowers — Mr. President, I am only surprised that in addition to the other amendment which it has been found necessary to propose by the majority this afternoon they have not proposed an amendment giving us the names of the fifty Senators who are to sit in judgment on the laws of this State for the next twenty years, and that they have not clothed their Committee on Legislative Apportionment with power to continue to amend from day to day this strangely-constructed scheme, that its manifest absurdities and contradictions may be corrected as discovered until the sun shall set on the day of election. This would be an important and convenient amendment, for it has not yet appeared in such shape that it can stand the light of a single day's discussion without its promoters running to cover and calling it back in the Convention for further amendment.

I am very much obliged to the gentleman who has just addressed the Convention for telling us at last the plain truth. I thank him also for the insult he offers in these closing hours, when he knows he has the votes and the power to carry this measure to final passage. The time has not yet arrived when I propose to surrender my individuality to his government or the government of any other man from Jefferson county; nor have the people of the city of New York yet reached that condition that they are under the guardianship of those who live in the rural districts.

But, Mr. President, we have now the truth. When I last addressed the Convention upon this question I challenged the majority to say in plain words that they meant to rob the cities of the State of the representation their population gave to them. Until that time they covered the idea, but by degrees it came forth until you, Mr. President, closed the debate, citing extracts from

the Constitutions of other States, and in plain terms let us know the truth, which is that 100,000 people in New York are only to have the representation that 50,000 or less in St. Lawrence or Jefferson are to have.

Mr. President, we have been in hard fortune. When you come upon the floor, with all the power of your high office, to which you were elevated in part by the votes of the minority, you bring to the debate a power which ought not to be there, and you must not wonder if we criticise the fact that the man who closes the debate on such a question proceeds back to the chair to determine questions of order and debate and interpret rules. Such has not been the course in previous Conventions. I glanced last night at the index of the Constitutional Convention of 1846, and I found that Mr. John Tracy was the President, and that he spoke twice — once in his opening address, and once at the final adjournment. I glanced at the index of the Constitutional Convention of 1867, and I found that Mr. William A. Wheeler was President, and he spoke twice, "address on taking the chair, page 15; address on final adjournment, page 1260." Possibly these gentlemen may not have been fairer presiding officers than has been our President, but we would have been pleased if their example had been followed, at least on a partisan question.

I have but a few moments, as I am well aware, to conclude the remarks that I feel it proper at this time to make. I have no doubt, Mr. President, that you have intended to perform your duty in all fairness; but considering that we stand to-day at the mercy of a majority guided by caucus action, we, at least, should have had presented to us the pretended spectacle of a judge on the rules of debate who had not made one of the most partisan speeches in behalf of the apportionment.

But one or two words more, and they are these. I said you should have named the Senators. You have named them for all practical purposes, for by the final amendments that you have introduced into this measure you have so arranged it that the country districts shall always remain the same, and any additional Senators that the great cities can gain by gathering new ratios of population are to be given them by an increase in the total number of Senators. Aye, and you have at last come out, under the demand of these debates, and conceded that the great counties of the State shall, none of them, ever have more than one-third of all the Senators of the State, no matter how great their population.

Fearing that I trespass upon the time allowed me, let me make one more reference to words which were dropped in debate — not

in the heat of debate, but in that customary, careless, cutting manner, which has marked so many of the suggestions that have emanated from the prominent leader of the Republican forces in this Convention. You told us, Mr. President, that we were fighting behind rotten ramparts, and with wooden guns. Such, sir, may be our position in this Convention. Broken down by the brute force of a great numerical majority, acting as one man, and increasing their forces by means, the most extraordinary, it may be that our defenses are overrun as if they were rotten, and our guns may appear to be made but of wood; or if you meant the intellectual superiority of those from the rural districts had overcome the poor defenses we of the cities may have made, you are welcome to take such claimed superiority to yourselves; but we have yet to hear one rural legislator come forth with words or arguments that could pretend to sustain one line of this bill.

Mr. President, and members of the majority, beware lest these same rotten ramparts and wooden guns turn out to be the rusty muskets and exhausted ammunition of the patriots of Bunker Hill, the forerunner of the defeat of the invaders of the State. (Applause.)

The President — The time for debate on this amendment has now expired.

Mr. Holcomb — I think we ought to have the privilege of saying a few words more before this debate is closed.

Mr. Root — I object.

The President — Objection is made.

Mr. Osborn — Mr. President, I intended to speak earlier. I do not rise to ask to be permitted to speak. I suppose it is too late to call attention to the blunders in the amendment.

Mr. E. R. Brown — Mr. President, I request unanimous consent that the gentleman be allowed time to call attention to the blunders in the amendment.

Mr. Bowers — I hope it will not be given. We will be here a month yet if that is done.

Mr. Hotchkiss — Let me suggest that the people at the next election will call attention to the blunders in the amendment.

Mr. Holcomb — Mr. President, I think I have the right to call attention to matters in the debate, and I hope that we shall proceed without curtailing gentlemen, which is very unfair.

The President — The Chair has no control over the motion. The motions are now to be disposed of in their order.

Mr. Root — Mr. President, may I say that I see no objection to Mr. Tekulsky's request being granted.

The President — It was a motion to recommit to the Committee on Legislative Organization with instructions to amend. The Secretary will read it.

The Secretary — Mr. Tekulsky moves that the proposed constitutional amendment under consideration, being general order No. 74, be recommitted to the Committee on Legislative Organization with instructions to amend as follows, and report the same forthwith to the Convention.

"On page 3, line 4, by inserting before the word 'Broome,' the words 'Dominick street, Varrick street,' and on page 4, line 3, insert before the word 'Broome' the words 'Dominick street, Varrick street.'"

The question being put on Mr. Tekulsky's motion to recommit with instructions to report forthwith the alteration suggested by way of amendment, Mr. Davies and Mr. Cochran were appointed tellers and announced that there were 97 ayes; 60 noes.

The President — Mr. Tekulsky's motion is carried. The Secretary will write in the words offered by Mr. Tekulsky. The question will now be taken on Mr. Becker's amendment which relates to the boundaries in Erie. The Clerk will read it.

The Secretary read the amendment as follows:

"Amend as follows: On page 9, line 12, after the word 'first' insert the word 'second,' and in line 12 strike out the word 'sixteenth;' also on same page, line 17, strike out the word 'second,' and in line 18, after the word 'fourteenth,' insert the word 'sixteenth.'"

The President then put the question on Mr. Becker's motion, and it was adopted.

The President — The Secretary will write in that alteration as now directed by the Convention.

Mr. McClure — Mr. President, would it be in order to have the Secretary take a couple of miles off my district in New York?

The President — You can raise that question some time next month.

Mr. McClure — Yes, along about the second Wednesday in November it will be taken off.

The President — The question will next be taken on the motion of Mr. Mereness. The Secretary will read the alteration.

The Secretary — Mr. Mereness moves to instruct said committee to amend as follows: Add the following section:

"Sec. 6. Each member of the Legislature elected after January 1, 1895, shall receive for his services an annual salary of $1,200; and shall also receive the sum of one dollar for every ten miles he shall travel in going to and returning from the place of meeting once each session, on the most usual route. Senators, when the Senate is convened in extraordinary session, or when serving as members of the court for the trial of impeachments and such members of the Assembly not exceeding nine, as shall be appointed managers of an impeachment, shall receive an additional allowance of ten dollars for each day necessarily engaged."

The question being put on the motion of Mr. Mereness, to recommit with instructions to amend by inserting the proposed clause and report forthwith, Messrs. Davies and Cochran were appointed tellers, and announced that there were 33 ayes; 68 noes.

The President — The motion is lost. The question will next be taken upon the motion made by Mr. Jenks, which will be read by the Secretary.

The Secretary — Mr. Jenks moves to instruct said committee as follows:

"Amend section 4, on page 10, by striking out lines 22, 23, 24, and 25, of said page, and also lines 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 of page 11."

Mr. Jenks — On that I call for the ayes and noes, Mr. President.

The call for the ayes and noes was not sustained.

The President put the question on the motion of Mr. Jenks to make the proposed alterations, and it was decided in the negative.

The President — The question will now be taken upon the motion made by Mr. Tibbetts, to recommit with instructions to amend as follows:

The Secretary — "Strike out all matters relating to apportionment so far as it actually apportions the Senate and Assembly districts, and report a general proposition to prevent unequal and unjust apportionments; also, giving the Legislature power to increase the membership of the Senate and Assembly."

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

The President — The question will next be taken on the motion of Mr. Roche to recommit and amend as the Secretary will read.

The Secretary read as follows:

"Strike out '1905' on lines 3 and 4, page 10, and insert instead '1895.'"

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

The President — The next and last motion was that which was first made by Mr. Dean. The motion as stated was read and was stated by him to be in substance to recommit with instructions to report in place of the present amendment, the pending amendment as a substitute for the present article on third reading.

The ayes and noes were called for, and the call was sustained.

The Secretary proceeded to call the roll.

Mr. Countryman — Mr. Chairman, in any rule of apportionment it has always been recognized and enforced in this State, recognizing county lines as the basis, that it has been impossible to give as full and complete representation to the country as to the cities in which more than one district was embraced, and, therefore, according to the present system, and based upon the present number of the members of the Legislature, there is, in my judgment, an unfair representation of the cities as compared with the country. I am, therefore, in favor of the proposed increase of the members of both houses of the Legislature, as I think upon any honest apportionment made on that basis, the country would get a better and fairer representation. I must, therefore, vote no.

The roll-call being concluded the result was as follows:

Ayes — Messrs. Bigelow, Blake, Bowers, Burr, Bush, Campbell, Cassidy, Chipp, Jr., Cochran, Danforth, Davenport, Deady, Dean, Deyo, Durnin, Emmet, Forbes, Giegerich, Gilleran, Goeller, Green, J. I., Griswold, Herzberg, Holcomb, Hotchkiss, Hottenroth, Jenks, Kerwin, Kimmey, Marks, Maybee, McClure, McCurdy, McLaughlin, J. W., Mulqueen, Nicoll, Ohmeis, Osborn, Parmenter, Peabody, Peck, Platzek, Roche, Sandford, Schumaker, Smith, Sullivan, W., Tekulsky, Titus, Truax, C. H., Tucker, Veeder, Williams — 53.

Noes — Messrs. Abbott, Acker, Ackerly, Allaben, Arnold, Baker, Barhite, Barnum, Barrow, Becker, Brown, E. A., Brown, E. R., Cady, Carter, Church, Clark, G. W., Clark, H. A., Coleman, Cookinham, Cornwell, Countryman, Crosby, Davies, Davis, Deterling, Dickey, Doty, Durfee, Faber, Floyd, Foote, Francis, Frank, Andrew, Frank, Augustus, Fraser, Fuller, C. A., Fuller, O. A., Galinger, Gilbert, Goodelle, Hamlin, Hawley, Hecker, Hedges, Hill, Hirschberg, Holls, Johnson, I. Sam, Johnson, J., Kinkel,

Kurth, Lauterbach, Lester, Lewis, C. H., Lincoln, Lyon, Manley, Mantanye, Marshall, McArthur, McDonough, McIntyre, McKinstry, McLaughlin, C. B., McMillan, Moore, Morton, Nichols, Nostrand, O'Brien, Parker, Parkhurst, Pashley, Phipps, Pool, Porter, Powell, Putnam, Redman, Root, Spencer, Springweiler, Steele, A. B., Steele, W. H., Storm, Sullivan, T. A., Turner, Vedder, Vogt, Wellington, Whitmyer, Wiggins, Woodward, President — 94.

Mr. Bowers — I move we now take a recess until eight o'clock.

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

The Convention then took a recess until eight o'clock P. M.

EVENING SESSION.

Thursday Evening, September 13, 1894.

The Constitutional Convention of the State of New York met pursuant to recess at the Capitol, Albany, N. Y., Thursday, September 13, 1894, at 8 P. M.

President Choate called the Convention to order.

Mr. Hedges — Mr. President, I desire to offer the following resolution:

R. 211.— "Resolved, That this Convention meet on Saturday next at 9 A. M., and adjourn at 12 M., until 10 A. M. Thursday, September twentieth."

The President — If Mr. Hedges will accept the suggestion of the Chair that question might better be put after the apportionment amendment is passed upon, when the Convention will be full.

Mr. Crosby — Mr. President, in view of the fact that important business is to come before the Convention, I move that there be a roll-call to ascertain whether there be a quorum present.

The Secretary called the roll, the result of which showed a quorum to be present.

Mr. Titus — Mr. President, I would like to report that Mr. Fields is sick.

The President — He already has leave of absence.

Mr. Gilbert — Mr. President, I am going to ask unanimous consent to offer an amendment. I am aware that I cannot introduce it without unanimous consent.

The President — Unless objection is made, Mr. Gilbert has leave to offer an amendment.

Mr. Davenport — What is it?

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

"On page 11, line 1, strike out the words 'one-half' and insert in lieu thereof the words 'one-third.'"

Mr. Cochran — I object.

The President — Mr. Gilbert cannot have leave, without unanimous consent, but the Secretary may enter on the Journal that he asked to have it.

The Secretary will proceed with the third reading of the amendment. (O., I. No. 376, P. 454.)

The Secretary read the proposed amendment in the language following:

Sections 2, 3, 4 and 5 of article 3 are hereby amended so as to read as follows:

Sec. 2. The Senate shall consist of fifty members, except as hereinafter provided. The Senators elected in the year one thousand eight hundred and ninety-five shall hold their offices for three years, and their successors shall be chosen for two years. The Assembly shall consist of one hundred and fifty members, who shall be chosen for one year.

Sec. 3. The State shall be divided into fifty districts, to be called Senate Districts, each of which shall choose one Senator. The districts shall be numbered from one to fifty, inclusive.

District number one (1) shall consist of the counties of Suffolk and Richmond.

District number two (2) shall consist of the county of Queens.

District number three (3) shall consist of that part of the county of Kings comprising the first, second, third, fourth, fifth and sixth wards of the city of Brooklyn.

District number four (4) shall consist of that part of the county of Kings comprising the seventh, thirteenth, nineteenth and twenty-first wards of the city of Brooklyn.

District number five (5) shall consist of that part of the county of Kings comprising the eighth, tenth, twelfth and thirtieth wards of the city of Brooklyn, and the ward of the city of Brooklyn which was formerly the town of Gravesend.

District number six (6) shall consist of that part of the county

of Kings comprising the ninth, eleventh, twentieth and twenty-second wards of the city of Brooklyn.

District number seven (7) shall consist of that part of the county of Kings comprising the fourteenth, fifteenth, sixteenth and seventeenth wards of the city of Brooklyn.

District number eight (8) shall consist of that part of the county of Kings comprising the twenty-third, twenty-fourth, twenty-fifth and twenty-ninth wards of the city of Brooklyn and the town of Flatlands.

District number nine (9) shall consist of that part of the county of Kings comprising the eighteenth, twenty-sixth, twenty-seventh and twenty-eighth wards of the city of Brooklyn.

District number ten (10) shall consist of that part of the county of New York within and bounded by a line beginning at Canal street and the Hudson river, and running thence along Canal street, Hudson street, Dominick street, Varick street, Broome street, Sullivan street, Spring street, Broadway, Canal street, the Bowery, Division street, Grand street and Jackson street, to the East river, and thence around the southern end of Manhattan Island to the place of beginning, and also Governor's, Bedloe's and Ellis Islands.

District number eleven (11) shall consist of that part of the county of New York lying north of district number ten, and within and bounded by a line beginning at the junction of Broadway and Canal street, and running thence along Broadway, Fourth street, the Bowery and Third avenue, St. Mark's place, Avenue A, Seventh street, Avenue B, Clinton street, Rivington street, Norfolk street, Division street, Bowery and Canal street to the place of beginning.

District number twelve (12) shall consist of that part of the county of New York lying north of districts numbers ten and eleven, and within and bounded by a line beginning at Jackson street and the East river, and running thence through Jackson street, Grand street, Division street, Norfolk street, Rivington street, Clinton street, Avenue B, Seventh street, Avenue A, St. Mark's place, Third avenue, East Fourteenth street to the East river, and along the East river to the place of beginning.

District number thirteen (13) shall consist of that part of the county of New York lying north of district number ten and within and bounded by a line beginning at the Hudson river at the foot of Canal street and running thence along Canal street, Hudson street, Dominick street, Varick street, Broome street, Sullivan street, Spring street, Broadway, Fourth street, the Bowery and Third

avenue, Fourteenth street, Sixth avenue, West Fifteenth street, Seventh avenue, West Nineteenth street, Eighth avenue, West Twentieth street and the Hudson river, to the place of beginning.

District number fourteen (14) shall consist of that part of the county of New York lying north of districts numbers twelve and thirteen, and within and bounded by a line beginning at East Fourteenth street and the East river, and running thence along East Fourteenth street, Irving place, East Nineteenth street, Third avenue, East Twenty-third street, Lexington avenue, East Fifty-third street, Third avenue, East Fifty-second street and the East river, to the place of beginning.

District number fifteen (15) shall consist of that part of the county of New York lying north of district number thirteen, and within and bounded by a line beginning at the junction of West Fourteenth street and Sixth avenue, and running thence along Sixth avenue, West Fifteenth street, Seventh avenue, West Fortieth street, Eighth avenue and the transverse road across Central Park at Ninety-seventh street, Fifth avenue, East Ninety-sixth street, Lexington avenue, East Twenty-third street, Third avenue, East Nineteenth street, Irving place and Fourteenth street, to the place of beginning.

District number sixteen (16) shall consist of that part of the county of New York lying north of district number thirteen, and within and bounded by a line beginning at Seventh avenue and West Nineteenth street, and running thence along West Nineteenth street, Eighth avenue, West Twentieth street, the Hudson river, West Forty-sixth street, Tenth avenue, West Forty-third street, Eighth avenue, West Fortieth street and Seventh avenue, to the place of beginning.

District number seventeen (17) shall consist of that part of the county of New York lying north of district number sixteen and within and bounded by a line beginning at the junction of Eighth avenue and West Forty-third street, and running thence along West Forty-third street, Tenth avenue, West Forty-sixth street, the Hudson river, West Eighty-ninth street, Tenth avenue, West Eighty-sixth street, Ninth avenue, West Eighty-first street and Eighth avenue to the place of beginning.

District number eighteen (18) shall consist of that part of the county of New York lying north of district number fourteen, and within and bounded by a line beginning at the junction of East Fifty-second street and East river, and running thence along East Fifty-second street, Third avenue, East Fifty-third street, Lexington avenue, East Eighty-fourth street, Second avenue, East Eighty-

third street and the East river, to the place of beginning; and also Blackwell's island.

District number nineteen (19) shall consist of that part of the county of New York lying north of district number seventeen, and within and bounded by a line beginning at West Eighty-ninth street and the Hudson river, and running thence along the Hudson river and Spuyten Duyvil creek around the northern end of Manhattan island; thence southerly along the Harlem river to the north end of Fifth avenue; thence along Fifth avenue, East One Hundred and Twenty-ninth street, Fourth avenue, East One Hundred and Tenth streets, Fifth avenue, the transverse road across Central park at Ninety-seventh street, Eighth avenue, West Eighty-first street, Ninth avenue, West Eighty-sixth, Tenth avenue and West Eighty-ninth street, to the place of beginning.

District number twenty (20) shall consist of that part of the county of New York lying north of districts numbers eighteen and fifteen, and within and bounded by a line beginning at East Eighty-third street and the East river, running thence through East Eighty-third street, Second avenue, East Eighty-fourth street, Lexington avenue, East Ninety-sixth street, Fifth avenue, East One Hundred and Tenth street, Fourth avenue, East One Hundred and Nineteenth street to the Harlem river, and along the Harlem and East rivers to the place of beginning; and also Randall's island and Ward's island.

District number twenty-one (21) shall consist of that part of the county of New York lying north of districts numbers nineteen and twenty within and bounded by a line beginning at East One Hundred and Nineteenth street and Harlem river, and running thence along East One Hundred and Nineteenth street, Fourth avenue, One Hundred and Twenty-ninth street, Fifth avenue and the Harlem river, to the place of beginning; and all that part of the city of New York lying north and east of Harlem river.

District number twenty-two (22) shall consist of the county of Westchester.

District number twenty-three (23) shall consist of the counties of Orange and Rockland.

District number twenty-four (24) shall consist of the counties of Dutchess, Columbia and Putnam.

District number twenty-five (25) shall consist of the counties of Ulster and Greene.

District number twenty-six (26) shall consist of the counties of Delaware, Chenango and Sullivan.

District number twenty-seven (27) shall consist of the counties of Montgomery, Fulton, Hamilton and Schoharie.

District number twenty-eight (28) shall consist of the counties of Saratoga, Schenectady and Washington.

District number twenty-nine (29) shall consist of the county of Albany.

District number thirty (30) shall consist of the county of Rensselaer.

District number thirty-one (31) shall consist of the counties of Clinton, Essex and Warren.

District number thirty-two (32) shall consist of the counties of St. Lawrence and Franklin.

District number thirty-three (33) shall consist of the counties of Otsego and Herkimer.

District number thirty-four (34) shall consist of the county of Oneida.

District number thirty-five (35) shall consist of the counties of Jefferson and Lewis.

District number thirty-six (36) shall consist of the county of Onondaga.

District number thirty-seven (37) shall consist of the counties of Oswego and Madison.

District number thirty-eight (38) shall consist of the counties of Broome, Cortland and Tioga.

District number thirty-nine (39) shall consist of the counties of Cayuga and Seneca.

District number forty (40) shall consist of the counties of Chemung, Tompkins and Schuyler.

District number forty-one (41) shall consist of the counties of Steuben and Yates.

District number forty-two (42) shall consist of the counties of Ontario and Wayne.

District number forty-three (43) shall consist of that part of the county of Monroe comprising the towns of Brighton, Henrietta, Irondequoit, Mendon, Penfield, Perinton, Pittsford, Rush and Webster, and the fourth, sixth, seventh, eighth, twelfth, thirteenth, fourteenth, sixteenth, seventeenth and eighteenth wards of the city of Rochester, as at present constituted.

District number forty-four (44) shall consist of that part of the county of Monroe comprising the towns of Chili, Clarkson, Gates, Greece, Hamlin, Ogden, Parma, Riga, Sweden and Wheatland, and the first, second, third, fifth, ninth, tenth, eleventh, fifteenth,

nineteenth and twentieth wards of the city of Rochester, as at present constituted.

District number forty-five (45) shall consist of the counties of Niagara, Genesee and Orleans.

District number forty-six (46) shall consist of the counties of Allegany, Livingston and Wyoming.

District number forty-seven (47) shall consist of that part of the county of Erie comprising the first, second, third, sixth, fifteenth, nineteenth, twentieth, twenty-first, twenty-second, twenty-third and twenty-fourth wards of the city of Buffalo, as at present constituted.

District number forty-eight (48) shall consist of that part of the county of Erie comprising the fourth, fifth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth and sixteenth wards of the city of Buffalo, as at present constituted.

District number forty-nine (49) shall consist of that part of the county of Erie comprising the seventeenth, eighteenth and twenty-fifth wards of the city of Buffalo, as at present constituted; and all the remainder of the said county of Erie not hereinbefore described.

District number fifty (50) shall consist of the counties of Chautauqua and Cattaraugus.

Sec. 4. An enumeration of the inhabitants of the State shall be taken under the direction of the Secretary of State during the months of May and June, in the year one thousand nine hundred and five, and in the same months every tenth year thereafter; and the said districts shall be so altered by the Legislature at the first regular session after the return of every enumeration, that each Senate district shall contain as nearly as may be an equal number of inhabitants, excluding aliens, and be in as compact form as practicable, and shall remain unaltered until the return of another enumeration, and shall at all times consist of contiguous territory, and no county shall be divided in the formation of a Senate district except to make two or more Senate districts wholly in such county. No town and no block in a city, inclosed by streets or public ways, shall be divided in the formation of Senate districts; nor shall any district contain a greater excess in population over an adjoining district in the same county than the population of a town or block therein, adjoining such district. Counties, towns or blocks which, from their location, may be included in either of two districts, shall be so placed as to make said districts most nearly equal in number of inhabitants, excluding aliens.

No county shall have four or more Senators unless it shall have a full ratio for each Senator. No county shall have more than

one-third of all the Senators; and no two counties or the territory thereof as now organized, which are adjoining counties, or which are separated only by public waters, shall have more than one-half of all the Senators.

The ratio for apportioning Senators shall always be obtained by dividing the number of inhabitants, excluding aliens, by fifty, and the Senate shall always be composed of fifty members, except that if any county having three or more Senators at the time of any apportionment shall be entitled on such ratio to an additional Senator or Senators, such additional Senator or Senators shall be given to such county in addition to the fifty Senators, and the whole number of Senators shall be increased to that extent.

Sec. 5. The members of the Assembly shall be chosen by single districts, and shall be apportioned by the Legislature at the first regular session after the return of every enumeration among the several counties of the State, as nearly as may be according to the number of their respective inhabitants, excluding aliens. Every county heretofore established and separately organized, except the county of Hamilton, shall always be entitled to one Member of Assembly, and no county shall hereafter be erected unless its population shall entitle it to a member. The county of Hamilton shall elect with the county of Fulton, until the population of the county of Hamilton shall, according to the ratio, entitle it to a member. But the Legislature may abolish the said county of Hamilton and annex the territory thereof to some other county or counties.

The quotient, obtained by dividing the whole number of inhabitants of the State, excluding aliens, by the number of Members of Assembly, shall be the ratio for apportionment, which shall be made as follows:

One Member of Assembly shall be apportioned to every county, including Fulton and Hamilton as one county, containing less than the ratio and one-half over. Two members shall be apportioned to every other county. The remaining Members of Assembly shall be apportioned to the counties having more than two ratios according to the number of inhabitants, excluding aliens. Members apportioned on remainders shall be apportioned to the counties having the highest remainders in the order thereof, respectively. No county shall have more Members of Assembly than a county having a greater number of inhabitants, excluding aliens.

Until after the next enumeration Members of the Assembly shall be apportioned to the several counties as follows: Albany county, four members; Allegany county, one member; Broome county, two members; Cattaraugus county, two members; Cayuga county,

two members; Chautauqua county, two members; Chemung county, one member; Chenango county, one member; Clinton county, one member; Columbia county, one member; Cortland county, one member; Delaware county, one member; Dutchess county, two members; Erie county, eight members; Essex county, one member; Franklin county, one member; Fulton and Hamilton counties, one member; Genesee county, one member; Greene county, one member; Herkimer county, one member; Jefferson county, two members; Kings county, twenty-one members; Lewis county, one member; Livingston county, one member; Madison county, one member; Monroe county, four members; Montgomery county, one member; New York county, thirty-five members; Niagara county, two members; Oneida county, three members; Onondaga county, four members; Ontario county, one member; Orange county, two members; Orleans county, one member; Oswego county, two members; Otsego county, one member; Putnam county, one member; Queens county, three members; Rensselaer county, three members; Richmond county, one member; Rockland county, one member; St. Lawrence county, two members; Saratoga county, one member; Schenectady county, one member; Schoharie county, one member; Schuyler county, one member; Seneca county, one member; Steuben county, two members; Suffolk county, two members; Sullivan county, one member; Tioga county, one member; Tompkins county, one member; Ulster county, two members; Warren county, one member; Washington county, one member; Wayne county, one member; Westchester county, three members; Wyoming county, one member, and Yates county, one member.

In any county entitled to more than one member, the board of supervisors, and in any city embracing an entire county and having no board of supervisors, the common council, or if there be none, the body exercising the powers of a common council, shall assemble on the second Tuesday of June, one thousand eight hundred and ninety-five, and at such times as the Legislature making an apportionment shall prescribe, and divide such counties into Assembly districts as nearly equal in number of inhabitants, excluding aliens, as may be, of convenient and contiguous territory, in as compact form as practicable, each of which shall be wholly within a Senate district formed under the same apportionment, equal to the number of Members of the Assembly to which such county shall be entitled, and shall cause to be filed in the office of such Secretary of State and of the clerk of such county a description of such districts, specifying the number of each district and of the inhabitants thereof,

excluding aliens, according to the last preceding enumeration, and such apportionment and districts shall remain unaltered until another enumeration shall be made, as herein provided, but said division of the city of Brooklyn and the county of Kings to be made on the second Tuesday of June, one thousand eight hundred and ninety-five, shall be made by the common council of the said city and the board of supervisors of said county, assembled in joint session. In counties having more than one Senate district, the same number of Assembly districts shall be put in each Senate district, unless the Assembly districts cannot be evenly divided among the Senate districts of any county, in which case one more Assembly district shall be put in the Senate district in such county having the largest, or one less Assembly district shall be put in the Senate district in such county having the smallest number of inhabitants, excluding aliens, as the case may require. No town, and no block in a city, inclosed by streets or public ways, shall be divided in the formation of Assembly districts, nor shall any district contain a greater excess in population over an adjoining district in the same Senate district, than the population of a town or block therein adjoining such Assembly district. Towns or blocks which, from their location, may be included in either of two districts, shall be so placed as to make said districts most nearly equal in number of inhabitants, excluding aliens; but in the division of cities under the first apportionment, regard shall be had to the number of inhabitants, excluding aliens, of the election districts according to the State enumeration of one thousand eight hundred and ninety-two, so far as may be, instead of blocks. Nothing in this section shall prevent the division, at any time, of counties and towns, and the erection of new towns by the Legislature.

An apportionment by the Legislature, or other body, shall be subject to review by the Supreme Court, at the suit of any citizen, under such reasonable regulations as the Legislature may prescribe; and any court before which a cause may be pending involving an apportionment, shall give precedence thereto over all other causes and proceedings, and if said court be not in session it shall convene promptly for the disposition of the same.

The President — This amendment having been read a third time, a vote upon its final passage will now be taken.

The President put the question on agreeing to the final passage of the amendment, and the Secretary proceeded to call the roll.

Mr. Bigelow — Mr. President, I am satisfied from the debate which this measure has undergone that it is inequitable and unfair to

the cities, that it discriminates against the representative rights of the cities in favor of the country districts. I dare say our friends on the other side of the hall will say that if the Democrats had a majority, as the Republicans have, they would not have given a fairer apportionment. It would not be profitable to either admit or deny such a statement as that, but I venture to say that if a Democratic majority had presented such an apportionment to this body, there is not a Republican within the sound of my voice who would not have pronounced it unfair, inequitable and unjust. I vote no.

Mr. Blake — Mr. President, Caesar, on the way to the capitol, said to the soothsayer, "The ides of March have come." "Yes, Caesar," he replied, "but they are not yet past." You gentlemen over there may exult in your numbers and your strength, may exult and fondly think that you have the victory already in your grasp; but I say to you, "Beware, the ides of November." Napoleon won his Quatre Bras, but his Waterloo speedily followed. You will win in this skirmish, because you have the strength of numbers, gentlemen, but your Waterloo will speedily and surely come. Before recess, when I looked over there at your serried ranks and noted your solemn silence, so confident were you in your strength, I could not help recalling an incident in history, one pregnant with more of moment than this even, because it involved the downfall of the liberties of the people. But the world was told, "Peace reigns at Warsaw." Yes, peace did reign, but it was the peace of brute force; it was the peace of silence; it was the peace of death, sir. Your silence was magnificent, unbroken, save by the rugged voice of the lion statesman from Jefferson. I will do him that honor because on one or two occasions he has had the courage to break away from party. No, there was one other voice, I think; that of the gentleman from Erie. The gentleman from Jefferson would have done better to have confined himself to the discussion of State issues and topics, because when he ventured out into the larger domain and upon the discussion of larger questions, he became hopelessly involved in the mire of illogic and error. I am proud to say that the Democratic party holds to-day the doctrine of decentralization. It was the doctrine of Jefferson, in contradistinction to that taught by the school of Hamilton. It was taught by Jefferson, the father and apostle of Democracy, the immortal author of the declaration; and so long as the name of Jefferson is revered in this land of ours, so long as Democracy is known in the land, so long will that doctrine be a fundamental principle of the Democratic party. Sir, I deny the assertion of the

gentleman from Jefferson that decentralization led to the civil war and to secession. On the contrary, I fearlessly assert that it was the curse of slavery and the inflammatory appeals to the passions of men on both sides of the line that led to that deplorable conflict. The gentleman from Erie had better not have said anything about bosses or bossism. He should remember, sir, that the Republican party to-day has a boss that holds his party in his relentless and iron grasp and rules it with a rod of iron. Did the heart of the Republican party cross the Atlantic to seek out New York's errant son, Levi P. Morton? Not at all, sir. But the voice of Platt speaks; then the big and little bosses "crook the pregnant hinges of the knee that thrift may follow fawning." I except you, sir, and Mr. Root, and the few distinguished gentlemen who amuse themselves with butterfly and rainbow politics. (Laughter.)

When the gentleman shall throw off the yoke of Plattism, then let him come and preach to us, and I promise you, sir, that we will like Paul at the feet of Gamaliel hear him; I vote no, sir.

Mr. Burr — Mr. President, the last word has been said in argument; the debate has been closed. Everything that could be said against this measure has been presented most eloquently and forcibly by my colleagues. Yet, before this iniquity is consummated I cannot refrain from uttering my solemn protest against this proposed amendment. There is no call for an apportionment in this constitutional Convention, and yet we see, as a matter of fact, that this apportionment is the one thing about which this Constitutional Convention revolves. It is the one thing at which you have strained; it is the one thing which you have bent every energy to accomplish. It is infamous; it is unfair; it is a blow at the growth of the great cities of this State; it is a blow at the principle of representative government; it is a stab at the very life of Democracy, because if this amendment passes and should be adopted by the people, that would be the end of the Democratic party, so far as representation, or at least control, in the Legislature is concerned. But, gentlemen, you have miscounted. You are mistaken if you believe that the Democratic party is in a temper to accept this infamous apportionment. Do you not realize that when at the last moment, pushed into a corner, you make a party or a man fight for his life, that then he bends his greatest energies, that then he devotes himself, or that party devotes itself, to protect its very existence? And so no matter what may be the grievances, no matter what may be the internal dissensions that exist in the Democratic party to-day, this proposed bill of yours will unite it as one man from Montauk Point to Niagara Falls, and that grand old Democratic party which

has met many shocks and withstood them, will come out of this contest grander, greater and more powerful than ever before. I vote no.

Mr. Cochran — Mr. President, I have already endeavored, when this matter was before the Convention heretofore, to explain my reasons for voting against the proposed apportionment. I have found no reasons since that time for changing my views, and I can only now repeat them. I was asked to-day what I thought of the work of this Convention, and I said I thought it was a failure, that I thought the more the people of this State studied its work, the more they would become convinced that this Constitutional Convention has been a greater failure than any other Convention that has ever sat within these walls or any others in this great State of New York. What have we done, sir, for the people of this State? I ask the majority of this Convention to point me to one amendment which has been passed that would commend our work to the people. There is not one. They speak of the judiciary. That is all they can point to with pride, and that they know, sir, has been forced through here by a party caucus, and not as a measure representing the wishes or the feelings or the sentiments of the majority of this Convention, and now, sir, the climax is capped. We go before the people with this apportionment article which violates the very principle upon which this government is founded, the representation of the people. We find them taking areas of territory and giving them representation here. Why, the next Constitutional Convention may possibly send hogs to represent that territory. Might just as well. (Laughter.)

The President — I hope the gentleman is not making that personal. (Renewed laughter and applause.)

Mr. Cochran — Not at all, sir. We hear in this Convention for the first time that area is to be represented and not population; and I was very much struck in hearing the arguments in favor of this representation, and also had recalled to my memory the words of a Republican member of the Convention of 1867, when a proposition similar to this was under consideration. It was then proposed to ignore what the cities were really entitled to in order to have a proper representation. He said: "However meritorious the theory may be, unless you can present a proposition to the people of this State that shall be just and fair upon its face, I do not believe it will have the least chance of being adopted as a part of the Constitution. There is no subject upon which communities are so jealous as that of political power."

His prediction was fulfilled; the Constitution submitted by that Convention was rejected by the people by an overwhelming vote.

And so I say to the majority here to-night, pass your unjust apportionment. The people have yet to pass on your work. They will show by their vote next November that they still believe in a truly representative government.

The President — Mr. Cochran's time has expired.

Mr. Cochran — I might say, sir, so that it will go upon the record, that most of my time has been taken up by the laughter excited by the President's former remark. I vote no.

Mr. Countryman — Mr. President, I have already said that I am in favor of the proposed increase of membership of the Legislature, for the reason that it would improve the representation of the country districts as a class, compared with the city districts. I am in favor of it for another reason. Many years ago, during the war, I was present at a meeting of representatives of the Republican party, when I was in the councils of that party more than I am now, and when it was debated whether or not the representation should be increased from the Assembly districts in a State convention. Horace Greeley was present and proposed an increase of from one to three from each Assembly district. The politicians and managers with one accord objected to such an increased representation, on the ground that it would make the convention unmanageable. After they had closed the discussion, the old man rose slowly from his seat, and continued to rise higher and higher, until he reached his full stature and towered high over them all, and said in his sharp high tone, "I want an unmanageable convention; I want a convention which the party managers cannot manage or control." And so I say here, I want an unmanageable Legislature, if it is possible to secure it, and the larger the representation in my judgment, the more unmanageable it will become. Therefore, sir, I am in favor of the proposed increase of membership. But I cannot vote for this article for the following reasons: I find in it the following rule laid down for the guidance of Legislatures in the future: "Nor shall any district contain a greater excess of population over an adjoining district in the same county than the population of a town or block therein adjoining such district. Counties, towns or blocks which from their location may be included in either of two districts shall be so placed as to make said districts most nearly equal." Now, sir, as between the country districts and the city districts, I think this increase of membership should be adopted, but I cannot vote for an apportionment made by this Constitutional

Convention to last for ten or more years, which is a direct and palpable violation of the very rule of apportionment which it lays down for the guidance of future Legislatures. I looked at the maps which were hung up on the walls of this chamber for my information, and I found in Brooklyn a district which contains one hundred and forty-two thousand population, and on three sides of it, one of one hundred and fourteen thousand, another of one hundred and sixteen thousand, and another of one hundred and seventeen thousand, varying from twelve and fifteen thousand in these adjoining districts. I, therefore, vote no.

Mr. Dean — Mr. President, it is not pleasant for a partisan Republican to stand here in the presence of his associates of the party and persistently vote against what, in their judgment, has seemed wise. I believe, however, that he serves his party best who serves his country first, and believing that this is the most serious mistake that the Republican party can make at this time, I vote no.

Mr. Dickey — Mr. President, with charity for all and malice toward none, and with every desire to be fair and just to all, I performed my duties as a member of the committee which reported this amendment. I now vote for it because I believe it is a good, honest apportionment, doing justice to all the people without favor, partiality or prejudice. I vote aye.

Mr. Forbes — Mr. President, I desire to explain my vote. I have attempted faithfully to perform my duties as a member, both in the Convention and in its committees; but I have found that I have had no part in the matter now before the Convention. Why should not the members of the Convention, as a whole, instead of a mere fraction of the Convention, have framed an apportionment? The keen interest with which I entered into the work of improvement of the old Constitution has disappeared. I feel that I have no further influence in forming the fundamental law of the land. On this matter, in which I could have had no part, no matter how much I tried, I vote no.

Mr. O. A. Fuller — Mr. President, there are some things about this amendment which I do not like. It takes my county out from our present senatorial district, with which we have always had pleasant relations, and makes us a part of the district represented by my friend, Mr. Dean. But I believe this to be a fair apportionment, and one great reason why I believe it is a fair apportionment, is because the only Democrat who has proposed any change in the boundaries of the senatorial districts has been granted what

he asked, and that change was made (laughter), and before they can complain that this is not a fair apportionment, they ought to present to this Convention some improvements in the formation of senatorial districts in particulars in which they think it is not fair. I vote aye.

Mr. Gilbert — Mr. President, I have only a word to say, and that is not a partisan word. It is a little curious that fair men, looking upon the same subject, should come to such diametrically opposite conclusions. When I hear men saying that this amendment is infamous, I am not disposed to say that it may not seem so to them. There are other men, equally intelligent and equally fair, who say that it is a righteous measure. I believe they are honest men. Now, I want to say, Mr. President, that while I shall vote for the amendment as a whole, I am opposed to one provision contained in it. I ask every Democrat to listen to what I say. I have a serious objection to that provision. There is incorporated in this bill, apparently, the principle that south of the Harlem river, in that small area of the State, immensely great to be sure in many respects, the proposition that it may, in some contingency, have a representation in the Senate and Assembly equal to that of all the rest of the State. Now, gentlemen of the other side, and of every side, I want to say to you that, in my judgment, that will be a sorry day, if it ever comes, when the entire territory of the State of New York north of the Harlem river shall have no more representatives in the Legislature of the State than the great city. I wish I had an hour instead of no time at all in which to give my reasons. All I can do, Mr. President and gentlemen, is to make the statement, and I predict that before twenty years have gone by the people of this State will find that there is immense significance in the proposition that I lay down; and the only reason why I asked to have the privilege of the floor now was this: I wanted to have it go upon the record that a protest was made here in the Convention of 1894, against the possibility of the city of New York having a representation equal to that of the entire territory of the State outside of it. That city of New York is massed in small compass; it is there to work as one man; in fact, it does sometimes seem to work according to the will of a single individual. It can work as one man. Now, as to the whole of the State outside of the city: its people are scattered, its forces are dissipated; little opportunity is given for consultation and concentration; hence they are not on terms of equality with an equal number of representatives from the city. And I want to say just this word more: some unkind flings have been made by the city at the country. As a represen-

tative from the country, I say to you that we do not reciprocate any feeling of that sort. The country has nothing but feelings of the utmost kindness, respect, ambition and glory for all that is worthy in the great metropolitan city of the State. We want it to prosper. I can recall the time when I sat in the Legislature here and when some of the best men of the city of New York appealed to us to do something for the city, and for one, I made the interest of the city my interest; I regarded the interest of the city as mine just as much as if I had lived within its limits. We do care for its prosperity, and here let me remind the Convention of the immense advantage, which must accrue to the metropolis from the investigation now being made by the Lexow committee — an investigation which comes down from the country, goes into the city and opens the doors of vileness so that the great city may be purged; that it may be purged for its own good? I vote aye.

Mr. Goeller — Mr. President, I desire to explain my vote. The principal result that is sought to be achieved by a State apportionment bill is not that it shall represent territory so much as that it shall represent citizens, voters. All men of reason, citizens of this country, ought to belong to some party and to use their judgment in making a selection of some party; and having affiliated themselves with that party, I consider it their duty, particularly when they are representatives in such a body as this, to resist with intelligent energy any infringement of the rights of that party, and any injustice sought to be perpetrated upon it. I have seen fit in my best judgment to affiliate myself with the Democratic party and advocate its principles; and my best judgment now prompts me to believe and to assert and charge, having carefully read this amendment, having carefully scrutinized its bearings in every particular, that it is inordinately and flagrantly unjust to the party to which I belong and to all Democrats of this State. The rights of the city of New York and the city of Brooklyn are largely disregarded. The Republican party secures by this measure that which it ought not to have, that to which it is not entitled. For these reasons, because of the great injustice done to the Democratic cities of New York and Brooklyn, the injustice done to the Democratic party, I vote no.

Mr. J. I. Green — Mr. President, I desire to explain my vote. There will be no need or necessity for explaining the votes of the majority of the people who will cast their votes on election day against this measure. I believe, sir, that this apportionment is unjust and unfair. I believe it is a measure brought forward at the hands of the Republican party managers to obtain again control of this

State against the wishes of the majority of the people of the State. I, therefore, Mr. President, vote no.

Mr. Hottenroth — Mr. President, there are two great lessons that I believe have been taught by this Convention. The first is how to make rules, and the second, how to break rules. I believe that this proposition is the embodiment of those two great lessons. In the first place we start to make rules, and in the second, we break them. In connection with the district which I have the honor to represent in this Convention we have a demonstration of the character of this measure. You have asserted time and again that you believed in the old antiquated county boundaries, and yet— and we have had it mentioned on the floor to-night — that old antiquated boundary, the Harlem river, is entirely ignored. Again, you say we ought to represent territory. There again we have the answer. Apart from that section of New York city which is one-twelfth smaller than the whole of Manhattan island, the entire balance is represented by one Senator and two Assemblymen. That district has a population of 116,000 and has two Assemblymen; and as I said the other evening, many districts with less than a hundred thousand are represented by three. Mr. President, we had a desire in that district to lose our provincial character. You have given us that much. We think now that we have become a part of the city of New York and are not any longer any part of the State north of the Harlem river. We feel that you have urged it upon us to stand in every event by the city of New York, as it has stood by the Democracy. There have been times when that district was close; there have been times when the Republicans carried it; but I feel to-night that if there is one Republican in my district that will vote for this iniquitous measure, he is voting against his own interests. I believe, Mr. President, that this Twenty-first District will prove the Waterloo of this bill. I vote no.

Mr. Lester — Mr. President, this apportionment bill is the work of the representatives of a majority of the electors of the State of New York, and in November a majority of the electors of the State of New York will approve the work of their representatives whom they have sent here for that purpose. And, sir, in accordance with true Democratic principles, I take pleasure in voting aye.

Mr. Lincoln — Mr. President, possibly a word may be due to Mr. Countryman in reply to the suggestion made by him in relation to the division of districts. I think he will discover if he refers again to the section that he read in our hearing, that the districts there referred to are Assembly districts and not Senate

districts, and that no attempt has been made in this amendment to make any division of the State into Assembly districts. We have simply designated the number to which each county is entitled and we have prescribed the board or body of officers who are to make the division in the counties, and laid down rules for their guidance, so that we cannot be said to have violated those rules in any respect. I vote aye.

Mr. Maybee — Mr. President, I desire to explain my vote. In Shakespeare's time it was said that men "dressed in a little brief authority played fantastic tricks before high heaven." It is as true now as it was then that "it is excellent to have a giant's strength, but tyrannous to use it like a giant." I do not believe that the men who are responsible for this proposed apportionment regard it as a fair apportionment. But the dominant party in this Convention, relying on the fact that this is a time of commercial depression and that there is now going on one of those strange reactionary movements that frequently occur in the history of politics, a reaction that they believe to be setting in from the great tidal wave of 1892 in favor of the Democratic party, believe that they can carry through at the election of this fall any measure which they may propose to the people as the work of this Convention, and perceiving the opportunity to gain an unfair partisan advantage, they have framed and will put before the people this proposed apportionment. It remains to be seen whether the people will ratify the work of this Convention. I have faith enough in the sense of fairness, in the sense of honesty, in the integrity of the common people, to believe that they will reject this proposed amendment. I vote no.

Mr. McClure — Mr. President, I desire to explain my vote. I have not taken any active part in the debate upon this subject of apportionment, because I early reached that state of mind, sir, that we often regret to reach as we advance along in years, and that is, an utter disappointment in human nature as it is presented to us in various shapes. I did suppose, sir, in the innocence of my youth, that a Constitutional Convention made up of select men of the great State of New York would rise to the importance and dignity of the position given them, and in all that is presented for their consideration would act in a spirit that would entitle them to the hearing of their fellow-citizens. I reached some weeks ago, sir, the conclusion that this was not, so far as the majority is concerned, that kind of a body. I do not see anything in its work so far that permits me to give it any credit, with one or two exceptions. The work that has been done by this Convention is narrow, restricted,

partisan in the extreme, and now I understand, by a suggestion that was made early this evening, that a proposition is to come up immediately after this vote is concluded by which the majority will take themselves to Saratoga to present themselves to the bosses of the Republican party and ask for ——

The President — Mr. McClure is not explaining his vote.

Mr. McClure — I thought I was — and ask for commendation upon their work. This is an unfair act that you are now perpetrating upon the people of this State; unfair upon the people of the great cities of New York and Brooklyn. My city in which I reside is being treated, in part by representatives of that great city, as if the citizens of it were unfit to cope with the citizens of other parts of the State, and it is proposed to disfranchise practically from 128,000 to 130,000 of its citizens. Districts have been carved out there regardless of localities so as to make them permanently Republican. The spirit that has been shown is not worthy of a Constitutional Convention. I cannot give its action any sanction of mine. I have no spirit, no hope, for the work of the Convention, after the act of to-night shall be completed; and in utter sorrow, regret, I was almost on the point of saying disgust, I vote no.

The Secretary called the name of Mr. Osborn.

The President — How does Mr. Osborn desire to vote?

Mr. Osborn — Am I required to vote now?

The President — The rules require Mr. Osborn to vote when his name is called.

Mr. Osborn — Well, Mr. President, I will explain my vote. There is one very satisfactory feature about this apportionment debate, Mr. President, and that is that very early in the debate the gentlemen on this side of the House touched the bull's eye when they made the point that there were new rules enlarging the existing rules of county representation in justification, of which no reason was shown. That point, Mr. President, it is a profound satisfaction to me to be able to say, at this stage of the debate, has not been met. The able speech of the President assumed that it was necessary to our position to do away with county lines, and then he demolished our situation very successfully. In his able speech the gentleman from New York (Mr. Root), when he touched upon that topic, said that he believed the counties had not had enough representation in this amendment as it was. Now, that is no reason; it does not amount to anything. And then I was satisfied that we had struck a point which had not been met and could not be met in this debate, when the proposer of this amend-

ment got up this afternoon and in his final utterance upon this subject, said, in substance, "Gentlemen, the Democrats seceded in the war of 1860, and, therefore, the counties in this State should have additional representation." Now, Mr. President, when gentlemen of such capacity, of such insight as yourselves, are unable to make any better statement of a reason why county representation should be increased, why the existing rules should be enlarged, than that, then I feel, Mr. President, that while we have not secured the victory of brute force we have at least secured the victory of reason; and I believe in due course of time the victory of reason will send the whole apportionment rolling down into the blind cave of eternal night, where it deserves to remain. I vote no.

Mr. Parmenter—Mr. President, I believe that this apportionment article would not have been presented in the shape in which it is presented had not our friends upon the other side seen, or thought they saw, that the Republicans could control both branches of the Legislature at the next apportioment in 1905. They may be mistaken, but, they have acted upon that principle undoubtedly, and, of course, I shall have to oppose the amendment. But I am not surprised at the form of the measure, because it reminds me of a little incident that happened a great many years ago in the city of Troy; and I am inclined to think that my friend, Francis, must have suggested the principle on which this apportionment was made. The lower part of our city, called South Troy, below the Fishkill creek, was, fifty years ago, a little hamlet. There were no lights in the streets beyond the naphtha lamps; no pavements, all mud; and, of course, the few burghers down there contented themselves with meeting together socially, and never pretended to come up into the city. Finally, at one of those meetings, they resolved that South Troy should have a mayor, and after talking the subject over, they hit upon one Martin Russell, a notorious wag and a constable that lived in that vicinity. They thought that Martin Russell would make a good mayor for South Troy. Martin hesitated about accepting the nomination, but he finally consented that he would take it upon one condition. They readily allowed him to name his condition, and he said: "If you will allow me to make a charter for South Troy and will adopt it, I will accept the office." They assented. Martin made a charter — it was a very short one; nothing like our Constitution here — it contained two articles only, and they read like this, I believe:

"Article 1. The charter of South Troy shall go into effect immediately and continue in force until changed, as herein provided.

"Article 2. Martin Russell, the present mayor, shall hold his office until the charter shall be amended; but no amendment thereof shall be made without the previous consent of the mayor."

Russell served for forty years in the office of mayor, and never had a competitor. (Laughter.) Now, my friends on the other side think that in 1905, when most of us will be gone ——

The President — Mr. Parmenter's time is up.

Mr. Parmenter — I vote no.

Mr. Phipps — Mr. President, in explanation of my vote, I desire to say that while this apportionment is not, so far as my district is concerned, the most desirable, yet I have been unable, under the existing conditions, to suggest any change which would improve it and obviate my objection. The associations of Queens and Suffolk counties have been of long duration and of the most pleasant nature, and I should have preferred to see them continue, but after a careful examination of the details of the measure, I am convinced that the general fairness and convenience of representation is such as to commend the amendment generally to the people of the State, and to restore to the people that representation to which I believe them entitled. Therefore, taking everything into consideration, I vote aye.

Mr. Platzek — Mr. President, I desire to explain my vote. I cannot vote for this apportionment, first, because it disfranchises 125,000 people of the State; second, because it discriminates against the great cities in favor of the rural districts; third, because it is inequitable, unfair, unjust in a degree. I represent in part the Eleventh Senatorial District. I look at the Fifteenth Senatorial District, and I discover that it begins at Fourteenth street and runs to Ninety-sixth street, eighty-two blocks, something over four miles in length. In width it runs from the westerly side of Lexington avenue to the easterly side of Seventh avenue, six blocks, carved out of the heart of the city where the wealthy classes alone live; the brown-stone district where the millionaire can live, but where the poor man cannot enter. Therefore, it is a discrimination against the masses by the moneyed classes, and that is neither Republican or Democratic; and besides, sir, in order to make this district absolutely Republican my good friends have taken the pains to include all the monkeys, the baboons, the giraffes and the hippopotami in Central Park. (Laughter.) Now, it does seem to me that they might have left something for the Democrats if it was only the monkeys in the park. But, gentlemen, I wish you joy. If

you succeed and if a Republican hereafter shall wear the laurels from the Fifteenth District in the State Senate, I have no doubt that the chimpanzees will bid him God-speed. I protest against this gerrymander, this Republican grab and steal, and vote no because of it.

Mr. Smith — Mr. President, instead of calling this a system of apportionment, I think it would be more fitting to call it a scheme of folly, falsehood and fatality. When subjected to analysis, and its constituent parts are clearly observed, it is nothing less than an attempt to gain a party advantage by an effort to organize injustice into law. I am not ready to believe that it will succeed. I would like the majority in this Convention to bear in mind this proverb, "Many a man," says Sancho Panza, "comes for wool and goes away shorn." I vote no.

Mr. Veeder — Mr. President, I desire to explain my vote. This is the third time I have witnessed a scene of this kind officially. In 1866 the Republican majority of the Legislature robbed the county of Kings of a Senator and two or three Assemblymen, by legislation. Again they attempted it in the Constitutional Convention of 1867-1868. Through the good sense of the people it failed at that time. To-night I witness it again by the party that professes all the morality and all the purity (although it did steal the presidency), to be the saints of the world pure and simple, desirous of doing nothing but what is for the good of the whole people, and for themselves particularly, saying that the counties must all be represented. I admire their commercial sagacity. What under the sun would become of the country if they could not occasionally tempt the city of New York through their Legislature? Why, these commercial gentlemen are thoroughly familiar with the value of corn and sugar. They are commodities that are very commercial. If any Democrat is willing to believe for one moment that they would give up their grasp on the cities, he does not understand the Republican party as I do. I vote no.

Mr. Bowers — Mr. President, I think the Convention has the power to compel delegates to answer when their names are called. The rules take care of that question.

The President — The rules simply require that every member who is within the bar of the Convention when a question is stated by the Chair shall vote thereon unless he be excused by the Convention.

Mr. Bowers — Enforce the rule; we will vote.

The President — Does Mr. Mulqueen desire to vote?

Mr. Mulqueen — Certainly. May I?

The Secretary called the name of Mr. Mulqueen, and he voted in the negative.

Mr. Bowers — I call for the absentees.

The President — Mr. Bowers is required to vote, as he was within the bar of the Convention when the question was put.

Mr. Bowers — If the Secretary will call my name I will vote.

The Secretary called the name of Mr. Bowers.

Mr. Bowers — I vote no.

Mr. Bush — I desire to explain my vote. I have seen a great many strange rulings made since I have been in this Convention, and I see the President has now adopted Mr. Reed's method and uses his eyes to know who is within the bar and who is not. (Great applause on the Republican side.) I hope the time devoted to the approval of the President's action will not be taken from my few minutes. (Renewed applause.) Now, Mr. President, this is the last act of the drama which sends to the people of the State of New York one of the most iniquitous measures that ever emanated from a legislative body, or a constitutional body, in the State of New York. In case this should be adopted, a new principle is injected into the law-making power of the State, and henceforth the acres of the Adirondack wilderness will vote in the halls of the Legislature against the population of the great cities of the State. If the people of the State of New York are willing to adopt that plan, if they are willing to say that the uninhabited acres of the great State of New York, or the sparsely settled districts, shall make the laws of this State for the government of the great metropolis, wherein is centered the great financial and business interests of this State, in those great centers which pay from seventy-five to eighty per cent of the total taxes of this State, then I simply have nothing whatever to say. But if the people of the State of New York know what is best and what it right; if they wish to preserve a republican form of government in the State of New York, they will bury this iniquitous measure so deep at the next election that no man who ever took part in adopting it would ever make the admission in public that he had anything to do with making it, or ever voted for it. Mr. President, I vote no.

The President — Does Mr. Cassidy desire to vote?

Mr. Cassidy — Mr. President, when this matter was in Committee of the Whole I stated upon this floor that I did not believe the apportionment was a fair one; and no sooner had I left the hall

than I was met by a number of my Democratic friends, who wished to congratulate me. They seemed to think that an apportionment, to be fair, must be fair to Democrats. I did not have Democrats in mind. I meant that I thought it was not a fair apportionment for the people. When I hear Democrats upon this floor say that this apportionment is not a fair apportionment, I know what they mean. They mean it is not fair to the Democrats. And when I hear the Republicans on this side say it is a fair apportionment, I know what they mean. They mean it is fair for the Republicans. But when I said I did not believe it was a fair apportionment, I meant that I did not believe it was a fair apportionment to the people of this Empire State, regardless of party. (Applause on the Democratic side.) Now, Mr. President, in forming a Legislature, four things ought always to be taken into consideration. First, efficiency; second, economy; third, fairness of distribution, and fourth, political expediency. Has there been any argument upon this floor to show that the Legislature, as it is proposed to constitute it, will be fairer, more efficient, than the present Legislature? Not one word on that subject has been stated. On the contrary, Mr. President, I stand here to-night to assert that an increased number of representatives, instead of making a more efficient Legislature, will make a less efficient Legislature. Mr. President, the question of economy is always subsidiary to the one of efficiency. If there were to be greater efficiency, then the question of economy ought to go for naught; but inasmuch as it has not been demonstrated, and cannot be demonstrated, that the Legislature which it is proposed to make will be a more efficient body, then the question of economy ought to be the paramount question, and we ought not to vote to increase the taxes of the people of this State unless we propose to give them greater efficiency. The next question is that of fairness of distribution, and that is the only virtue that this apportionment has. I think that perhaps the representatives are a little more fairly distributed. But when we remember that we are violating political policy, that we are going back on the principle of economy, that we are going back on the principle of efficiency, I say the question of fairness of distribution is not worth considering; but, Mr. President, my party is greater than I am, and I do not wish to put myself on record here to-night as against it. I, therefore, vote aye.

Mr. Moore — Mr. President, I desire to explain my vote. I was somewhat opposed to this apportionment act at first, on several grounds which I do not need to state here, but after hearing all the arguments, *pro* and *con*, and particularly the arguments of my

Democratic friends, I have come to the conclusion that, like all other Republican measures which have been well and duly considered by that party, this measure is really for the best interests, not only of the Republican party, but of all the people in this State. I have grown up with the Republican party. I have discovered that its policies and traditions produce statesmen; I have discovered that its policies and traditions do not produce cowards; I have discovered that its policies and traditions produce men who dare to act when the time comes to act, and act boldly, bravely and well. I do not believe, Mr. President, that you ever gather figs from thistles. Our friends on this side have started the cry of partisanship, but when it comes to that I ask this Convention to consider what men have the Democratic party produced? What men have the Republican party produced? Come out of that corner you Democratic James G. Blaines, and let us see how you look. Come out of that corner you Democratic Abraham Lincolns and let us see how you look. Mr. President, that party cannot even breed such men, let alone educate them. I judge of political parties as I do of everything else, by their fruits. Mr. President, on that ground I vote aye for this measure.

Mr. Tekulsky — Mr. President, I am very thankful to the Republican party that it has shown just what it is constituted of. I am very thankful, because it has demonstrated to the people of the State of New York that there are only two classes of people in this country, or at least they are trying to make two classes of people, rather; and those are the aristocratic people and the common people. The Republican party with this apportionment has done this to perfection. I am very thankful to them for the district which they have given me. The district which I have the honor to represent has been laid out to me by them, thirteen to fourteen thousand Democratic strong, which I am very grateful for. Not only that, but they have consented this morning to add a little block to it, for which I am likewise thankful; and the Democrats and the common people of the State of New York will, in November, allow the Republican party to know that they are not in favor of aristocracy in this country. When they have undertaken to divide a district so that the person who is a millionaire shall not rub shoulders with the common, every-day workingman, or the middle-class man, the people of this country will certainly resent it; and I am thankful to them for dividing the districts as they have, so as to show the hypocrisy of the Republican party; and I, therefore, vote no.

The Secretary having completed the calling of the roll, the following result appeared:

Ayes — Messrs. Abbott, Acker, Ackerly, Allaben, Arnold, Baker, Barhite, Barnum, Barrow, Becker, Brown, E. A., Brown, E. R., Cady, Carter, Cassidy, Church, Clark, G. W., Clark, H. A., Coleman, Cookinham, Cornwell, Crosby, Davies, Davis, Deterling, Dickey, Doty, Durfee, Faber, Floyd, Foote, Francis, Frank, Andrew, Frank, Augustus, Fraser, Fuller, C. A., Fuller, O. A., Galinger, Gilbert, Goodelle, Hamlin, Hawley, Hecker, Hedges, Hill, Hirschberg, Holls, Johnson, I. Sam, Johnson, J., Johnston, Kinkel, Kurth, Lauterbach, Lester, Lewis, C. H., Lincoln, Lyon, Manley, Mantanye, Marshall, McArthur, McDonough, McIntyre, McKinstry, McLaughlin, C. B., McMillan, Moore, Morton, Nichols, Nostrand, O'Brien, Parker, Parkhurst, Pashley, Phipps, Pool, Porter, Powell, Pratt, Putnam, Redman, Root, Spencer, Springweiler, Steele, A. B., Steele, W. H., Storm, Sullivan, T. A., Turner, Vedder, Vogt, Wellington, Whitmyer, Wiggins, Woodward, President — 96.

Noes — Messrs. Banks, Bigelow, Blake, Bowers, Burr, Bush, Campbell, Chipp, Jr., Cochran, Countryman, Crimmins, Danforth, Davenport, Deady, Dean, Deyo, Durnin, Emmet, Forbes, Gibney, Giegerich, Gilleran, Goeller, Green, A. H., Green, J. I., Griswold, Herzberg, Holcomb, Hotchkiss, Hottenroth, Jenks, Kerwin, Kimmey, Marks, Maybee, McClure, McCurdy, McLaughlin, J. W., Meyenborg, Mulqueen, Nicoll, Ohmeis, Osborn, Parmenter, Peabody, Peck, Platzek, Roche, Rogers, Sandford, Schumaker, Smith, Speer, Sullivan, W., Tekulsky, Titus, Towns, Truax, C. H., Tucker, Veeder, Williams — 60.

The President announced that this constitutional amendment, having received a majority of the votes of all the members elected to this Convention, was duly adopted.

The President — The resolution offered by Mr. Hedges will now be read.

The Secretary again read the resolution offered by Mr. Hedges relating to adjournment.

Mr. Cochran — I sincerely trust, sir, that this resolution will not prevail.

Mr. McClure — Point of order, Mr. President; that should be laid over under the rules giving rise to debate.

Mr. Veeder — I rise to a point of order, Mr. President, that this cannot be considered under rule 50; and I also refer the President to rule 56.

The President — The Chair is of the opinion that the matter is open for consideration to-night under the rule which Mr. Veeder refers to, and that the point of order is not well taken.

Mr. Veeder — I rise to a further point of order. Try your hand at rule 56. How do you decide?

The President — There is rule 50 which covers the case: "Resolutions giving rise to debate, except such as shall relate to the disposition of business immediately before the Convention, to the business of the day on which they may be offered, or to adjournments or recesses, shall lie over for one day" — this is expressly excepted, and is now open for consideration if the Convention desires to consider it.

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

Mr. Veeder — A point of order ——

The President — Mr. Veeder's point of order is not well taken, whether it is one already stated or one which he is about to state. (Laughter.)

Mr. Veeder — That point of order has been disposed of. If the President will look at rule 56 I think he will find that we are entitled to have it referred to the Committee on Rules?

The President — I am not of that opinion.

Mr. Acker — Mr. President, I move the previous question on this.

Mr. Cochran — Mr. President ——

The President — I think Mr. Veeder has the floor.

Mr. Cochran — Only for a point of order. I was merely interrupted by Mr. Veeder's point of order.

The President — Mr. Cochran may proceed.

Mr. Cochran — Mr. President, before the previous question is put, as it undoubtedly will be, I want to say for one, for myself, and I think I echo the sentiments of this minority, that I hope this resolution will not prevail. What is the object of adjourning to Thursday? It is that the majority of this Convention can go and attend a Republican State convention. No other reason. And is it for that reason that a State Constitutional Convention shall adjourn for four days? If we have work to do, let us stop here and do it, and not become partisan and adjourn. We have been told that this is a non-partisan body. Now, let us stay here and do our work.

Mr. Tekulsky — Mr. President ——

The President — Mr. Cochran has the floor to the exclusion of

everybody else, and every other gentleman in the Convention will take his seat. (Laughter.)

Mr. Cochran — Now, sir, we have pending here a resolution that this Convention shall sit in continuous session until certain very important matters are disposed of; and yet, immediately after a partisan apportionment article is passed by this Convention, these Republicans propose to adjourn to attend a Republican State convention. I say, sir, that the minority are opposed to it. What becomes of the resolution offered here ——

The President — There is no such object stated in the resolution.

Mr. Cochran — I know, sir, it is not stated in this Convention, because they dare not do it; but we know what it is for; it is common rumor. We know that it was decided upon in the caucus this afternoon. We know what it was done for, to attend a Republican convention. May be some of the gentlemen here are candidates; they may be elected, but I hope they won't. Now, sir, as I was about to say, there is a resolution before the Committee on Rules, offered by one of the minority in this Convention, providing that the Convention shall sit in continuous session until the matters proposed in that resolution are disposed of. Those, sir, are important matters — matters which affect the laboring people in this State, for whom the majority say they want to do so much, and yet have done so little. There are matters relating to corporations, anti-trust regulations, and other proposed amendments which I think we all agree are important.

Now, sir, why are we asked to adjourn? Why do we not stop here? What is the reason for this resolution? I have heard none. The minority do not want to adjourn. We want to stay here and get through with our work. We have still on the general order calendar the educational article. It is understood that in connection with that we have the very important subject of the charities of the State to consider. We have also left undisposed of in the Committee of the Whole, the great question of home rule for cities, which has been buffeted about in this Convention, and I think it will reflect very little to our credit if we adjourn without doing something for the great communities of this State. Now, sir, besides these it appears that we have some fifty or sixty other matters on the calendar of general orders which have not yet been considered even in the Committee of the Whole, and, consequently, have not been ordered to a third reading. Now, it is the feeling of all in this Convention, I am sure, that we want to do our entire duty to the State and do it well, but, sir, we want to get through

with that work just as rapidly as it is possible for us to do. There are many members of this Convention who have been detained here at great personal sacrifice, and I submit, sir, that that detention should not be prolonged one day more than is necessary for the accomplishment of our work in a proper manner; and this adjourning over until Thursday is going to cause the loss of a week in our work. We prefer, sir, to sit here now in continuous session and continue on the work upon which we are now engaged and finish it up; and I am sure, that if we sit here now and continue on with the work, we can have it completed by the end of the next week; but if we adjourn on Saturday to meet on Thursday following, it means that this Convention must continue its proceedings into the week following, and that, sir, would mean a much greater sacrifice for many members of this Convention than I think they should be called upon to make. I took occasion in explaining my vote a few moments ago on the apportionment article to say that I thought as a Convention we had done very little. The President of this Convention, and the leader of the majority, have for the last month or six weeks opposed every resolution to adjourn, and said that we should not be doing our duty to the State if we did not stay here from Monday morning at nine o'clock until Saturday afternoon, and sit continuously and do our work; and now, sir, it is proposed by these ——

Mr. Hedges — Mr. President, I desire to withdraw my resolution (No. 211) for the present.

The President — That will deprive Mr. Cochran of the floor. (Laughter.)

Mr. Tekulsky — Mr. President, I hope that the gentleman will not withdraw his resolution, because I am very strongly in favor of this adjournment, and I would like to say just a few words ——

The President — The resolution is withdrawn, and the next order of business is the forestry, third reading.

Mr. Hedges — Mr. President, I desire to move that resolution (No. 211), again, and on that motion I move the previous question.

There were numerous calls for the ayes and noes upon the previous question.

Mr. McClure — Mr. President, upon the motion having been withdrawn by the famous soldier from Rockland, the Chair announced that we were now on the order of third reading on the forestry amendment. I raise the point of order that no motion such as is now made by the gentleman from Rockland can inter-

vene — that we are now on the order of third reading of the forestry amendment.

The President — I think that point of order is well taken.

Mr. Root — I move that this session be extended until half-past ten. I think, sir, that we ought to make up for the time that we take up in talking against time ——

Mr. Hotchkiss — I rise to a point of order, Mr. Chairman. Such a motion is not debatable.

Mr. Holcomb — I demand the ayes and noes on that motion to extend.

Mr. Cochran — I rise to a point of order.

The President — The matter before the House is the forestry amendment, third reading. The Secretary will read the title.

Mr. Cochran — Point of order. I raise the point of order now so that I can take the benefit of it hereafter, that I had the floor and was debating a resolution which was pending before this Convention. That resolution was withdrawn, and no gentleman had a right to interrupt me to withdraw it.

The President — The Chair holds otherwise; that Mr. Hedges had a right to withdraw his resolution.

The Secretary read the title of the proposed amendment relating to the forest preserves.

Mr. Root — Mr. President, I renew my motion to extend this session until half-past ten.

There were numerous calls for the ayes and noes, and the call was sustained.

The Secretary proceeded to call the roll.

Mr. Maybee — Mr. President, I desire to explain my vote. The tactics of certain members of the minority are, in my opinion, ill-advised, to say the least. The question as to whether an adjournment is to be taken, and for how long, should be considered to-night, so that the members of this Convention can know what to depend upon. There certainly is no party advantage to be gained by any such course as that pursued here. I vote aye.

Mr. Tekulsky — Mr. President, I desire to explain my vote, and my reasons for explaining it are these: that now we have passed over the bloody chasm, all political matters have been attended to and taken care of by the majority; we are going back now to good fellowship and we intend to do something for the people. There are a large number of general orders which are in the interest of

the people, and I hope that the minority will not fillibuster or attempt to do anything which will delay the work of this Convention. We have been here long enough. We have tried to do the best we could. The most important measures for the people are still on the calendar, and if we act together as men and as representatives of the people, we will get down to business and transact the necessary matters that we were sent here to attend to. I, therefore, vote aye. (Applause.)

The President — I desire to explain my vote. I have been appealed to by a very large number of those calling themselves the minority in this Convention, during the last two weeks, pressing upon me the importance of having a time fixed for an adjournment, and especially to determine what should be done on Saturday, the fifteenth. I suppose that they would hail with great satisfaction the introduction of a motion which would determine, and fairly determine, that question of what should be done on the fifteenth; and I was very much astonished at the tumult and disorder with which they received the motion. I trust they will reconsider the matter, and that the resolution that was offered will be again introduced and decided one way or the other, and that this evening session will be continued until that is done, whether it be half-past ten or half-past one. I vote aye.

The motion to extend the session until half-past ten o'clock was determined in the affirmative by the following vote:

Ayes — Messrs. Abbott, Acker, Allaben, Arnold, Barnum, Barrow, Becker, Bigelow, Brown, E. A., Brown, E. R., Burr, Cady, Carter, Cassidy, Church, Clark, G. W., Clark, H. A., Coleman, Cookinham, Cornwell, Danforth, Davies, Davis, Deady, Dean, Deyo, Dickey, Doty, Durfee, Faber, Floyd, Foote, Francis, Frank, Augustus, Fuller, C. A., Galinger, Gilbert, Goeller, Goodelle, Green, J. I., Hamlin, Hawley, Hedges, Hill, Hirschberg, Holcomb, Holls, Hotchkiss, Johnson, J., Kurth, Lauterbach, Lester, Lincoln, Lyon, Marks, Maybee, McArthur, McClure, McIntyre, McKinstry, McLaughlin, C. B., McMillan, Moore, Morton, Mulqueen, Nicoll, Nostrand, O'Brien, Parker, Pashley, Phipps, Platzek, Pratt, Putnam, Redman, Root, Sandford, Smith, Spencer, Springweiler, Steele, A. B., Steele, W. H., Sullivan, T. A., Tekulsky, Tibbetts, Titus, Towns, Turner, Vedder, Wellington, Whitmyer, Wiggins, Williams, Woodward, President — 96.

Noes — Messrs. Banks, Bush, Danforth, Fuller, O. A., Giegerich, Herzberg, Jenks, Kerwin, McLaughlin, J. W., Ohmeis, Peabody, Peck — 14.

The President — It seems to the Chair proper that the motion of Mr. Hedges should be renewed so that it may be decided, for the benefit of the whole Convention, one way or the other, that they may know, as they have asked to know, how to make their arrangements.

Mr. Nicoll — Mr. President, we want ten or fifteen minutes to discuss it. We don't want to be cut off with the previous question.

The President — The Committee on Rules have a report to make, which will be read.

The Secretary read the amendment as follows:

"The Committee on Rules reports the resolution (No. 202), offered by Mr. Root, September eleventh, and recommends its passage, amended to read as follows: Resolved, That no call for the ayes and noes be allowed upon any of the following motions: first, for the previous question; second, relating to rules and order of business; third, to lay upon or take from the table, or postpone or to reconsider, and, fourth, dilatory motions."

Mr. Root — I move the adoption of the resolution, Mr. President.

The President put the question on the adoption of the resolution proposed by the Committee on Rules, and it was determined in the affirmative.

Mr. Hedges — Mr. President, I renew the offer of my resolution (No. 211), that this Convention meet at 9 A. M., on Saturday next, and adjourn at twelve o'clock until Thursday, September twentieth, at 10 A. M.

Mr. Tekulsky — Mr. President, I am heartily in favor of the resolution offered by Mr. Hedges, probably because I am a little selfish in the matter. My own organization holds its convention during three days of next week, and the adjournment will give me an opportunity to attend to my own private business. But, leaving that aside, I am in favor of remaining right here all night to-night, all day to-morrow and all night to-morrow night, until we can finish this work if we desire to get through. But, Mr. President, if we do adjourn, what I desire to find out from the gentlemen in the majority of this Convention, as I cannot get any information any other way, is whether it is the intention of returning here next Thursday to attend to the business of this Convention and pass upon the questions that are now on general orders, and which are in the interests of the people. There is nothing on general orders in the nature of political questions. If it is the intention to return here and finish up that business, then I hope Mr. Hedges's resolu-

tion will pass; but if it is not the intention to do that, but merely to say in what form we will submit this matter to the people, and then spring upon the people, who have come away from their business, the proposition to adjourn after getting here, I am certainly opposed to it. I want this resolution to be offered and to be offered in all fairness and honesty, so that it may be known what it is intended to do, so that we can make our arrangements accordingly. If it is the intention to come here and finish up our work, I am in favor of the motion of Mr. Hedges, and I hope it will pass.

Mr. Hedges — Mr. President, I believe that the Republican majority on this floor is as desirous of returning and perfecting the work that is before this Convention as is the minority, and I feel certain that when I say that none of the work of this Convention will be slighted by the majority. (Applause.)

Mr. Nicoll — Mr. President, I am surprised that we have not heard from the movers of this resolution, some of the grounds upon which they want to adjourn the Constitutional Convention of the State of New York for a week, or for a period of some six days. Why should we adjourn on Saturday until the following Thursday? What reason has been urged for taking an adjournment of five days, when there are so many unfinished measures upon the calendar? Do we need a rest after our long labors? Are we in a state of collapse or fatigue in consequence of three months' attention to the public business? Is that the reason why we are to adjourn? Haven't we vigor enough left to transact the remaining business of this Convention and pass upon the remaining measures upon its calendar? Are you gentlemen so weary and fatigued that you cannot stay here six days more and then adjourn finally, and give the people an opportunity to study our labors some five or six weeks before the next election in November? Do you not know that we are giving them a very little time as it is, that it is almost preposterous to bring the work of this Convention up to four or five weeks before the time at which the people are going to pass upon it? What are the reasons for adjourning urged by anybody? Is it not a fact that we are to-day and will be to-morrow, and the next day, and the day after, better able to do the remaining work of the Convention than we will be if we come here next Thursday, after an adjournment of five days? Our minds are now intent upon the various subjects under consideration. Our books are here, our homes are here. All our preparations have been made to remain here and finish up our work. Then why are we to adjourn? No one has ventured to stand up in this Convention and tell the reason

why it is proposed to subordinate a Convention of the whole people to an attendance upon a political convention in this State. That is the reason why we propose to adjourn, in order to give some of the members of this Convention an opportunity to attend a political convention held thirty miles from this city. I say, Mr. President, with all respect, that it is the most unworthy suggestion ever introduced into a constitutional body. Suppose, for instance, some one should make the suggestion that we on our side wanted to adjourn to attend the Democratic convention in this State, I would resent that just as vigorously as I resent this suggestion. It is unworthy, it is degrading, it is contemptible, for this sovereign body to be at the beck and nod of a political convention. Why not adjourn to attend an exhibition of Haggenback's trained animals, or of living pictures, or a prize fight between Corbett and Sullivan? Let us stay here and attend to our business, and execute the commands which we have received from the people of the State of New York, instead of running away to attend a political show thirty miles from this point. I hope this motion will not prevail, although it may have been declared by caucus of the majority. It is unworthy of you, gentlemen, unworthy of this Convention. It belittles it in the eyes of the people, makes them suspicious of its work, and will probably help to defeat the many salutary amendments that have emanated from it.

Mr. Burr — Mr. President, I hope this resolution will not prevail. I think we have plenty of business to occupy our time without any adjournment, or without any such adjournment, unexplained as it is, as that proposed by Mr. Hedges. I had occasion some two or three days ago to submit a resolution calling for continuous sessions of this Constitutional Convention until certain matters therein had been fully discussed and fully disposed of. That resolution was referred to the Committee on Rules, and I have never heard a word from that committee from that day to this. Now, we have assembled here, I think — though, as I remarked to-night, the Convention seems to revolve entirely about the question of apportionment— I think we have assembled here to do something for the people of the State of New York. The great economic questions that have been presented to this Convention have been thrust aside until the political part of the work was attended to. We have here great questions which affect the people of this State vitally and seriously. Yesterday you made a pretense of being the friend of labor, and when you revealed the fact that you were not the friend of labor; when by your votes it was shown that you did not desire to carry the proposition which was made,

as I believe, in all sincerity by the gentleman from Albany, we came to your rescue, for the minority in this Convention are the true friends of labor, as the Democratic party has ever been and always will be. Now, if you are the true friends of labor, if you are seeking to benefit the industrial classes in this State, then why not stay here and give your attention to the betterment of their condition? Why not stay here and discuss these great economic problems which are presented for our consideration? Is there no merit in the proposition which has been made here by Mr. Springweiler, that no law shall be enacted making it unlawful for any number of persons to band themselves together for the purpose of obtaining an advance in the rate of wages or compensation, or of maintaining rates, decreasing the hours of labor, or bettering the moral and mental condition of themselves or others; is there no merit in that proposition of Mr. Springweiler? Why do you not, the friends of labor, stay here and show that men can combine for their betterment, without hindrance or without let? Is there no merit in the proposition of Mr. Cornwell, that no railroad or telegraph or telephone company, corporation or common carrier doing business within the bounds of the State, shall make discrimination in rates or charges or business to be done in the State? Is that not a crying necessity? Has not Mr. Cornwell, a respectable Republican, who has felt the evil that he proposes to remedy, the right to have the measure passed upon? Why, then, not stay here and dispose of these matters? Is there no merit in the proposition made by my friend, the member of the State Bar Association, Mr. Tekulsky, (laughter), to suppress gambling? Is there no merit in the amendment of Mr. Kellogg, that the right to recover damages for injuries to the person of an employe of a corporation or company engaged in the transportation of passengers or of freight, sustained in the course of employment, shall not be denied for the reason that such injuries were caused by the act or negligence of a co-employe? Why, gentlemen, your protestations of friendship for the working or industrial classes are futile. They are not believed. If you were the friends of the industrial classes, why wouldn't you stay here and pass upon these all-important measures?

Mr. Gilbert — Mr. President, I rise to a point of order. It seems to me, and I appeal to the gentleman himself, that he is abusing the privileges and the rights of debate. The question is upon adjournment, and he is talking about various other things.

The President — I think Mr. Burr is within the rules, only I was going to suggest to him myself that he should move that the time

be extended for two or three hours to enable him to finish. (Laughter.)

Mr. Burr — I propose to do so, Mr. President.

Now, Mr. President, is there no merit in the amendment of my friend, Mr Gilbert ——

Mr. Abbott — Mr. President, may I ask the gentleman a question? When are we expected to answer these conundrums?

Mr. Burr — You want to get away from answering them by adjourning. Mr. Gilbert's proposition is that the Legislature shall, by general laws, provide for the establishment of Boards of Arbitration, with powers to investigate, consider and determine matters of controversy between employers and employes which affect public interests. Isn't that an important matter for the working classes of this State? Why not stay here and consider it? I want to say now, gentlemen, that I am willing to sit here until twelve o'clock to-night, and willing to sit here all night. I am willing to stay here all night to-morrow night, and all night the next night, to finish the business that is before this Convention, that the needs of the people cry out to have passed upon.

The President — Will Mr. Burr be kind enough now to move an extension of the session?

Mr. Burr — Mr. President, I now move that the session of this Convention this evening be extended until twelve o'clock.

Mr. Root — Mr. President, I move as a substitute, that the session be extended until half-past eleven.

Mr. Burr — I second the motion.

The President put the question on extending the session until eleven-thirty, and it was determined in the affirmative.

The President — Mr. Burr will proceed with his remarks.

Mr. Burr — I think, Mr. President, I have sufficiently called the attention of the Convention to the fact that there is some other business before it. I think I have stated, and that was the reason why I went into the matter so much in detail by reading these amendments, the character of the business before us. Now, if the gentlemen will move any one of these matters for consideration, I am prepared to go on with it. Why not take up this matter of trusts — this matter which I had the honor to offer on the twenty-ninth day of May last?

The President — The Chair will remind Mr. Burr that the forestry matter is next in order, and will be proceeded with as soon as this discussion is closed.

Mr. Burr — I am perfectly willing, Mr. President, to allow the forestry matter to proceed.

Mr. Root — Mr. President, I move the previous question upon Mr. Hedges's motion.

Mr. Veeder — Mr. President, I call the President's attention to the fact that the Chair declared that if Mr. Burr would take his seat the forestry matter would immediately proceed.

The President — The question is, shall the main question now be taken on Mr. Hedges's motion?

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

The President — The question is now on the motion of Mr. Hedges. The Secretary will read the resolution of Mr. Hedges.

The Secretary read the resolution referred to (No. 211).

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

The President — The forestry matter is now upon the order of third reading, and the Secretary will read it.

The Secretary read the proposed amendment as follows (O., I. No. 392, P. No. 452):

"Proposed constitutional amendment to amend the Constitution relative to the forest preserve.

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

"ARTICLE —.

"Section —. The lands of the State, now owned or hereafter acquired, constituting the forest preserve, as now fixed by law, shall be forever kept as wild forest lands. They shall not be leased, sold, or exchanged, or be taken by any corporation, public or private, nor shall the timber thereon be sold, removed or destroyed."

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

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

The President — Mr. McClure has the floor.

Mr. McClure — Mr. President, at this late hour, in view of the fact that this matter has already been thoroughly explained, I do not think it necessary that anything further should be said. I do

not know whether there are any other amendments to be offered, but I understood that my friend, Mr. Floyd, had one, which I will oppose immediately upon its being offered.

Second Vice-President Steele took the chair.

Mr. Floyd — Mr. President, I offer the following amendment:

The Secretary read the amendment as follows:

Insert after the word "leased," in line 4, the words "otherwise than is now provided by law, or."

Mr. Floyd — Mr. President, I desire to call the attention of the Convention to the fact that in our anxiety to protect our forest preserves against the devastating dollar hunter, we have proceeded, perhaps, with a little too much precipitation. We have prevented any leasing whatever. This amendment suggests that we should allow such leases to be made as are now prescribed by law. The Forestry Commission is allowed at the present time to lease under certain restrictions, and they are quite severe; they can rent only for five years, they can rent only in plots of five acres, and the lessees must enter into covenants both as to the occupation and as to the subletting, and as to the preservation of the timber. No leases have as yet been granted, but there are in the hands of the Forestry Commission some thirty-nine applications, and the amount which is charged for these plots of five acres ranges from fifty to two hundred and fifty dollars. If these were granted there would be an income to the Forestry Commission for the purpose of buying other lands of between five and six thousand dollars per year.

But it is not the revenue that seems to me to be of any importance. I suppose the frequenters of the North Woods, the lovers of the woods are of two classes: first, those who go there for pleasure, the robust and active men and women who use it as a pleasure ground, and with their guides and boats can traverse it from one end to the other. But aside from this class of people, who look to the North Woods for pleasure and health, there is the other class, and, it seems to me, they are to be as much regarded in our arguments, perhaps more so, than the other: they are the sick who go there for health. It has been for years a well-known resort for persons afflicted with pulmonary diseases, and has proved to them a great blessing. If we prevent any leasing we shut out from the North Woods that class of frequenters, for it is impossible that they should go there and occupy the same tents and camps which campers use. They must put up some small structure of boards or logs, or something to afford shelter. It is in the interests of

this class of people, to whom we ought not to deny this health-giving, life-giving region of the North Woods. It is in their interest, I submit, and there is no danger of detriment to the State from the fact that the law hedges about in the leasing in the matter I have described. It is for that reason that I desire to have this clause incorporated in the amendment, that it may be leased in the way now prescribed by law.

Mr. McIntyre — Mr. President, we might as well not have any law whatever as to have this one. I simply want to say this: if you should put in a clause there to lease lots, you might as well not have any amendment whatever, because by the leasing of it, in a very few years every desirable place will be taken up and the public will have no place whatever to go to. We all know enough about this land to know that you cannot get water there; you must have a pond or a lake or a running stream for fishing and hunting, and for the place where you would go to camp, and these would soon be taken up, and most of the forests would be taken from the public.

Mr. Forbes — Mr. President, I desire to offer an amendment, in the way of an additional section.

The President — The Chair must hold that additional sections would not properly be amendments to the amendment offered by Mr. Floyd.

Mr. McClure — Mr. President, it having been shown that Mr. Floyd's amendment would be an unwise thing to adopt, I move the previous question upon the amendment.

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 the adoption of Mr. Floyd's amendment, and it was determined in the negative.

The Secretary read Mr. Forbes's amendment, as follows:

"Sec. —. The Legislature shall, by suitable laws, provide for the permanent preservation and protection of the forests of the State, and may provide for rebates of taxes on agricultural lands where forests are preserved or maintained in connection therewith."

Mr. Forbes — Mr. President, I have said already, in Committee of the Whole, all that I care to say upon this subject, although it was in a very brief and condensed form. I think the members will recollect what was said at that time, and I will not detain them now to repeat it; but it is a subject which should receive the careful consideration of every gentleman present. We should extend ques-

tions of this kind to the whole State, rather than limit them to some small portion or section of the State, benefiting only a small section and not the whole of the State. This was the case with the Niagara Falls proposition that we have had up to-day; it was because that was a sectional matter that it was voted down, I believe, and we should have treated that question as we treat this, and I hope that during the recess which we shall have that the committee which has the matter of the waters of the State in charge will devise something that will apply to the whole State, and not to any particular section of it.

Mr. Goodelle — Mr. President, I move the previous question upon this amendment.

The President — Does any other gentleman desire to make any further amendment? If there are no other amendments, the previous question is not necessary.

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

Mr. McClure — Mr. President, if no other gentleman desires to speak, I move that the debate be now closed.

The President — If there is no objection, the debate is closed, and the Secretary will read the amendment through.

The Secretary read the amendment, and proceeded to call the roll.

Mr. Forbes — Mr. President, I think it is necessary for me to explain my vote. Some gentlemen who are here seem to think that their own personal convenience is of more importance than this great question that we have before us to-night. We have divided up a great question and made it a little one. We have taken one small section of the State and said that we will do something for that, and will not do anything for the rest of the State. I would like to have voted for this measure as it should have come before this Convention. The whole subject should have been taken up by the Convention, and should have been treated in a noble and in a proper spirit, commensurate with the dignity of this great State. But in view of the fact that the Convention thinks it can only give protection to a small part of the State, and that it must always keep it as it is at the present time without any culture, without any care, but yet, because we have made a commencement, as it were, I vote aye.

The amendment was adopted by the following vote:

Ayes — Messrs. Abbott, Acker, Allaben, Arnold, Baker, Banks,

Barhite, Barnum, Barrow, Becker, Bigelow, Brown, E. A., Brown, E. R., Cady, Carter, Cassidy, Church, Clark, G. W., Clark, H. A., Cochran, Coleman, Cookinham, Cornwell, Countryman, Crosby, Davenport, Davies, Davis, Deady, Dean, Deyo, Doty, Durfee, Durnin, Emmet, Faber, Floyd, Forbes, Francis, Frank, Andrew, Frank, Augustus, Fuller, C. A., Fuller, O. A., Galinger, Gibney, Giegerich, Goeller, Goodelle, Green, A. H., Green, J. I., Hamlin, Hawley, Hedges, Herzberg, Hill, Hirschberg, Holcomb, Holls, Hotchkiss, Hottenroth, Jenks, Johnson, I. Sam, Johnson, J., Kinkel, Kurth, Lauterbach, Lester, Lewis, C. H., Lincoln, Manley, Mantanye, Marks, Marshall, McArthur, McClure, McDonough, McIntyre, McKinstry, McLaughlin, C. B., McLaughlin, J. W., McMillan, Moore, Morton, Mulqueen, Nichols, Nicoll, Nostrand, O'Brien, Osborn, Pashley, Peabody, Peck, Phipps, Platzek, Pool, Powell, Pratt, Putnam, Redman, Root, Springweiler, Steele, A. B., Steele, W. H., Storm, Sullivan, T. A., Tekulsky, Tibbetts, Titus, Towns, Truax, C. H., Turner, Vedder, Veeder, Vogt, Wellington, Whitmyer, Wiggins, Williams, Woodward, President — 122.

Mr. Cookinham — Mr. President, I move that we adjourn.

The President put the question on the motion of Mr. Cookinham, and it was determined in the affirmative, whereupon the Convention adjourned until Friday morning at ten o'clock.

Friday Morning, September 14, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber, at the Capitol, at Albany, N. Y., Friday morning, September 14, 1894.

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

The Rev. A. Kennedy Duff offered praper.

On motion of Mr. A. H. Green, the reading of the Journal of yesterday was dispensed with.

Mr. I. S. Johnson — Mr. President, I rise to a question of privilege.

The President — Mr. Johnson will state his question of privilege.

Mr. Johnson — Mr. President, last night during the session myself and a large number of other members of this Convention were seriously attacked and charged with abandoning our work, or an effort to abandon our work in this Convention. I desire, Mr. Chairman, to call attention to a little history of this Convention

as furnished by its Journal. On the tenth day of August the following resolution (No. 167) was offered by Mr. Root:

"Resolved, That after August fifteenth, sessions of the Convention shall be held every day in the week, except Sunday, and that the sessions be held from 10 A. M. until 1 P. M.; from 3 P. M. to 5 P. M., and from 8 to 10 P. M., unless otherwise specially ordered by the Convention, except that no session shall be held on Saturday evening."

Upon that resolution coming in, Mr. Cochran, who last night made the charges that we were abandoning our work, rose in his place, and offered the following amendment:

"So that no session shall be held on Friday of each week, after the afternoon session, and then, at that time, there shall be an adjournment until 3 P. M. on Mondays."

That amendment was put, and every person who voted in favor of it was a member of the minority.

The other gentleman who saw fit to attack the majority for asking for a three days' recess after we have spent these long days working day and night, morning and evening, was a gentleman from New York (Mr. Nicoll), who, during the forepart of the sessions of this Convention, was engaged in defending election thieves in the city of New York instead of being here attending to the duties of this Convention.

Mr. Cochran — What page is that?

Mr. Johnson — Page 483 of the Journal.

The President — Mr. Johnson seems to be well entitled to the vindication.

Mr. Bowers — It seems that his vindication is an attack upon others.

Mr. Cochran — Mr. President, I rise to a question of privilege.

The President — The gentleman will state his question of privilege.

Mr. Cochran — Mr. President, the gentleman has neglected to add that it was distinctly stated by me at that time that that amendment was proposed not by myself alone, or as my own idea, but as the idea of many members, not alone of the minority, but of the majority as well, who were in favor of sitting as was proposed by that amendment, but during the interim that occurred between the preparation of my amendment and the offering of it in the Convention, I was apparently left alone to defend the amendment, and

in the end I myself voted for the resolution of Mr. Root that he refers to.

The President — Mr. Cochran seems to be well entitled to the vindication.

Mr. Crosby — Mr. President, Mr. McArthur desires to be excused on account of illness. I found a note on his desk this morning stating that he was not well.

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

Mr. Cady— Mr. President, I desire to announce that a meeting of the Canal Committee will be held at their committee room at a quarter past two o'clock.

Mr. Lincoln — Mr. President, I desire to offer a resolution, and I wish to preface the reading of it by a brief statement.

Mr. Bowers — I object. Let us have the resolution read. It may be a new apportionment scheme.

The President — The Secretary will read the resolution.

The Secretary read the resolution as follows:

R. 212.—"Resolved, That the Secretary be, and he is hereby directed to deliver by mail, or otherwise, to the publisher of each newspaper or other periodical, a copy of all constitutional amendments adopted by this Convention, within five days after their adoption."

Mr. Lincoln — Mr. President, the law requires the Secretary of State to designate two newspapers in each county to publish the constitutional amendments. I think it will be hardly possible to have that publication before the first of October. That will leave the time quite short for the people to become informed of the work of the Convention and so qualified to vote intelligently. The object of this is to furnish all the newspapers and magazines of our State with copies of our work so that they may comment upon it or may publish it. Of course, the only expense is the printing and mailing of them. I think it is of the utmost importance that this means be taken to inform them of the work of the Convention. I hope no objection will be made to the consideration of the resolution now, and that it will be passed.

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

The President — Mr. Lincoln will furnish the Secretary with a list of the papers and magazines he desires to be furnished with this

matter. There were some resolutions laid over yesterday under the rules. If the movers wish to call them up they can do so.

Mr. Kurth — Mr. President, I call for the resolution offered by me yesterday and laid over until to-day.

The President — The Secretary will read the resolution.

The Secretary read the resolution as follows (No. 209):

"Whereas, From the files upon the desks of the delegates to this Convention at the present time, it appears that the Record and proceedings of this Convention are not printed later than Saturday, August twenty-seventh, or seventeen days ago,

"Resolved, That the Compiler be and he hereby is directed to inform the Convention forthwith the cause of such delay or neglect."

The President — The question is on Mr. Kurth's resolution.

Mr. Veeder — Mr. President, I move to amend. "Forthwith" is rather quick. Should it not be on or before to-morrow at noon? I submit that "forthwith" is an unheard-of proposition.

Mr. Kurth accepted Mr. Veeder's amendment.

The President put the question on Mr. Kurth's resolution, as amended by Mr. Veeder, and it was determined in the affirmative.

Mr. Dean — Mr. President, I desire to move that the vote by which the apportionment article (O., I. No. 376) was passed last night be reconsidered, and that that motion lie upon the table.

The President — The Chair is of the opinion that Mr. Dean, not having voted with the majority, cannot move to reconsider.

Mr. Bowers — A point of order, Mr. President. That rule does not apply to the final passage of a constitutional amendment.

Mr. Dean — Mr. President, I desire to call your attention to the rule which says that on the final passage of an amendment that rule does not hold good.

The President — That is correct.

The President put the question on the motion to lay Mr. Dean's motion to reconsider on the table, and it was determined in the negative.

The President put the question on Mr. Dean's motion to reconsider the vote by which the apportionment article was adopted, and it was determined in the negative.

Mr. A. B. Steele — Mr. President, I offer the following resolution:

The President— The Secretary will read the resolution.

The Secretary read the resolution as follows:

R. 213.—" Whereas, Albert B. Crumb, one of the messengers at this Convention, has continually acted as Assistant Postmaster since May twenty-first, now, therefore, it is hereby

" Resolved, That an additional sum of $3 per day be allowed and paid to said Crumb for his services as Assistant Postmaster."

Mr. Deady — Mr. President, I move that that resolution be referred to the Committee on Contingent Expenses.

The President — It is so referred. There is one matter to which it is perhaps the duty of the Chair to call the attention of the members to, and that is, that the committee clerks have now ceased to have any employment, and the question arises whether they should be continued.

R. 214.— Mr. Deady — Mr. President, I move that the clerks and officers of this Convention be continued in employment until the final adjournment of the Convention.

Mr. Bowers — Mr. President, I offer as an amendment that the services of all the clerks of committees who have no work to do, be dispensed with.

The President — The question is on the amendment of Mr. Bowers, that the services of all the clerks of committees who have no work to do, be dispensed with.

Mr. I. S. Johnson — I move as amendment to the resolution that they be employed in such business connected with the Convention as the President and Secretary shall require.

The President — So far as the President is concerned, he will state that it will be impossible for him to employ them.

The President — The question is now on Mr. Bowers's resolution.

Mr. Bowers— Mr. President, I have no objection to Mr. Johnson's proposition. I will withdraw mine.

The President — Mr. Johnson's resolution is that the clerks and messengers be employed in such business connected with the Convention as the President and Secretary shall require.

Mr. Hirschberg — Mr. President, I move as a substitute that the matter be left with the Committee on Rules, with power.

Mr. Bowers — Mr. President, I rise to a point of order. The first proposition was to leave it with the President and Secretary.

The proposition now is to leave it with the Committee on Rules. I say that that is an equivalent motion.

The President — The Chair thinks not.

Mr. Root — Mr. President, would it not be better that it should be referred to some committee — the Committee on Rules, or some other committee, to report to the Convention what employes will be necessary and proper to retain after to-morrow?

The President — Mr. Hirschberg moves that it be referred to the Committee on Rules.

Mr. Hirschberg — With full power.

The President put the question on the resolution of Mr. Hirschberg that the matter be referred to the Committee on Rules, with full power, and it was determined in the affirmative.

The President — Are there any other notices, motions or resolutions? Any reports of committees?

Mr. Lyon — Mr. President, I have a report from the Committee on Contingent Expenses on the application of Thomas Rochford.

The President — A report from the Committee on Contingent Expenses.

The Secretary will read.

The Secretary read the report as follows:

"Mr. Lyon, from the Committee on Contingent Expenses, to which was referred the annexed resolution reciting that Thomas Rochford be, and is hereby, entitled since the twenty-ninth day of May last, to such pay as is commensurate with such added duties and work required of and performed by him, would respectfully report that Thomas Rochford was appointed a messenger of this Convention on May twenty-second, and was, on May twenty-ninth, assigned by the Secretary of the Convention to assist the Financial Secretary in clerical work, and has so assisted since that time; that Mr. Rochford has received for his services $3 per day for seven days each week, which is the compensation allowed messengers of the Legislature; that four members of the Committee on Contingent Expenses favor an additional allowance to Mr. Rochford, and three members of the committee are opposed to any additional allowance.

"GEORGE H. LYON,
"*Chairman.*"

The resolution referred to in this report is as follows (No. 205):

By Mr. Kurth:

"Whereas, Thomas Rochford was, on the twenty-second day of May, 1894, duly appointed a messenger of this Convention, and duly qualified and entered upon his duties as such, and

"Whereas, Thereafter, and on the twenty-ninth day of May, he was transferred to the office of the Financial Secretary of the Convention, and therein required to do clerical work and assist in making up the pay-rolls and receipts of the Convention, and as well as perform duties as messenger in said office,

"Resolved, That said Thomas Rochford be and is hereby entitled since the twenty-ninth day of May, to such pay as is commensurate with such added duties and work required and performed by him."

Mr. McMillan — Mr. President, I offer the following resolution:

The President — The Secretary will read the resolution.

The Secretary read the resolution as follows:

R. 215.—"Resolved, That the amount of compensation to be paid to Thomas Rochford for extra services rendered as assistant to the Financial Secretary be the sum of $2 per diem from May 29, 1894, to the final adjournment of this Convention, and that the payment thereof out of the fund appropriated for the expenses of this Convention be and hereby is authorized and directed."

Mr. McMillan — Mr. President, I ask that it lie over under the rules until to-morrow.

The President — It will lie over under the rules.

The Chair suggests to Mr. McMillan if he can find any authority under the law for making this allowance.

The President — The next business in order is third reading, and the first amendment is that of Mr. Nichols.

Mr. Nichols — Mr. President, before we enter into the consideration of that matter, I desire to make the point of no quorum.

The President — The Secretary will call the roll and ascertain if there is a quorum present. The Chair is of the opinion that there is a quorum.

The Secretary proceeded to call the roll.

The President — A quorum having already answered their names, the Secretary will suspend the further call of the roll.

Mr. Nichols — Mr. President, I desire to give notice that at the close of the debate upon this question I shall move a call of the Convention.

The President — Mr. Nichols gives notice that at the close of the debate he shall move a call of the Convention. The business in hand is third reading No. 20, general order No. 34 printed No. 402. The Secretary will read the title.

The Secretary read the title as follows (O., I. No. 253, P. No. 402):

"Proposed constitutional amendment to amend section 4 of article 2 of the Constitution, relating to registration of voters."

The President — Does any gentleman desire to be heard upon this amendment?

Mr. Nichols — Mr. President, I do not believe it is necessary for me to enter upon any extended discussion of the amendment at this time. It was thoroughly considered in Committee of the Whole and I think the Convention are as fully advised of its purpose and effect as they will be after an hour's discussion. There are no substantial changes in it as it is now presented here, and I think in its phraseology it meets every objection that was interposed to it when it was upon third reading. It will be noted that one objection that was stated to the amendment when it was in Committee of the Whole was that in cities of upwards of 5,000 people, registration of voters might not be required as under existing statutes. It will be noted if the gentlemen will read the amendment that the exception is so drawn that wherever at the present time registration is required in the villages and cities of the State, and in the towns, it is unaffected by the proposition here presented. In other words, registration shall not be required for town and village elections, except by express provision of law. Such villages as West Troy, or towns, will be entirely unaffected by the enactment of this proposition for town elections. That is the most substantial change in the phraseology in the final amendment, and I think covers all the objections that were interposed to the proposition at the time I moved the passage of the measure.

Mr. Holcomb — Mr. President, I would like to call attention to the phraseology of the last clause of this proposition:

"In cities and 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."

It seems to me that there is very great danger in those words, that the Legislature may compel the voters in the cities to appear

on the first day of registration, and thereby all the days except the first one may be taken away, which would be a very great hardship and a matter that could not be carried into effect in a city like the city of New York, because, although the election districts have a limited number of voters in each one of them, the people, being largely working people, could never get to the registry place on the first day. Therefore, I would like to call Mr. Nichols's attention to it. On the first day it was under consideration the President, I think, called attention to the same words. Whether the same idea was in the President's mind that is in mine, I cannot say, but I think the danger is very imminent.

The President — I think I made the same point when the matter was under Committee of the Whole, but it was very thoroughly explained by Mr. Nichols. As I understand it, the registry officers may, on the first day, make up the list without the personal attendance of the voters, but personal registration would be required in the case of names put on at any subsequent day.

Mr. Holcomb — Mr. President, as I understand it, this would apply to people in all parts of the State. "Laws shall be made for ascertaining, by proper proofs, the citizens who shall be entitled to the right of suffrage." Now, under the wording of the last clause, if I read it right, it may be required that in cities personal registration shall take place upon the first day of the meeting of the board of registry. We have no such thing in the city of New York, as the gentleman moving the proposition suggests, any registration other than personal. I have not prepared any amendment, but it looks to me as if there was very great danger there.

Mr. Nichols — If I may be permitted to say a word upon that; the President has already stated the facts in regard to this matter. I understand that the Legislature has full power now to require the citizens of the cities to register on the first day. The Legislature may provide but one day for registration throughout the entire State, but that is not true of this constitutional amendment. I do not think that the proposition here advanced makes any difference whatever with the power of the Legislature to require personal registration in respect to the cities of the State. If they see fit to exercise so arbitrary and ridiculous a power as to compel the citizens of the cities to register upon one day, there is nothing in the Constitution to prevent. There is nothing in this proposition to prevent it. However, I do not apprehend, sir, that that danger is possible, or that the Legislature of the State, no matter what party was in power, would think of imposing such a hardship upon the citizens.

Mr. A. B. Steele — Mr. President, I believe I am the one that offered the amendment that has been referred to by Mr. Holcomb, and I am sure that I had no intention such as the gentleman refers to, in making the amendment. That it may be fully understood why the amendment was offered and that the gentlemen who live in the cities where personal registration is required may understand it thoroughly, I would say this: there are many villages in the State whose population will exceed five thousand inhabitants, but are not co-extensive with the town. Therefore, in making the division of the town into election districts, and as many towns have but one village in them, and as the voting is almost invariably done in the village, as is likewise registration, many of the districts covering a portion of the town extend into the village. Therefore, the place of registration would be in the village. Now, without this amendment, if the village exceeded five thousand inhabitants and the persons registering actually had to register in the village, as the bill originally was, it would require personal registration. Therefore, the act would compel personal registration on the first day outside of the limits of the village. Therefore, I offered the amendment so that the personal registration on the first day should only be required of the persons residing within the villages over five thousand inhabitants, or in cities, and I cannot conceive how, in any conceivable way, it can be construed as the gentleman says, so as to require all persons residing in villages of over five thousand inhabitants or in cities to personally register the first day. It seems to me that in order to get that construction there must be a perversion of the English language. The intent is that whoever resides in a village of over five thousand inhabitants, or in a city, will be compelled to personally register, and that those persons who reside outside of a village of over five thousand inhabitants, or who reside outside of a city, will not be required to personally register, even upon the first day, so that the amendment here would be directly in keeping with the statute of 1892.

Mr. Holcomb — Mr. President, I would like to offer an amendment. I will send it up in a moment.

The President — The Chair would suggest that any gentleman who has any amendment to offer to this, should send it to the desk, so that the time of discussion will not be curtailed.

Mr. Holcomb — Mr. President, I would like to amend by adding at the end of the section, after the word "voters," "this provision shall not authorize legislation reducing the number of days for registration of voters in cities now provided by law."

The President — Will you please send it up to the Secretary's desk? The Secretary will read Mr. Holcomb's amendment.

The Secretary read the amendment as follows:

Add at the end of the section after the word "voters" the following: "This provision shall not authorize legislation reducing the number of days for registration of voters in any cities now provided by law."

Mr. Holcomb — Mr. President, the present days of registration give the people in cities all the convenience they require, and while there is no provision in the existing Constitution in this behalf, the legislation on the subject has stood so long as to be justified in being recognized by constitutional provision.

Mr. Nichols — Mr. President, I do not see the necessity of the amendment which the gentleman suggests. It seems to me that the matter ought to be left to the discretion of the Legislature respecting the number of days that will be required for cities as well as the country districts. If there was any disposition on the part of the Legislature in the hands of either of the great political parties to take advantage and to deprive the voters of this right, it would have appeared, it seems to me, before this in efforts in the line of legislation. There has been nothing of that sort and I do not believe it can be reasonably apprehended.

Mr. Holcomb — Mr. President, there is no danger, but I think it would be wise that the danger be entirely removed by these words, and I would like to ask the gentleman this: if there be no danger, why not leave the words in, simply for the purpose of guaranteeing safety? I do not believe the Legislature is going to oppress anybody, but I think it would be a good plan to provide a safeguard.

Mr. Nichols — Mr. President, I think, sir, that there should be some limit upon the matter. If we enter upon the detail which the gentleman suggests we can never tell where it will terminate.

The President — I would like to inquire if it is the intention to dispense with the necessity of personal registration in towns as distinguished from cities and villages?

Mr. Nichols — Mr. President, it is in towns and villages with less than 5,000 inhabitants.

The President — There is nothing about the towns having less than 5,000 inhabitants.

Mr. Nichols — There is nothing upon that subject, but personal registration shall not be required of voters not residing in cities

or villages of less than 5,000 inhabitants — they shall not be required to register personally on the first day; that is to say, personal registration may be required in cities on the first day of registration as it is now. I understand that throughout the entire State personal registration is required upon the first day. It may also be required upon the first day and all subsequent days in villages containing 5,000 people. In other portions of the State, that is to say, outside of the cities and outside of the villages, containing 5,000 people, personal registration shall not be required upon the first day. Mr. President, it is not required upon the first day now throughout the rural districts. In fact, outside of all cities personal registration, under the statutes as they are to-day, is not required. It is only in the cities of the State that it is required, and I think, sir, that it is along the lines of the statute as they now appear upon the books, that this provision is drawn. It does not modify existing provisions in any respect.

Mr. Holcomb — Mr. President, could I ask to have my proposed amendment read by the Secretary?

The President — The Secretary will read Mr. Holcomb's amendment.

The Secretary read the amendment as follows:

Add at the end of the section after the word "voters" the following: "This provision shall not authorize legislation reducing the number of days for registration in cities now required by law."

Mr. Morton — Mr. President, I ask Mr. Holcomb's attention a moment to the following: to the fact that on Saturday preceding the election, as the law now stands, the boards of registry meet in their respective districts for the purpose of registering those who have been naturalized within the ten days next preceding, and that is the only business of the boards of registry upon that day. His amendment would continue that meeting of the board of registry unnecessarily, from the fact that the amendment, if adopted, requiring aliens to become citizens sixty days before election, would make his amendment unnecessary. And, therefore, his amendment provides for a registration day upon which no business could be done.

Mr. Holcomb — Mr. President, in answer to Mr. Morton, I would say that I am not familiar with the days of registration in Brooklyn, but in New York we meet on various days for the purpose of personal registration. Under this amendment of mine all persons would be required to appear on the first day of registration.

Mr. Foote — Mr. President, the power which Mr. Holcomb refers to exists to-day. It could have been exercised by the Legislature and one day of registration could have been required. It seems to me that we should not presume that the Legislature will do anything different in the future from what they have done in the past. I think the form of the amendment is good as it stands.

The President — Does any other gentleman desire to be heard?

Mr. Maybee — Mr. President, I desire to say now what I would say in explaining my vote on this proposition. I have always been opposed to personal registration in the country districts. I do not think it wise to adopt any such rule in regard to the rural counties. At the same time I do not think it wise to tie up the Legislature for twenty years, and I shall vote against the amendment now proposed.

Mr. Vedder — If I understand this amendment correctly, the conundrum of the President is quite pertinent. I want to see if I can understand it and can explain it. I understand as the law is to-day, that in cities of the State personal registration is required upon each day; that no one can vote unless he comes and is personally registered. I understand this amendment does this; it preserves the law in that particular, except that it permits the inhabitants of cities and villages having a population of less than 5,000 and consequently of towns having less than 5,000 inhabitants, to be registered at the first meeting of the board of registration without making personal application therefor.

The President — Only cities and villages.

Mr. Nichols — Let me say that such voter not residing in such cities or villages shall not be required to apply in person for registration at the first meeting of the officers for the purpose of the registry of voters; that is, outside of the cities, it cannot be required.

Mr. Vedder — Now, as the law is, as I understand it, on the first day in the country to-day voters can be registered without personally appearing, but upon all subsequent days they must appear, and it is to preserve the law precisely as it is, changing it only in this particular, that voters not residing in cities or villages having 5,000 or more inhabitants shall not be required to apply in person for registration at the first meeting of the board. Now, the way they do it is this: they take the list of voters of the year before and the registration officers copy that list on the first day. If there are any left off by mistake, or if there are parties who moved into the town or village who are not on the registry the year before,

they must come personally to the board of registry and register after the first meeting.

The President — The intention of this is that in towns as distinguished from cities and villages, no personal registration shall be made. Why not put in the word town?

Mr. A. B. Steele — Is there any town in the State of New York, outside of a village I mean, barring the residents of a village, where the inhabitants amount to 5,000?

Mr. Vedder — No.

Mr. A. B. Steele — Two thousand will cover the residents of all towns outside of villages?

Mr. Vedder — Yes, sir.

The President — The Secretary will read once more the amendment of Mr. Holcomb.

The Secretary read Mr. Holcomb's amendment as follows:

Add at the end of the section after the word "voters" the following: "This provision shall not authorize legislation reducing the number of days for registration of voters in cities now provided by law."

The President put the question on Mr. Holcomb's amendment.

Mr. Holcomb asked for a rising vote.

The President — Mr. Cochran and Mr. McDonough will please act as tellers.

The gentlemen named acted as tellers and announced the vote as 36 ayes and 55 noes.

The President — The amendment is lost. Does any other gentleman desire to be heard upon this constitutional amendment? If not, the Secretary will read the proposed amendment the third time.

The Secretary read the proposed amendment the third time as follows (O., I. No. 253, P. No. 402):

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 each election. In cities and in villages having five thousand 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."

The President — Does Mr. Nichols insist upon his call of the Convention?

Mr. Nichols — Mr. President, I would like to say in answer to the inquiry, that I do not insist upon it at this time, but reserve the right to do so before the roll-call is finished, and, before the announcement of the vote.

The President — This proposed amendment having been read the third time, the question is now on its final passage. The Secretary will call the roll and those in favor will vote aye and those opposed, no.

The Secretary proceeded to call the roll.

Mr. Smith — Mr. President, I wish to explain my vote. I vote no, upon this ground: that this section is not consistent with itself. The first paragraph of the section says that "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." Proper proofs would be the personal application of the individual. The latter part of the section provides, that voters not residing in such cities or villages — referring to small villages — shall not be required to apply in person, that is to say, with regard to one part of the State there shall be no proofs to ascertain who shall be entitled to vote. Now, when we consult the Penal Code it is provided that any person who shall apply to have his name placed upon the registry and who is not entitled to vote, shall be guilty of a crime. The registry should be a record made up from proofs, so as to be a verity, and the name of every person upon it should be placed there under such circumstances that somebody would be guilty of a crime for having put it there, provided it is placed there wrongfully. It is not fair and just to have one rule for one place and another for another place. It is not uniform throughout the State and is a violation of that great doctrine upon which every Constitution should be made, namely, adherence to principle. Therefore, I vote no.

The President — This constitutional amendment, having received

a vote of more than a majority of all the members elected, is adopted; 103 ayes and 45 noes.

The vote in detail on this amendment was as follows:

Ayes — Messrs. Abbott, Acker, Ackerly, Allaben, Arnold, Baker, Barhite, Barnum, Barrow, Becker, Brown, E. A., Brown, E. R., Cady, Carter, Cassidy, Church, Clark, G. W., Clark, H. A., Coleman, Cookinham, Cornwell, Countryman, Crosby, Davies, Davis, Dean, Deterling, Dickey, Doty, Durfee, Faber, Floyd, Foote, Francis, Frank, Andrew, Frank, Augustus, Fraser, Fuller, C. A., Fuller, O. A., Galinger, Gibney, Gilleran, Goodelle, Hamlin, Hawley, Hecker, Hedges, Hill, Hirschberg, Holls, Johnson, I. Sam, Johnson, J., Johnston, Kimmey, Kinkel, Koch, Kurth, Lauterbach, Lester, Lewis, C. H., Lewis, M. E., Lincoln, Lyon, Manley, Mantanye, Marshall, McArthur, McDonough, McIntyre, McKinstry, McLaughlin, C. B., McMillan, Mereness, Moore, Morton, Nichols, Nicoll, Nostrand, O'Brien, Parker, Parkhurst, Pashley, Phipps, Pool, Porter, Powell, Pratt, Putnam, Redman, Root, Spencer, Springweiler, Steele, A. B., Steele, W. H., Storm, Sullivan, T. A., Tibbetts, Turner, Vedder, Vogt, Wellington, Whitmyer, Wiggins, Woodward, President — 103.

Noes — Messrs. Banks, Bigelow, Bowers, Burr, Bush, Chipp, Jr., Cochran, Danforth, Davenport, Deady, Deyo, Durnin, Emmet, Farrell, Forbes, Giegerich, Goeller, Green, A. H., Green, J. I., Herzberg, Holcomb, Hotchkiss, Hottenroth, Jenks, Marks, Maybee, McClure, McLaughlin, J. W., Meyenborg, Mulqueen, Ohmeis, Parmenter, Peabody, Peck, Platzek, Rogers, Rowley, Sandford, Smith, Sullivan, W., Tekulsky, Titus, Truax, C. H., Tucker, Veeder, Williams — 45.

The President — The next business in third reading is Mr. Lauterbach's amendment, third reading No. 21 (printed No. 457, introductory No. 35). The Secretary will read the title.

The Secretary read the title 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, etc.

Mr. Lauterbach — Mr. President, I believe that the amendment when in general orders was thoroughly discussed under the guidance of Senator McMillan, the chairman of the committee that reported it favorably, and the discussion was so complete that I think it is unnecessary to add anything further. I hope the matter

will be expedited, but I would be pleased, however, to hear any suggestions that may be made in respect to it.

The President — Does any gentleman desire to debate this?

Mr. Dickey — Mr. President, I desire to make a motion to recommit with instructions to amend and report forthwith.

The President — The Secretary will read the resolution offered by Mr. Dickey.

The Secretary read the resolution as follows:

Resolved, That the amendment be recommitted with instructions to amend and report forthwith by striking out the word "six" in the ninth line and insert the word "eight."

Mr. Dickey — Mr. President, while I am quite willing that there should be a change in the term of the Governor and other officers on account of the change in the cities article, I want to raise my protest against any change that will shorten the term of the Governor to be elected in November of this year, because when he is elected he will be elected under the present Constitution that provides for a three-year term, and this amendment shortens his term by one year. I do this in justice to whoever may be elected, but I have in mind more particularly the fact that the Republican party will probably elect the Governor this year, and as the Democrats have had a three-year term, I for one must protest against this Convention taking any action that will shorten the term of the Governor who is to be elected this fall by one year.

The President — The question is on Mr. Dickey's amendment.

Mr. Dickey — I call for a rising vote, Mr. President.

The President — Mr. Cochran and Mr. McDonough will please act as tellers.

The gentlemen named acted as tellers and announced the vote as ayes, 24; noes, 52.

The President — Mr. Dickey's amendment is lost. If there is no more debate the Secretary will read the amendment the third time.

The Secretary read the bill the third time, as follows (O., Nos. 35-457):

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, etc.

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

Section 1 of article 4 is hereby amended so as to read as follows:

"Section 1. The executive power shall be vested in a Governor, who shall hold his office for two years; a Lieutenant-Governor shall be chosen at the same time and for the same term. The Governor and Lieutenant-Governor, elected next preceding the time when this section shall take effect, shall hold office until and including the thirty-first day of December, eighteen hundred and ninety-six, and their successors shall be chosen at the general election in that year."

Section 1 of article 5 is hereby amended so as to read as follows:

"Section 1. The Secretary of State, Comptroller, Attorney-General, State Engineer and Surveyor shall be chosen at a general election at the times and places of electing the Governor and Lieutenant-Governor, and shall hold their offices for two years, except as provided in section 2 of this article. Each of the the officers in this article named, excepting the Speaker of the Assembly, shall, at stated times, during his continuance in office, receive for his services a compensation which shall not be increased or diminished during the term for which he shall have been elected, nor shall he receive to his use any fees or perquisites of office or other compensation. No person shall be elected to the office of State Engineer and Surveyor who is not a practical civil engineer."

Amend section 2 of article 5 so as to read as follows:

"Sec. 2. The first election of the Secretary of State, Comptroller, Attorney-General, Treasurer and State Engineer and Surveyor, pursuant to this article of the Constitution, shall be held in the year eighteen hundred and ninety-five, and their term of office shall begin on the first of January following, and shall be for three years. At the general election in the year eighteen hundred and ninety-eight and every two years thereafter, their successors shall be elected for the term of two years."

The President — The question now is on the final passage of this amendment. The Secretary will call the roll. Those in favor of its adoption will say aye, and those opposed, no.

The Secretary called the roll, and the proposed constitutional amendment was adopted by the following vote:

Ayes — Messrs. Abbott, Acker, Ackerly, Allaben, Arnold, Baker, Banks, Barrow, Becker, Bigelow, Cady, Carter, Church, Clark, G. W., Clark, H. A., Cochran, Coleman, Cookinham, Cornwell, Crosby, Davenport, Davies, Davis, Deterling, Doty, Durfee, Emmet, Faber, Floyd, Foote, Forbes, Francis, Frank, Augustus, Fraser, Fuller, C. A., Fuller, O. A., Galinger, Gibney, Giegerich,

Gilleran, Goodelle, Green, A. H., Green, J. I., Griswold, Hamlin, Hawley, Hedges, Hill, Holls, Jenks, Johnson, I. Sam, Johnson, J., Johnston, Kimmey, Kinkel, Lauterbach, Lester, Lewis, C. H., Lincoln, Lyon, Manley, Marks, Marshall, Maybee, McArthur, McDonough, McIntyre, McKinstry, McLaughlin, C. B., McMillan, Moore, Morton, Nichols, Nicoll, O'Brien, Parker, Parkhurst, Pashley, Phipps, Platzek, Pool, Porter, Powell, Pratt, Putnam, Redman, Rogers, Root, Rowley, Spencer, Springweiler, Steele, A. B., Steele, W. H., Storm, Sullivan, T. A., Tibbetts, Titus, Truax, C. H., Tucker, Turner, Vedder, Vogt, Wellington, Wiggins, Williams, President — 107.

Noes — Messrs. Barhite, Burr, Bush, Campbell, Danforth, Dean, Dickey, Goeller, Herzberg, Holcomb, Hottenroth, Lewis, M. E., McClure, McLaughlin, J. W., Mereness, Meyenborg, Nostrand, Ohmeis, Peabody, Peck, Roche, Sanford, Schumaker, Veeder — 24.

The President — This constitutional amendment, having received the votes of more than a majority of the members elected to this Convention, is duly passed.

The President — General order No. 13, printed No. 451 (introductory No. 369), introduced by the Committee on Cities, to provide home rule for cities. The Secretary will read the title.

The Secretary read the title as follows (O., I. No. 369, P. No. 451):

Proposed constitutional amendment to provide home rule for cities.

Mr. M. E. Lewis — Mr. President, I move that general order No. 13, third reading No. 22, be recommitted to the Committee on Cities, with instructions to report the same forthwith to the Convention with the following amendment: strike out the word "fifty," in line 7, page 2, and insert in place thereof the words, "two hundred and fifty," and the measure to retain its place on the calendar.

The President put the question on the motion made by Mr. Lewis and it was determined in the negative.

The President — Are there any other amendments offered?

Mr. M. E. Lewis — I move to recommit this proposition to the Committee on Cities, with instructions to strike out all after and including the ninth line in the article, and upon this motion I desire to be heard. I regard this proposition as a proposition solely for the benefit of the cities of New York and Brooklyn. It may be asked why, as a member of the Committee on Cities, I signed a report containing this proposition and forming a part of the article

which the Cities Committee has submitted. In reply I can say that this section was proposed as a part of this article by New York and Brooklyn members, and was acceded to by representatives, upon the Cities Committee, of interior cities of the State simply as a substitute. It was conceded to also because it was supposed to establish a uniform system of elections in all the cities of the State. I notice that very recently, or since the proposition was reported by the committee, an amendment has been secured exempting all cities of the third class, or cities of less than fifty thousand inhabitants, from the effect of this proposition. That being so, there are now but seven cities in the State which will be affected by the adoption of this section, namely, New York, Brooklyn, Buffalo, Rochester, Syracuse, Albany and Troy. If this proposition is good for seven cities of the State, I cannot see why it should not be good for twenty-five other cities of the State. If it is thought to be a measure of reform in seven of the largest cities of the State, I do not see why it should not be thought wise for some of the smaller cities of the State. I do know that it has been stated by a representative in this Convention of one of the smaller cities of the State that if this proposition is adopted and applied to his city it will make his city Democratic, whereas, it has for the past ten years been a Republican city. I do not care what the result of this may be as between the two great political parties in the various cities of the State, but I asked in my motion that was voted down that all cities of less than 250,000 inhabitants be stricken out, as I desired to have Rochester stricken out. In Rochester the fiscal year will be changed from April to January. The collection of the tax budget will be changed so that the city will be forced to collect two budgets within a period of seven or eight months; the terms of all the city officials will be shortened or extended. Now, it has been thought that the proper method for the separation of the terms of members of the common council should be one-half in one year, and one-half in the next year; but with the adoption of this article the terms of office of those officials will have to be extended through four years, or else all the terms will expire at the same time. So far as I am concerned, I should desire to see the entire article defeated, but if that is not to be accomplished, then I hope that all this matter in relation to the shortening and lengthening of the terms of office of the various city officials will be stricken out and that the matter of providing for their terms shall be left to the Legislature.

Mr. H. A. Clark — Mr. President, as has been stated by Mr. Lewis in regard to himself, I signed the report of the Committee on Cities,

believing that that report was a good one as a whole, and also understanding how the larger cities of the State desired the article as drafted by that committee to be presented to and passed by this Convention. Since the matter came into the Convention the article has in effect been destroyed, and it stands here now with a single section remaining — that relating to the divorcement of city elections from State and county elections. Considering this in connection with other bills that have come before this Convention, I wish to call attention to the inconsistency that now confronts us. We are confronted by more than a theory at this time; we are confronted with a condition. It is provided by this amendment that the county officers of the counties of New York and Kings shall be elected in the odd-numbered years. Those county officers include county clerks, whose terms are three years; sheriffs, whose terms are three years; and registers of deeds, whose terms are three years. I think there are also other officers in those counties whose terms are three years, but I am not sure. Those terms are left by the Constitution as it now stands at three years, and this amendment requires the officers to be elected in each odd-numbered year. When an officer's term is three years how can you elect one in each odd-numbered year? If, in the year 1895, a sheriff of New York county is elected, how can you elect another in 1897 when the term does not expire for over a year afterward? The same argument applies to county clerks and to registers of deeds, and I think it applies to the office of city chamberlain. It also applies to the office of district attorney. Now, here is an inconsistency which cannot be remedied, because we have passed by the time of proposing amendments to the Constitution. We have passed the point when we can amend the article in relation to county officers, and, as I understand it, the committee which had charge of that matter declined to make that change, and now we stand here with one section asking to divorce city elections from county and State elections, when, if it is passed, it does not divorce them at all or separate them in the least. It leaves, at the same election when New York city elects her city officers, for her to elect Members of Assembly, a district attorney, a county clerk, a register of deeds, and a sheriff. The whole effect of the article on cities has been destroyed, and it stands here merely as a great big shadow amounting to nothing, and if it is passed it will cause a great amount of trouble for the cities of this State. I am sorry to differ with some of my friends on the committee and take this position, but it seems to me that it is necessary now to kill this amendment. I, therefore, hope that

the amendment of Mr. Lewis will be adopted and thereby the force and effect of this section be defeated.

Mr. J. Johnson — Mr. President, it is with very great regret, as has been suggested by Mr. Clark on his part, that I find myself in any degree in difference of opinion with any member of the committee which has worked so long and with such industry in the framing of the article of which this section forms a part. But, sir, we must look at all subjects from the light in which we stand. In reference to the objection as to the terms of office of the sheriffs, of the county clerks, of the registers, and of the district attorneys, of the counties of New York and Kings, that is all within the purpose and letter of the first general order adopted.

Mr. Spencer — Mr. President, if the gentleman will give way for a moment, I desire, before the hour expires, to offer an amendment.

Mr. J. Johnson — I will give way for that purpose, sir.

Mr. Roche — Mr. President, allow me to inquire when the hour will expire?

The President — At 12 o'clock.

Mr. Roche — I also desire to offer an amendment which I will send up to the Secretary's desk.

The President — Mr. Johnson may proceed.

Mr. J. Johnson — As the matter stands, there is an obvious inconsistency. A motion to reconsider, which was made in time, will be brought up as soon as this is adopted, if it be adopted, and that will relieve the difficulty in the counties of New York and Kings, and which difficulty exists nowhere else. Now, we have adopted a provision to change the term of Governor and the time of his election; we have adopted a provision changing the time of the election of Senators. The whole framework of the State government as to the time of elections has been changed to conform to the proposition here made. This proposition, I wish to say, speaking as a resident of one of the great seaboard cities, means the enfranchisement of those cities in a large degree from the entanglements which come when the attempt is made to administer a government that expends fifty millions of dollars a year in connection with the election of officers on the issue of tariff, of peace or war, with foreign nations. This is absolutely necessary. I beg for one of those seaboard cities, that it may not fail. In reference to the provision striking out cities of the third class, all of them but three already hold their elections at another time, and one of them

at least, Long Island City, elects its mayor in the odd-numbered years. I doubt not, if this provision is adopted, that those cities now holding their elections in the spring will adjust their elections gradually, but certainly, by the statute and the great reform which this Convention has gone so far in bringing to the people of the State, will be made complete a new phase in the history of the government of cities. I hope the amendment will be adopted.

Mr. Holls — I sincerely hope this article, as now proposed, will be adopted by the Convention; and, with reference to the suggestion coming, I am sorry to say, from one of my colleagues, to strike out cities of the second class from this provision, I should consider that a most vicious blow to the entire scheme. I come from a city of the third class, and I know that in that city public sentiment is practically unanimous in asking for separate elections. I was overruled in striking out cities of the third class, because I was informed that nearly all other cities of the third class had, through their representatives, asked to be exempt, and I bowed to the decision of my colleagues on that point; but on behalf of a city which soon expects to enter into the second class, I protest against striking out cities of the second class. I hope that all the amendments to this article will be emphatically voted down. We have discussed the merits of this question entirely too much, and it is now time that we should adopt it.

Mr. Spencer — Mr. President, I desire the amendment, which I proposed, read, which was to recommit with instructions to add at the end thereof what I sent up to the Secretary.

The President — If you wish to speak upon it, the Secretary may read it.

The Secretary read Mr. Spencer's amendment as follows:

Mr. Spencer moved to recommit with instructions to add at the end of the section, the following: "Whenever the electors of any city shall elect to exercise exclusive legislation and administrative powers concerning the streets, highways, parks, public places and sewers within said city, and the compensation of city officials and servants whose duties appertain to any of such subjects, the Legislature shall confer such powers upon the mayors and common council of said cities and provide for their organization and election in such manner as shall, in the opinion of the Legislature, best conserve the rights of and represent all the people of such city. The Legislature may confer upon such mayor and common council such further powers of local legislation and

administration as the Legislature may, from time to time, deem expedient."

Mr. Spencer — When this Convention met on the eighth day of May, one of the most important questions that was to be addressed to this Convention was in relation to home rule of cities, and we were charged with the duty, as a committee, of investigating the matter and reporting the subject to this Convention. After several months of work and study a proposition was reported to this Convention which has been so emasculated that nothing remains but a mere rag, the effect of which will be to disturb the whole State without accomplishing any good result. Now, sir, if the doctrine of home rule for cities is to be sacrificed, let us know who is to blame for it. Those who are opposed to home rule in cities, should come forward and boldly state that they are opposed to it. I believe that this important reform, which has been demanded from every quarter of the State, is being sacrificed in this Convention by cowardice upon one side and selfishness upon the other. If there is anything that is demanded by the people of this State who live in the cities it is that they shall be relieved from the shackles that have been put upon them by successive Legislatures. And now, sir, I make this amendment. I do not expect that it will be adopted by this body, but I suggest it as indicating the true theory which this Convention should adopt. There is but one sentence that I propose, and that is, that the people of the cities, whenever they desire to exercise exclusive legislative and administrative powers concerning their domestic affairs shall take a vote upon that question, and that then the Legislature shall be compelled to confer those powers upon them or upon their mayor and common council; and in that connection I provide that they may reorganize and provide for the election of the mayor and common council as they shall see fit. I introduce this amendment as much for my own personal gratification as anything else. As a member of the Cities Committee, I protest against being in any way regarded as allied to the emasculated proposition which now remains before this Convention.

Mr. Jenks — Mr. President, it is an amusing spectacle to see gentlemen at this late hour presenting manuscript amendments to the Constitution which none of us have read. So far as the attitude of the minority on the question of home rule is concerned, that has been cogently expressed in the report of the minority of the Committee on Cities. I am not here to debate the measure of home rule, but I suggest to the gentleman that he should defer this amendment until we shall have had a reasonable opportunity to read it and to consider its full bearing, so that if it does in any

way provide home rule for cities, I, for one, shall vote in its favor. I ask the gentleman in all courtesy to let this matter rest until this afternoon, and then, after I have had an opportunity to examine it, if it does provide what he says it does, I pledge myself to vote for it.

Mr. Spencer — I am willing to concede to any reasonable request in regard to the matter.

Mr. Root — May I inquire how the gentleman wishes to have the matter laid over? We are about to read this bill for the third time.

Mr. Jenks — What I suggest is, that we should not be asked to vote on a manuscript amendment to the article for cities. I should suppose that by unanimous consent it may rest until the afternoon or evening session.

Mr. Root — The reading of this amendment cannot be postponed by unanimous consent, because I shall object.

Mr. Jenks — I am not surprised at the objection, but I appeal from the leader of the majority to the members of the majority, and I ask them if it is a fair treatment to the Democratic minority upon this floor that we should be asked to discuss a manuscript amendment handed up to the Secretary's desk in the heat of these closing hours, without at least the courtesy being afforded us of having it put upon our desks, in order that we may see what it proposes to do.

Mr. Root — Let me say that so far as I am concerned, I propose to vote against the gentleman's (Mr. Spencer's) amendment. I think when a measure has come to third reading, extended manuscript amendments should not be so offered as to postpone action upon it. There is now in general orders, set down immediately after the report of the Committee on Charities, the second in general orders, so that it will be reached in a comparatively few hours, if we do not waste our time, a proposition to amend the Constitution in regard to cities. The amendment proposed by the gentleman from Fulton (Mr. Spencer) would be much more appropriate to that than to this. I suggest that if he is willing to withdraw his amendment and offer it then, he shall do so. If he is not willing, I suggest that any gentleman will have an opportunity to offer it again in Committee of the Whole, which is the appropriate place, when that measure comes up for consideration. In the meantime, let us go on and adopt, if we remain of the same mind that we did when we ordered this measure to third reading, this measure which we have already committed ourselves to — this proposition in relation to the regulation of elections, to which the Convention has

already committed itself by finally passing an amendment to the Constitution, changing the term of the Governor and State officers and changing the term of Senators. Let us adopt it and complete, so far as we can now this morning, the adoption of the scheme for the separation of elections in cities, which so many thousands of our citizens are anxious to have us adopt.

Mr. Jenks — I wish to say one word in reply. The gentleman from Otsego offered this amendment and flung his castor into the ring, saying that this was a measure of home rule, and that he wished to put the Convention on record. As this was a sudden move, and, as I am not able to decipher even his copper-plate handwriting, I thought the suggestion I made was an entirely fair one. I am delighted — although the leader of the majority and I differ on matters of home rule for cities — that he falls in line with my suggestion, and I sincerely hope that the gentleman from Fulton will follow the lead of his own leader, and withdraw his amendment and offer it later in Committee of the Whole, as he has been advised, and then "love will reign supreme" for the rest of this session.

Mr. Tekulsky — Mr. President, I would like to offer the following amendment. I move to recommit this article to the Cities Committee, with instructions to report forthwith, adding a new section, which shall read as follows:

"Nor shall the Legislature pass any bill in relation to the regulation of places of public amusement, or any business, or occupation, or any structure, building, or any property used therefor, or the persons or corporations engaged therein, in any city, but it shall delegate, by general law, to the legislative body of all cities, the right so to do."

I offer this amendment in good faith. I cannot understand how we can have home rule for cities without having this section adopted. The legislative bodies of the cities to-day have to regulate a great many different kinds of business, and the Legislature should give them this power, and then let every city have an opportunity to apply the principles of home rule, or "local option," as they call it in the country. We who live in the city would like to regulate our own affairs, and I cannot see that there is any home rule in this proposed measure unless that new section is added to it.

Mr. Roche — I desire to offer an amendment. I am opposed to this article as it stands now. If it be an attempt to secure better government in the cities of the State, there is no reason why any

distinction should be made between the cities. I do not see why it should not be applicable to cities of less than fifty thousand inhabitants, as well as to cities having more than that number of people. There are but seven cities in the State that would come under the operation of this article. I understood Mr. Lincoln to say the other day that their elections, according to existing laws, would come at the same time as the elections of State officers but once in six years. Now, it is a question in my mind whether we should change the whole scheme of the election of our State officers and the terms of their offices in order that separate elections may be had in seven cities of the State once in six years; that is, once in six years there would be separate elections had from those of State officers, according to existing constitutional provisions. I voted against the previous proposition, fixing the term of office of Governor and Lieutenant-Governor at two years, and if I had any hope whatever that any proposition emanating from the minority of this Convention would be acceptable to the majority, I should move to reconsider the vote by which that change was made. I doubt very much if it is wise that this whole scheme should be swung differently from what it is now swinging, in order that we may have separate elections in but a small number of the cities of this State; but if we are to have such elections, then it seems to me they should be made applicable to all the cities of the State, and that all cities should be treated alike, and that we should not in this respect, as we have in others, keep up distinctions between the cities and the villages, and in this case make it still more marked by applying it only to cities of upwards of fifty thousand inhabitants. According to the apportionment article which was adopted yesterday we will not have another State enumeration for eleven years, and in the meantime cities whose population is, perhaps, not quite fifty thousand will have attained a population of more than that number. I submit, therefore, that they should come under the operation of this law sooner than eleven years, and as the next federal census will be taken six years from now, I think that is a more reasonable time.

Mr. Barhite — Mr. President, I desire to offer an amendment, that general order No. 13 be recommitted to the Committee on Cities, with instructions to strike out all after line 4, page 2.

Mr. Becker — I desire to ask Mr. Roche if it is not the fact that the federal enumeration will not be had until 1900?

Mr. Roche — Yes, sir; six years from now, while under the apportionment article, our State enumeration will not be had until eleven years from now.

Mr. Becker — Mr. President, I hope none of these amendments will prevail at the present time. They can all be offered when the balance of the cities article comes up for consideration. I feel very much as Mr. Spencer does about this matter. This principle of separate elections is not strictly what is known as home rule. It is simply a provision against fraud and the use of corruption funds raised at the time of great national and State issues for the purpose of electing local candidates. It simply permits cities to elect their own candidates separate and apart from party lines. In times of State or national elections, people are apt to vote a party ticket without reference to who is on it. I hope all these amendments will be withdrawn until we can pass this amendment as a whole, and then we may take up Mr. Spencer's suggestion.

Mr. Dickey — The smallest cities of the State do not want this change. It would necessitate so many changes in their internal affairs that they want to be excepted from the operation of this amendment. They are quite willing that the larger cities, which think they need such a separation of elections, should have it, but they do not want it thrust upon them. I think this is the unanimous opinion, with one exception, of the delegates on this floor who represent the smaller cities of the State, under fifty thousand inhabitants. I hope all these amendments looking to the striking out of this exception of cities under fifty thousand inhabitants will be voted down.

Mr. Holcomb — If there be anything involved in this suggestion, it is a matter of principle that the State election should be separated from the city elections. If that be a principle that should be put into effect anywhere in the State, it should be applied all over the State. I am in favor of the amendment offered by Mr. Barhite. I do not understand why distinction should be made between the people who live in the large cities and those who live in the smaller cities. Human nature is quite the same in Newburgh as in New York, and if there is to be a separation of elections, then I submit that it should be made to apply without distinction to all the cities of the State. If virtue is to be preserved by cutting away the federal elections from the State elections, then the virtue is necessary to be preserved in the smaller cities as well as in the larger ones. I am in favor of Mr. Barhite's amendment, and hope it will prevail.

The President — There being no further debate, the question will now be put upon the various amendments offered in the order in which they were presented.

The Secretary read Mr. Lewis's amendment, to strike out all after the word "year," at the end of the first paragraph, and the President put the question on the amendment, and it was determined in the negative.

The Secretary read the amendment of Mr. Spencer, to add at the end of the section the following:

"Whenever the electors of any city shall elect to exercise exclusive legislation and administrative powers concerning streets, highways, parks, public places and sewers within said city, and the compensation of city officials and servants whose duties appertain to any of said subjects, the Legislature shall confer such powers upon the mayor and common council of said city, and provide for their organization and election in such manner as shall, in the judgment of the Legislature, best conserve the rights of and represent all the people of such city. The Legislature may confer upon such mayor and common council such further powers of local legislation and administration as the Legislature may from time to time deem expedient."

A count was called for, and the President appointed Mr. Davis and Mr. Hotchkiss as tellers.

The President put the question on Mr. Spencer's amendment, and it was determined in the negative by a vote of 11 ayes to 50 nays.

The Secretary read the amendment offered by Mr. Roche, that the article be recommitted to the committee, with instructions to amend by striking out the last paragraph, and the President put the question on the amendment, and it was determined in the negative.

The Secretary read the amendment offered by Mr. Tekulsky, to recommit, with instructions to amend, and report forthwith, by adding as an additional section, section 2: "Nor shall the Legislature pass any bill in relation to the regulation of places of public amusement, or any business or occupation, or structure or building, or any property used therefor, or the persons or corporations engaged therein in any city, but it shall delegate, by general laws, to the legislative bodies of all cities, the right so to do."

The President put the question on Mr. Tekulsky's amendment, and it was determined in the negative.

The Secretary read Mr. Roche's amendment, to add after the word "State," on line 6, page 2, the words "or federal."

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

The Secretary read the amendment of Mr. Barhite, to recommit, with instructions to amend by striking out all of lines 5, 6, 7, and 8, on page 2.

The President — That is exactly the same as the amendment already voted on, and it need not be put. These motions having now all been disposed of, the amendment will be read the third time.

The Secretary then read the amendment through.

The President — The proposed amendment having been read the third time, a vote will now be taken upon its final passage.

The Secretary proceeded to call the roll.

Mr. Ackerly — I vote aye on the understanding that the inconsistency existing between it and section 10, article 1 of the Constitution, being the first article passed this Convention, shall be corrected.

Mr. Foote — I believe in the principle enunciated in this amendment, but I do not believe it should be applied to only a few cities of the State, and, therefore, I vote no.

Mr. Holcomb — I am not willing that any distinction should be made as proposed by this amendment, and, therefore, I vote no.

Mr. Jenks — I regret that this principle is not made to apply to all cities of the State. It is another example of petty partisan legislation supposed to be against Democratic municipalities. I shall vote for it, however, and I vote aye.

Mr. Nicoll — I am in favor, and always have been, of this proposition which provides for separate elections in cities, and particularly in the great cities of the State, because it is a step in the right direction, and points toward better government; but while I shall vote for this proposition, I ought also at the same time to say upon the record that standing by itself it will amount to little or nothing, unless it is supplemented by some measure of home rule which shall prevent the Legislature from exercising constant supervision over and interference with the special affairs of cities. However, such as it is, I vote aye.

Mr. O'Brien — As one of those who were instrumental in having this final exception put into this amendment, it seems to me that a word of explanation is necessary. Cities of the third class do not wish to be included in this provision for the reason that the majority of them already have separate elections. They already have spring elections, and they do not care to have elections in the fall, and thus

disarrange all their internal affairs. They demand separate elections just as much as the large cities, but as they are already provided for in that section, they do not wish to be incorporated into this amendment. I vote aye.

Mr. Platzek — I regret that the amendment is not in such form as to apply to all cities in the State. However, I will take what I can get, and will vote aye.

Mr. Spencer — I shall vote in favor of this proposition with a great deal of hesitation. I do not believe it will be beneficial to any of the cities of the State. The demand for this change came largely from the city of New York, but I do not know what good this is going to do them. Still, I object to dislocating the arrangements of the rest of the State in the matter of elections. However, I do not care to exercise my personal views in the matter, and I will vote aye.

Mr. Veeder — By the terms of this apportionment act you have provided that Members of Assembly shall be elected for only one year; so that it is impossible to separate local elections in these cities from the elections of State officers. You allow the election for Members of Assembly at the same time you may elect officers of the city government. I vote no.

Mr. H. A. Clark — I was in favor of the separation of city elections from State and county elections, and I favored this section when it was before the Committee on Cities. We had an understanding at that time that county officers and State officers would be changed so as not to conflict with the section. That has not been done. As the Constitution stands, county officers in New York and Kings, as well as Members of Assembly, must be elected on the same ticket in the odd-numbered years with the city officers, if this section is adopted, and the effect will be that there will be no divorcement of city from county and State elections. I vote no.

The amendment was adopted by the following vote:

Ayes — Messrs. Abbott, Acker, Ackerly, Allaben, Arnold, Baker, Banks, Barnum, Barrow, Becker, Brown, E. A., Brown, E. R., Burr, Cady, Carter, Church, Clark, G. W., Cochran, Coleman, Cookinham, Cornwell, Crosby, Davenport, Davies, Davis, Dean, Deterling, Dickey, Doty, Durfee, Emmet, Faber, Floyd, Francis, Frank, Andrew, Frank, Augustus, Fuller, C. A., Fuller, O. A., Galinger, Gibney, Giegerich, Goeller, Goodelle, Green, J. I., Hamlin, Hawley, Hecker, Hedges, Hill, Hirschberg, Holls, Hotchkiss, Jenks, Johnson, I. Sam, Johnson, J., Johnston, Kimmey, Kinkel, Kurth, Lauterbach, Lester, Lewis, C. H., Lyon, Manley, Mantanye,

Marshall, Maybee, McDonough, McIntyre, McKinstry, McLaughlin, C. B., Moore, Morton, Nichols, Nicoll, Nostrand, O'Brien, Ohmeis, Osborn, Parkhurst, Pashley, Phipps, Platzek, Powell, Pratt, Putnam, Root, Rowley, Sandford, Spencer, Springweiler, Steele, A. B., Steele, W. H., Storm, Sullivan, T. A., Sullivan, W., Tibbetts, Tucker, Turner, Vedder, Vogt, Wellington, Whitmyer, Wiggins, Woodward, President — 107.

Noes — Messrs. Barhite, Bigelow, Blake, Bush, Cassidy, Chipp, Jr., Clark, H. A., Danforth, Deady, Deyo, Durnin, Farrell, Foote, Forbes, Gilleran, Green, A. H., Griswold, Herzberg, Holcomb, Hottenroth, Lewis, M. E., Marks, McCurdy, Mereness, Meyenborg, Mulqueen, Parmenter, Peabody, Peck, Redman, Roche, Rogers, Schumaker, Smith, Speer, Tekulsky, Titus, Towns, Veeder, Williams — 40.

The President — The amendment is adopted by a vote of 107 in favor, to 40 against. This completes the present matters upon the order of third reading.

Mr. Cady — Mr. President, I offer the following:

"Resolved, That the Committee on Canals be discharged from the further consideration of the several matters referred to it by the resolution of September twelfth, and that the several amendments on the subject of canals reported by the Committee of the Whole on September eleventh be, and the same hereby are, ordered to a third reading."

I offer this for the purpose of placing those amendments which were favorably reported by the Committee of the Whole within the control of the Convention, so that they may hereafter be dealt with if necessary. As the matter now stands, they are committed to the Canal Committee, which, of course, has no power to advance them. I ask that this action be taken now so that they may be placed upon the order of third reading.

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

The President — The Convention will now go into Committee of the Whole on the charities article, and Mr. Vedder will take the chair. Before that is done, Mr. Pool asks leave of absence for the balance of the day and to-morrow, on account of illness. (Granted.)

The Convention resolved itself into Committee of the Whole on general order No. 67 (introductory No. 392), proposed constitutional amendment to amend article 5 of the Constitution, Mr. Vedder in the chair.

The Chairman — The Convention is in Committee of the Whole on general order No. 67 (O., I. No. 392, P. Nos. 446-460), in relation to amending article 5 of the Constitution. I would suggest that the proposition be read through first, and then amendments generally would be in order to each section. That would be the more orderly way of procedure, I think, and if there is no objection, that course will be taken.

The Secretary read the proposed amendment through.

The Chairman — The Committee of the Whole has four hours on this subject, and all amendments must be in before the expiration of the limit.

Mr. Lauterbach — Mr. Chairman, there has been so much discussion upon some of the matters involved in this amendment, when the consideration of the educational amendment was being had, as to render a very elaborate consideration of the subject at this time unnecessary. If it be a formal thing so to do, I move to strike out section 1, with the privilege of withdrawing the motion, in order that I may very briefly explain the proposed amendment.

The Chairman — I desire to state to the committee that there are a number of amendments, apparently proposed by the committee itself. Those amendments will be found in printed No. 463.

Mr. Lauterbach — Yes, sir; the amendment itself being No. 460.

At the very outset of the Convention there was introduced by Mr. Holls amendment No. 2, which provided that:

" No law shall be passed respecting an establishment of religion, or prohibiting the free exercise thereof, nor shall the State, or any county, city, town, village, or other civil division, use its property or credit, or any money raised by taxation, or otherwise, or authorize either to be used, for the purpose of founding, maintaining or aiding, by appropriation, payment for services, expenses, or in any other manner, any church, religious denomination, or religious society, or any institution, society or undertaking which is wholly or in part under sectarian or ecclesiastical control."

That amendment was referred, affecting educational matters as it did, to the Committee on Education; to the Committee on Charities, because it contemplated depriving sectarian charities of public support; to the Committee on Legislative Powers, because it savored somewhat of a check on legislative powers, and because it was intended to provide a restraint upon the expenditures of funds to be raised by taxation; also, to the Committee on Taxation. So far as the Committee on Taxation, and on Legislative Powers, were concerned, the submission was, after all, only of a formal

character; whereas, the submission to the Committee on Education, and that on Charities and Charitable Institutions, involved most careful attention and consideration. Study of the amendment showed that it affected two classes of institutions, in respect of one of which there immediately arose serious doubts as to the propriety of the amendment, but in regard to the other there seemed to be a general concession that some amendment of the character proposed should be adopted by the Convention. The phase of the proposed amendment, which referred to moneys to be expended for education, met with general approval, while those features of the amendment which caused it to be referred to the Committee on Charities caused serious doubts as to its propriety; there seemed to be a general consensus of opinion throughout the State, subsequently intensified by being shared in by the advocates representing the sects and denominations to be affected thereby, and that might have been supposed not to be in harmony with the proposed amendment, that, so far as the extension of State money, or city, county or town money, toward parochial schools was concerned, or toward schools absolutely under denominational control, if such an abuse existed, it should be checked, and, if the abuse did not exist, and there was any danger of its ever arising, that steps should be taken that would render its existence impossible. Consideration of that branch of the subject by the Committee on Education led to its offering an amendment, recently discussed in the Convention, which is intended to prevent the possibility of any such abuse as that referred to, and which has been attacked so vigorously by associations and organizations that for the past three or four years have flooded the State with literature bearing upon that branch of the question. The assertion had been made so stoutly that in some way the State of New York was engaged in upholding parochial schools and paying for tuition in denominational institutions that we regarded it as truth, as absolutely proven. The investigation of the subject by the Committee on Education and of Charities in that particular respect showed, I think, to the satisfaction of both committees that no such abuse existed; that there were only one or two isolated cases in which any money was being applied in the direction complained of, and that since about 1850 — at which time a general scheme for the administration of common school funds had existed upon the statute books — no proposition of the character suggested had ever been carried into practical operation, except the payments for children in orphan asylums. So that, in point of fact, so far as any actual abuse, by the diversion of any part of the school funds to parish or parochial

schools under religious denomination, was concerned, there had been appropriated through the instrumentality of the Regents of the University, and otherwise, only about $5,200 annually throughout the State, an amount which was about evenly divided between Protestant and Catholic institutions. But as some mistaken zealot had introduced a bill into the last Legislature looking to the appropriation of common school funds to parochial schools, as there had been intimations made that such things might in the future be attempted, it was thought wise by the Committee on Education so that no such abuse might ever prevail, that this Constitutional Convention should submit a measure to the people which would render such a thing impossible. There are to-day in the State of New York nearly eighty thousand children of the Catholic faith, who are being brought up in parochial schools, receiving an education in which there is a blending of religious instruction; but the fact is, that those schools receive, except to the slight extent to which I have referred, and have asked for, none of the funds, either of the State, or of any of its civil divisions. The Catholic church is to-day teaching in this State, at its own expense, and without making any requisitions upon the public treasury whatever, from seventy to eighty thousand children in parochial schools; but it may be that some Legislature, at some time, might desire to encourage those institutions by contributing public assistance thereto, and, therefore, it was deemed proper, and was conceded on all hands to be proper, that legislation that should check the possibility of the perpetration of such a wrong should be adopted by this Convention. It was supposed by the Committee on Charities that the form that the amendment would take, in the Educational Committee, would be that no part of the public school funds should ever be applied to any but public school uses, but as it came from the Educational Committee, and became the subject of discussion here, it was in language which I shall read to you, which, in the opinion of the Charities Committee, creates the necessity for the amendment proposed by it, in order that a wrong may be guarded against, which might be perpetrated, and which it is not the intention of any member of the Committee on Education, or of any of those who advocated the adoption of the report of the Educational Committee — either the President of the Convention, who was earnest and zealous in his advocacy of its adoption, or any other member — to inflict. Section 4 of that amendment, now in the order of third reading, without limiting its provisions to the common school fund, or to school funds generally, provides that:

"Neither the State nor any subdivision thereof shall use its property or credit, or any public money, or otherwise, 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."

It would appear upon the face of that amendment that there was no danger that any institution, except a school or institution of learning, as these terms are understood in ordinary parlance, was intended to be affected; but the difficulty is that since 1849, when the laws were first enacted that enabled secular education to be afforded to children in orphan asylums and correctional institutions, especially the former, the term "orphan asylum" has been used persistently and regularly to such an extent even as to have received well-understood legislative interpretation. Viewing the amendment in this light, serious question, to say the least, might be raised, and a result which nobody intends should be produced, might arise, namely, that no funds whatever should be paid to orphan asylums or correctional institutions under sectarian control.

You will remember that during the consideration of the educational amendment, the whole discussion teemed with the concession that while the criticism referred to might be just, it was deemed important that the amendment should pass as it was, without amendment, so that no possible error could be made in construing it to mean that no denominational school of learning should receive any State or public moneys, the promise being given to this assemblage that when the object intended by that amendment should have been secured by its adoption, the charities amendment should be so framed as to secure the certainty of public aid for the secular, but not for the religious, instruction of the inmates of charitable and correctional institutions. After the passage of the educational amendment to its third reading the Charities Committee prepared an amendment, which is now before you, which, while not permitting the payment by the State, or any of its divisions, for any religious instruction, will secure the making of provision, not by the State itself, but by its counties, towns and municipalities, for secular education to the inmates of those institutions. If the proposition submitted is guarded as I believe it to be, as to secure only this result, and as it has been conceded to be by all those who have been most zealous to secure the certainty that parochial schools shall never receive public encouragement, I trust

that at least that portion of the proposed amendment will be adopted; for whatever may be done by you, in respect of the commission and boards intended to be created by our proposed amendments, if the education article is to be passed, it is absolutely vital for the well being of the infant wards of the State, gathered in the institutions to which I have referred, that at least that portion of the amendment submitted by the Committee on Charities shall be adopted.

When amendment No. 2, the one I first referred to, was originally proposed, it contemplated not only the absolute prohibition of State or public aid to institutions of learning, but, if carried out in its full force, it would have prevented the use of any public moneys by any charitable, eleemosynary, correctional or reformatory institutions of any kind, if it could be claimed that it was under the management of any religious sect or denomination. It, therefore, became the duty of the Charities Committee to investigate the actual condition of the institutions that were intended to be so vitally affected. That investigation was made as thoroughly, as honestly, as fairly, and with as little prejudice, either for or against the institutions involved, as could possibly have existed in the minds of any seventeen men. The Charities Committee began the investigation, impressed by statements which had been sedulously promulgated throughout the State, with the belief that great abuses existed, that there was a great squandering of public moneys or that at least public moneys were being used and appropriated to other than the charitable purposes for which they were intended; yet they, together with such members of the Committee on Education as volunteered to assist them in the investigation, came to the conclusion with entire unanimity that not only did no such abuses exist, but that, if the State deprived itself of the power of invoking the aid of these institutions as agents to assist in caring for its wards, agencies from which so many beneficent returns had been secured in the past, it would be acting most unwisely. It was felt that he who would lay a hostile hand, through the Constitution, upon the existing condition of the law so far as it affected charitable institutions, would be a foe to the State and inimical to its true interests.

Recess was taken until three o'clock P. M.

AFTERNOON SESSION.

Friday Afternoon, September 14, 1894.

The Constitutional Convention reassembled in Committee of the Whole, Friday afternoon, September 14, 1894, at three o'clock, pursuant to recess, Mr. Vedder in the chair.

The Chairman— The Convention is in Committee of the Whole, resuming the consideration of general order No. 67, and Mr. Lauterbach has the floor.

Mr. Lauterbach — Mr. Chairman, the result of the actual investigation of the various institutions, which would have been affected by the amendment originally proposed, was that the committee was unanimous in their opinion that no change in respect of the present system should be made, and, as I understand that there is no amendment favorably reported which would effect any change, except as to schools or institutions of learning, it will be unnecessary to enter upon any detailed description of the hospitals, the foundling asylums, the homes for the aged and infirm, the homes for crippled and afflicted children, and the various classes of charitable institutions visited; but, as I understand that in no respect is the attitude which the State has maintained for so many years, to be in any manner militated against, I will content myself with a brief extract, reading from the committee's report:

"As a result of these investigations, the committee is of the opinion that the public has received adequate return for all moneys paid to private charitable institutions; that the expenditures made have been, in most instances, far less than if the institutions had been conducted by the public; that the religious training which is insured for the young by the methods now pursued is of incalculable benefit; that the care of those in private institutions is better, in most instances, than that received in those under control of public local officers, and is, at least, as good and fully on a par with the institutions, fewer in number, directly under the control of the State itself; that the public moneys expended under the prevailing method are supplemented by the expenditure of enormous sums from private sources; that to a large extent the buildings and accessories of these organizations have been supplied at private cost, and that the method, upon the whole, is certainly the most economical that can be devised, and will be still more economical when some comparatively trifling abuses, such as the too long retention of inmates, or laxity in their admission, shall have been remedied.

"If the amendments proposed by the earnest people who submitted them were carried out to their legitimate conclusion, and if the partial support from public sources to orphan asylums, foundling asylums and kindred institutions, which are necessarily under denominational control, were withdrawn, it is to be feared the State itself, or its civil divisions, would be called upon, at infinitely greater cost, to endeavor to perform a service which it could never adequately render, and which would tend to deprive the orphan, the foundling, the sick and other unfortunate dependents upon charity of the advantages afforded through the aid of thousands of volunteers, many of whom now devote their lives, without compensation, to co-operation with the State in this, its noblest work, inspired thereto by praiseworthy religious impulses, and which bring to these institutions, not the perfunctory service which would be rendered by paid public officials, many of them qualified only by political service, but a sincere devotion of officers, directors, managers and subordinates, engaged in their work as a labor of love, and not for emolument."

It might, perhaps, be well to cite two or three examples for the edification of those who are not entirely familiar with the practical results that have been accomplished. Take, for instance, a public foundling asylum, such as that which we found on Randall's Island, tolerably well supervised, but managed by the comparatively perfunctory service of paid public officials. The death rate there was large. The condition of the unfortunate babies within that institution was comparatively wretched. A visit to the private institution for foundlings, either Protestant or Catholic, revealed a vast difference. The institution at the corner of Fiftieth street and Lexington avenue, under the care of a noble band of Protestant women, who were the first to establish an asylum of that kind in the State of New York, and who have devoted their energies to it for the last thirty years unintermittently, revealed an infinitely better condition of the inmates. The Catholic Foundling Asylum, at Sixty-sixth street and Third avenue, founded upon the model of the one established by these Protestant women that I have referred to, revealed the same superior condition to that prevailing in the public institution; here they were providing for twelve hundred children. The care of these infants in both of these private institutions was given at a minimum expense, far below that entailed in the public institutions. The comparison between public and private hospitals showed the same relative condition. It may be well to digress a moment from that which is strictly pertinent to the discussion, as it is now narrowed down, to speak of these hospitals

which present the greatest object lesson against the enactment of any such amendment as that originally proposed; its enactment would have prevented the local authorities from entering into contractual relations with any of these private institutions at any time, even in the event of an epidemic or widespread contagion. Take the Presbyterian Hospital, for example, entirely supported by Presbyterian money, probably the best-constructed and best-managed hospital in the world, with a minimum record as to death rate, and a maximum record in every respect to which the authorities of hospitals all over the world are anxious to attain. That hospital is at present receiving no public aid. In times past many of these sectarian hospitals did receive public aid. But they ask for no public aid since the situation no longer demands it. You find nothing of a sectarian character in any of them, either in the Presbyterian hospital, or in any of the other Protestant hospitals, or in the Catholic or Hebrew hospitals. Their benefits are conferred upon their patients, irrespective of color, race or religion. It is a magnificent spectacle, sir, to enter one of these hospitals and see in adjoining beds a negro, an Israelite, a Protestant, a Catholic, an Irishman, a Frenchman, an Italian, all cared for out of sectarian funds, receiving no aid whatever from the public. Now, the purpose of this amendment originally was that, if the time came when the public authorities in the city of New York might find it desirable to enter into contractual relations with any of those institutions, they would, on examining this enactment proposed by bigotry, ignorance and intolerance, be compelled to say to the managers, "We need your aid, but we are debarred from coming to you and asking you to give us the assistance you can render us; altogether we are willing to do what we can toward recompensing you for the tremendous expense which you are under." That was an uncalled for, unnecessary amendment; under its provisions, the city of New York could have been compelled to send its patients to the public hospitals, which the committee were unanimous in believing did not come up to the high standard of these private institutions to which I have referred.

But, as I say, that branch of the subject is eliminated from the discussion. Happily, the effort that was made to break down the system that has prevailed has signally failed, and nothing has come of it, except that we who have looked into the matter are able to stand in this Convention and say to the delegates: "You may go home when your work has been accomplished here and say to those whose minds have been poisoned against these institutions because they are sectarian, and who have been misled into the belief that

the money of the community has been misappropriated, and say truthfully, that all that has been done in this regard has been wisely and economically done, infinitely better done by having been permitted to invoke the assistance of the noble men and women that have been ready to respond to the demands of the great community. You can testify to the great good that has been so well accomplished, and which has made the Empire State and the empire city to stand peerless among all the governments and cities of the earth in its works of charity, accomplished, too, at minimum cost, probably less than one-half what it would have cost had these institutions been controlled and administered by active, partisan politicians, instead of by the unselfish self-sacrificing men and women, who have devoted their very lives, without compensation or any motive, but that of the highest humanity, to the succor of the poor, infirm and the wretched who are ever with us. I appreciate that, because there has been misrepresentation, not always wilful, but misrepresentation often arising from ignorance, which has caused your constituents to believe that wrong has existed, and that misuse of the public funds has prevailed, when the fact is that no such condition has ever existed, some explanation of the truth must be given, and the report of the committee will afford ample testimony of the fact. Where one dollar is given from the public purse, at least another dollar follows in its train and supplements it, donated from private sources, often sectarian. You will have done wisely, gentlemen, in assisting to create a sentiment which enables this Charity Committee to come here and say: "We have no amendment that is now asked for by any member of the Convention, except in regard to educational institutions — that shall effect any change whatever in the present situation toward charitable organizations." This magnificent work of charity has not been entirely without guidance or supervision. There has existed for the last thirty years a State Board of Charities, composed of the most honored men and women in the community, and also a board known as the State Charities Aid Association, composed of men and women who have sacrificed their time and their ability, without hope or expectation of pecuniary or other reward, men and women whom you hardly know, so unostentatiously have their great services been rendered, who have supervised this work. From these no voice came in support of amendment No. 2. On the contrary, both bodies, thoroughly familiar with the present condition of affairs, favored the retention of the present system.

And so we are left to consider this question simply in respect to the waifs, the dependent children of the State. Now, what is the

situation as to these children? Until 1875 the dependent children of the State were sent to the public alms-houses. It needs no words of mine to depict the consequences of putting young children among the miserable specimens of humanity who were gathered within the walls of the poor-houses of the State. Better that the children had not lived a day beyond the period of the date of their admission to those institutions, because the surroundings were such that they became either of the pauper class, or, what was more to be deprecated, members of the criminal class. With the assistance of the State Board of Charities, and the State Charities Aid Association, a demand arose all over the State that that condition should exist no longer. And what was the change? Was a crude provision made for the establishment of public infant asylums throughout the State, so that these children might be put under the supervision of politically appointed officials? No; the same or worse iniquities that manifested themselves in the poor-houses would soon have developed. It was declared by the Legislature to be unlawful to place a child within the walls of a poor-house or alms-house, but permission was accorded to contract with families for the support and maintenance of such children, or with those institutions of mercy and benevolence provided by private charity. But what did they do further? The enunciation of a principle most salutary in its results which has remained unchanged since 1875, although the Legislature might at any moment have changed it. No alteration was ever suggested by the State Charities Aid Association. None was ever suggested by the State Board of Charities. No change was ever suggested by the Legislature, and the matter went on unaltered to the satisfaction of every one concerned that is familiar with this most important and interesting subject, from 1875 to the present time. And what provision did those laws, enacted over and over again, known to everybody, contain? The provision was in effect: better any religious instruction than no religious instruction; better any scheme of religion than an entire absence of religion. And the Legislature enacted that these dependent children should be put under the care of families holding the same religious faith as those of the parents of the children, or in institutions managed by those holding the religion of the parents. Personally, I am of the opinion that it is in the deeds that men perform which are important, and that creed is immaterial, and may at some period of life be shaken off. I care nothing for the varieties of creed, for their differentiations or discriminations, and I believe that men may pursue their course in life honestly and fairly and be free-thinkers or agnostics, or maintain any or no

creed; but I believe that if, for the tender child in its early days, there can be inculcated some faith or belief, it must redound to its advantage. Whenever the State shall enunciate the proposition that discrimination shall be made against an institution because religion is a part of its functions, then, indeed, will the Empire State, great as it has become, suffer irreparable disgrace. But, gentlemen, that will never happen. To-day, there are some twenty thousand children in the orphan asylums of the State, and there is no word of complaint from any source as to the maladministration of a single one of them, and there is no complaint that any effort at making proselytes or securing any change in the religion of inmates is being made. Many of these wards attend the public schools, but many of these institutions are situated in suburbs and not convenient to the public schools, but where they are situated near enough to them, the effort has been made to send them there, especially from orphan asylums and institutions of that character. There is a class of children, however, who cannot, unhappily, be sent to the public schools; they are the children confined in correctional institutions — children in many instances born of criminal parents, in whom the inherited taint of wickedness still prevails. For example, our fellow-delegate, Mr. A. H. Green, some forty years ago founded a juvenile asylum in the city of New York, to which these petty malefactors were committed, and it has been one of the many noble aims of his life to endeavor to reclaim these children and make them respectable members of the community. We saw eleven hundred of those children. Their wicked instincts are not entirely wiped out; they are under surveillance, and, of course, they could not be put in association with the children in the public schools. Any effort that might have been made to say that those correctional institutions should receive no public aid from any source, unless those children were marched in a body to some public school and there educated, would have been not only abortive, but ridiculous.

The wording of the amendment, as it passed the other night, the educational amendment, will clearly render it impossible for the State or the city to pay or contribute one dollar, either for the education of these children, or for their care or support, and no money whatever could go to that institution, because, forsooth, it is under Protestant denominational management. Do you wonder, gentlemen, that I am earnest in this matter? Do you wonder that I beg of you not to put into the Constitution a provision that can by any possibility bring about that result? We have seen the great Catholic Protectory, to which two thousand three hundred children

were committed. I have never in my life seen a more interesting sight than the education of those children, as there carried on. There was an element of religious instruction, I admit, but four hours of industrial occupation are steadily maintained, and at least four hours are devoted to the regular common school curriculum; and, for all that training and education and care that institution was receiving — not one dollar from the State; but the Legislature has permitted the city of New York to pay for all that, for each child, one hundred and ten dollars a year. In any public institution, it would have cost three hundred dollars a year to give the same care and instruction to each child. I could cite a hundred other instances of the unwisdom even of the educational article as proposed; but am, nevertheless, willing to accede to public clamor and agree that we shall not permit any county or the State to pay a dollar that can possibly be used for religious instruction. I think the policy is wrong, but I am content to submit to it. The money that is paid, in the city of Troy, for the education and care of those children, does not go for their religious instruction. Those children are educated in the institution, and a part of the common school fund goes to the regularly certificated teacher who takes charge of them, and that teacher is of their own creed; but between nine o'clock in the morning and three in the afternoon, every word of instruction is absolutely secular. The same rule prevails in the neighboring Protestant asylum. What care I or you whether, after those hours, there is education given to the inmates in one or another kind of religion? Your money does not go toward it, and never has. The tremendous fund, infinitely more than that which the county or the State itself supplies, that is raised from private sources by all of these institutions, is legitimately applied, not only to religious instruction and to secular instruction, but in furnishing edifices and other essentials.

I hope most earnestly that if this proposed educational amendment can jeopardize, as I think it does, the care, maintenance and secular education of these children, you will not depart from this Convention, however radically you intended to act in respect to this proposition when you first took your seats, without relieving them therefrom, as you can do by the adoption of the charities articles. Members of my committee who had the strongest prejudice against the prevailing system, after witnessing the work of the institutions that I have referred to, acknowledged that they had been in error in their judgment. The cause of charity, sectarian or unsectarian, can always rely upon them for co-operation, and the hand of none

of them will ever be raised against these, the noblest institutions in the land.

But the investigation led to other results. We found the constitutional provisions affecting this subject to be as follows: Article 8, section 10, provides that "neither the credit nor the moneys of the State shall be given, loaned to or in aid of any association, corporation or private undertaking, except as far as may be proper for the support of the blind, the deaf and dumb, and juvenile delinquents."

So that the State is prohibited from doing anything, either for a sectarian or non-sectarian institution, in extending its aid or credit to any institution, except either of the three classes that I have mentioned. Of those institutions certainly no one complains, whether they be sectarian or not. And yet, gentlemen, no enthusiast on the Education Committee will say but that, on the day that that amendment passed, had it gone into operation, the arrangements that were made for the care of the deaf and dumb in the various institutions would have absolutely ceased. The teachers came to this chamber and said: "You have deprived us of our sustenance and you have cut off these children from the possibility of education." Why? Because there are religious characteristics affecting, for instance, the Le Couteulx Institute, and you will deprive them of all assistance, not only from any educational fund, but from any State aid of any kind. Nobody meant that in those educational institutions any result of that kind should happen. Nobody meant that if the State took twenty blind people and put them into an institution for the blind in which any religion prevailed, no payment whatever could be made for them, and yet they are schools and institutions of learning, are they not? When I raised the point upon the floor during the discussion of the educational article, it was met with derision. Yet you will all confess that I was right, and that the educational article, unaltered, would prevent the State from doing, in respect to juvenile delinquents, to the deaf and dumb, and to the blind, the very things that it has been dong so well and so satisfactorily for many years. Section 11 of the article contemplates that as to all other dependents, the counties, cities, towns and villages shall do as they please with their own money for the care of the poor. Does anybody object that the city of New York should do as it likes in respect to its own poor? Is it the business of anybody, except the representatives of New York city? Yet you have been actively engaged, you who prate of home rule, in trying to prevent the city of New

York, and the city of Brooklyn, and other cities, from doing with their own money, in respect to the care of their poor, what they desire to do. What right have we, constitutionally or otherwise, to limit the right of these cities to maintain their own poor? Have we the right to endeavor, by shrewdly devised amendments, to compel the city authorities, instead of paying the miserable pittances for the support of their wards and waifs, which they have been in the habit of paying, out of their own funds, to go to the Court of Appeals, to have these dangerous amendments interpreted? I care not what your preconceived conceptions in respect to this matter were. You will, I know, help me to guard the children in these orphan asylums, and in these correctional institutions, no matter whether the institutions are Catholic, Protestant or Hebrew. You will see to it that the provisions of the Constitution, under which we have lived since 1847, are not so changed, as to make it impossible for the cities, towns or villages to carry out their own methods in caring for the unfortunate children who come within its jurisdiction? And how they come to the great city of New York from every section! How you, from the country, are willing to permit the fatherless, the dependent children to find their way to the great city of New York! We do not shirk the charge you impose on us. Do not hamper us in sustaining it.

But we discovered other matters that were astonishing to the committee. It appears that there are expended in this State from public sources upwards of twenty millions of dollars — a larger sum than is devoted by the State to any purpose except education — twenty millions of dollars are expended by the State and the civil divisions of the State, without any supervision, except the volunteer supervision of the noble men and women to whom I have referred, members of the State Board of Charities, and of the State Charities Aid Association, and so far as prisons and jails are concerned, of the noble board of prisons which has existed as a volunteer visiting board for more than fifty years. You have your correctional institutions, prisons, reformatories and jails. You have your charitable institutions, such as those to which I have referred. You have your insane institutions — and except that there is a lunacy commission which pursues its functions under legislative authority, and except the three volunteer associations I have named, no provision for supervision and inspection is made legislatively, and none by the Constitution. There is no board that can remedy the few defects that there are, because their powers are not broad enough, and, if exercised, there would be an opposition to them which might cause the Legislature not only to remove any

of the members but abolish the board itself. As to your State prisons criticised yesterday by Governor Flower in his letter to the Superintendent of Prisons, if the amendment relative to abolishing contract labor is adopted, a further expenditure of two millions of dollars annually will be entailed upon the State. Under your Constitution, the Superintendent of Prisons is absolutely endowed with the fullest executive powers, and without any supervision and inspection of any character, except the volunteer board of prisons. Your county jails are in disgraceful condition for lack of proper supervision. We found that for the year 1893 — and I bespeak your attention to this, for I think the situation is not understood — there were under the care of the State, and in the subsidiary divisions of the State, a daily average of 80,543, individuals, distributed as follows:

Insane	18,379
Idiotic and feeble-minded	1,561
Epileptic	619
Blind	718
Deaf	1,414
Dependent children	26,359
Juvenile offenders	4,935
Reformatory prisoners	1,713
Disabled soldiers and sailors	959
Hospital patients	5,735
Aged and friendless persons	8,074
Ordinary poor-house inmates	10,077
	80,543

To which must be added the inmates of prisons, penitentiaries and jails, in which there was a daily average of some 10,000 persons.

In this condition of affairs there is a call that something should be done, is there not? I know the objection to commissions, to organized boards, to constitutional boards, to any addition to the number of public officials, but I believe that every one will agree with me that there should be some body, some board, whose business it shall be to see to it that all these persons shall receive intelligent care and direction, and that this tremendous sum of money shall, in its expenditure, be somewhat supervised; that it is time that the one man principle of distribution and expenditure should cease and that there should be something done in the way of check and regulation. Accordingly, amendment number 460 was prepared — an amendment which is a modification of another proposed

amendment which was broader, more complete, but to which objection was made because it gave too much power in the Constitution, and that the actual details of power should be left to the Legislature, modified, too, because the existing boards that were to be benefited thereby, and to be endowed with this additional power, the State Board of Charities came to us and said: "Do not endow us with too much power at once, do not create an antagonism against us; make us simply a constitutional board to visit and inspect and leave all the rest to the Legislature to be increased or diminished." Their argument was so sound and the source from which it came so powerful, that the whole amendment, which was originally devised, was recast, and it was then put in the form which I shall now explain. In lieu of amendment No. 446, came the amendment from the committee numbered 460. It reads as follows, and I will explain it briefly as I go along, and so conclude my remarks:

"The Legislature shall provide for a State Board of Charities, which shall visit and inspect all institutions, whether State, county, municipal, incorporated or not incorporated, which are of a charitable, eleemosynary, correctional or reformatory character, excepting only such institutions as are made subject to the visitation and inspection of either of these commissions, hereinafter mentioned, but including all reformatories, except those in which adult males convicted of felony shall be confined."

That is to say over every correctional reformatory, eleemosynary institution, or charitable institution, the State Board of Charities shall have the power of visitation and inspection; and as you will see further on in the amendment they shall have the very important power of prescribing all rules and regulations, subject to the action of the Legislature, by which every dollar of money is expended on charitable institutions, and under which the receipt of inmates and their discharge shall be regulated. You will observe that an exception to this general jurisdiction is here provided for, and it is only fair to my committee to say that at least one member thereof, and perhaps more, have objected to that exception, and I desire to explain the objection. There are a number of reformatories, so-called, in the State. There is one, for example, at Hudson, which is an admirable institution. In it are confined only women who are accused of offenses of a light order, never of felony. There are other similar reformatories in the State. Those are charitable institutions, and for the care of the inmates of those institutions the hand of charity is necessary. They belong to the supervision of a charity commission. There is now one institution,

and there soon will be a second and a third, I believe, which is essentially a prison, but with the effort at reformation added to the usual functions of a prison in which are confined only male felons between the ages of sixteen and thirty. Now, there is where the functions of a State prison commission ought fairly to be exercised, in the opinion of a majority of the committee; and, ignoring the excitement that exists in this State as to the Elmira Reformatory, the committee, determining this question upon the philosophical principles connected with it, and not upon any present, ephemeral influence, have decided that that reformatory shall be subject to the jurisdiction of the to-be-created board of prisons, and not of the Board of Charities. Of course, you can imagine that some criticism of this has been made, and the arguments *pro* and *con* have been carefully weighed; but I think that the Convention will agree that the report of the committee in that respect ought to be adopted, and that this and all similar reformatories for the reception of male felons ought to be under the care and supervision of the State Prison Commission and not under the Charities Commission. I could say more upon that subject, but I think that is sufficient for the present.

It is the purpose of this amendment that the present admirable State Board of Charities shall be continued in office, and there is a provision for that, but no longer than the Legislature desires. The board, as such, shall always continue; the incumbents of that board may be changed at the will of the Legislature.

Provision is made for a State Commission in Lunacy, which shall visit and inspect all institutions, either public or private, used for the care and treatment of the insane, not including institutions for epileptics or idiots. The present Commission in Lunacy is the succeeding body of two or three other bodies that have existed in the State for the last twenty years. Its functions are well understood. At present its jurisdiction is co-ordinate or collateral with the State Board of Charities, and the same institutions are supervised by both bodies, and a great deal of friction, which has done no good to the community, has resulted. It is proposed that the Commission in Lunacy without perpetuating its number, without perpetuating its powers except as to visitation and inspection, shall remain a constitutional body, subject entirely to the action of the Legislature as to its personnel and its policy.

I am in receipt of a telegram from the homeopathic physicians of the State, asking that no lunacy board shall be appointed. I do not know why they should protest. They desire that in that body not only allopaths, but homeopaths, should be represented. Now,

there is nothing in this amendment, remember, that will prevent the Legislature from appointing allopaths, or homeopaths, or hydropaths, or any or all of the different schools of medicine that desire to be represented. Therefore, an objection from this source would not appear to be well founded.

You will observe a restriction as against the jurisdiction of the Lunacy Commission and in favor of the jurisdiction of the Charities Commission in regard to epileptics and idiots. The Charity Commission is to have charge of epileptics and idiots, as heretofore. Epileptics are clearly not insane. The man or woman who occasionally falls into an epileptic fit, and for whose care institutions are now being erected, should never be marked as insane. Julius Caesar was an epileptic. Men of strong will power have been epileptics. Therefore, the jurisdiction of the State Board in Lunacy should not extend to epileptics. As to idiots, the question appears to be a closer one; but as idiots are born in the condition in which they find themselves, and as there is no cure to be effected but only care to be afforded; as there is no distinction between them, except that some are known as unteachable idiots and others as teachable idiots, teachable in some slight respects, it has been thought proper by the committee that even if the Lunacy Commission is created, the Charity Commission should still have charge of the idiots.

Next: "A State Commission of Prisons which shall visit and inspect all institutions used for the detention of sane adults charged with or convicted of crime, or detained as witnesses or debtors."

I need not further expatiate upon that branch of the amendment.

Next: "The members of the said board and of the said commissions shall be appointed by the Governor, by and with the advice and consent of the Senate; and any member may be removed from office by the Governor for cause, an opportunity having been given him to be heard in his defense."

The next provision is:

"Existing laws relating to institutions referred to in the foregoing sections and to their supervision and inspection, in so far as such laws are not inconsistent with the provisions of the Constitution, shall remain in force until amended or repealed by the Legislature."

Now comes the important provision, to which I again call the attention of the members. It is the section that is intended to provide against any wrong that may be inflicted under authority of the educational amendment; but it is not intended to broaden the scope of existing laws in any respect. On the contrary, it is

intended to absolutely prevent the use of State or county moneys for religious education in any way, and provide only for the secular education of children in those institutions. The amendment, as proposed, is the result of frequent conferences with those who have been most earnest in advocacy of the educational amendment, and a general consensus of opinion has been arrived at that the amendment, as I now read it, will cover the case as it should be covered. There are those who do not like its phraseology, who fear that, in some respects, some injury may be accomplished as against those institutions, from its phraseology, but that is not my personal impression. I will read the section and will explain it as I go along:

"Nothing in this Constitution contained——"

This is made as sweeping as possible, since the educational amendment is a separate article, and it is uncertain in my mind what will be the effect of that article upon sections 10 and 11 of the present Constitution.

"Nothing in this Constitution contained shall prevent the Legislature from making such provision for the education and support of the blind, the deaf and dumb and juvenile delinquents, as to it may seem proper——"

That is substantially the same provision that now exists in respect to that class of unfortunates. Now comes the other question:

"Or prevent any county, city, town or village."

Not from paying any sum of money for education; I want to meet the subject fairly and clearly, but

"From providing for the care, support, maintenance and secular education of inmates——"

Not of the orphan asylums as institutions but for inmates. They can be supported they can be secularly educated, by making them provided for by counties, towns or villages.

"Inmates of orphan asylums, homes for dependent children or correctional institutions, whether under public or private control."

I think up to that point there will be no criticism of the section from any one. The phraseology of the next section leads to some criticism. Personally I believe it to be unfounded. If there is anything clearer that can be suggested, I shall be glad to adopt it.

"Payments by counties, cities, towns and villages to charitable, eleemosynary, correctional and reformatory institutions——"

That is to the institution itself, "wholly or partly under private control, for care, support and maintenance, may be authorized, but shall not be required by the Legislature."

Not for education at all. There shall not be any direct payment made directly to the institution. Provision may be made for the

education of its inmates secularly, but they shall not be able to receive funds for secular instruction and then apply them to religious education; but payments may be received for care, support and maintenance; "may be authorized, but shall not be required."

Really that is an admirable provision, irrespective of its educational features, or of its effect upon the educational amendment. It is intended to stop a prevailing abuse. It is the habit of the Legislature, under the suggestion of some Senator or Member, who may be a member of the Finance Committee, to put into the supply bill some such provision as "The City of New York is hereby directed and required to pay to the (blank) $100,000." Yet there is no provision that there shall be any power of supervision by the local authorities; they cannot prevent payment even if they desire to do so. The institution may or may not be deserving. There is no system regulating its bestowal, no system such as now prevails in respect of payment made by cities themselves under general laws which has all been done upon a per capita basis in every city. The Legislature now requires the cities to pay to A, B or C, $60,000 or $100,000. Now, with this amendment in force, that can no longer be done. They may authorize cities to pay, but shall not require them to pay.

"No such payment shall be made for any inmate of such institutions who is not received and retained therein pursuant to rules established by the State Board of Charities."

Which is the section to which I have referred as giving absolute domination to this body now composed of eleven admirable incumbents, who shall make such rules and regulations in respect to the payment of money as they may see fit.

Mr. McDonough — May I ask Mr. Lauterbach a question?

The Chairman — Will Mr. Lauterbach permit a question?

Mr. Lauterbach — With great pleasure.

Mr. McDonough — May I ask why the word "secular" education is left out in the second paragraph there?

Mr. Lauterbach — Because it is the intention of those who are willing that this section should pass as it is now, that secular education shall be afforded by the authorities by making provision for it.

Mr. McDonough — Then, Mr. Lauterbach, if the city provides common schools, that is enough.

Mr. Lauterbach — It need not necessarily be enough. It might be enough. It ought to be done in that way, if it can be done. I think it is the duty of every institution that can send its children

to the common schools without doing an injury to the common schools, to do so, and it will be beneficial to the institution itself. I think it will be an admirable thing to commingle together children who are unhappily left orphans with other children in the common schools.

But that is not the only way in which the provision can be made. It may be made as it is now made. But it cannot be made for religious education.

"Such rules shall be subject to the control of the Legislature by general laws."

Now, Mr. Chairman, I have generally stated, I think, as briefly as possible — I hope I have not been prolix — the general situation which has led up to the proposal of this amendment. There are three or four verbal errors and there are some errors in the construction of the original section which I have just read, which led the committee informally to suggest to the Committee of the Whole the following amendments. Look at No. 463, instead of 460.

First amendment: after the word "are" in section 1, page 1, line 6, insert the word "hereby."

Second amendment: in section 1, page 1, line 7, strike out the word "these," and insert instead thereof, the word "the."

Third amendment: in section 2, page 1, line 9, strike out the words "board of," and insert instead thereof, the words "commission in."

Fourth amendment: on page 2, at the end of line 14, insert the following: "The visitation and inspection herein provided for shall not be exclusive of other visitation and inspection now authorized by law."

That is to enable the State Charities Aid Association and the State Prison Association to continue to perform their functions just as they have done in the past; and not to have this amendment of the Constitution usurp that which they have so admirably done.

Then follows the other amendment to which I have just referred.

I recommend the entire amendments proposed by the Charities Committee to your favorable consideration and hope to secure their adoption.

Mr. Choate — Mr. Chairman, I desire to be heard for a few minutes in substantial support of this amendment offered by the committee, and especially in respect to the fifth amendment, in regard to the children. About the Commissioners of Lunacy and the Commissioners of Prisons, I do not feel so much interest, although I think that every commission that can be avoided ought

to be. I want to say a few words about these children, in whom I feel a very great interest, which you may realize when I say that I have been for very many years connected with the State Charities Aid Society and with the Society for the Prevention of Cruelty to Children in New York.

Now when we first came here, there was a very decided raid made upon this Convention with the intent of preventing the payment of any public money to any sectarian institutions whatever, and I must say that I have heard of alleged abuses in connection with sectarian institutions before I came here and after I came here, that if they had been sustained, perhaps would have justified the cutting off of all public money from them; but I came to the conclusion, after hearing all that has been said to us and all that I have been able to learn, that the movement for the prohibition of all public money whatever to sectarian institutions was largely inspired by a sentiment with which I have no sympathy whatever, and I do not believe this Convention has, namely, a fear, a hatred of the Roman Catholic Church as a religious body. I had heard, for instance, from what seemed to me to be very high authority, that institutions of that persuasion in the city of New York, under the cover of provision for children, realized immense sums of money which they used for direct theological purposes — the support of priests and so on.

Now, I am satisfied from the investigations of the committee that those allegations were utterly unfounded (applause), and that the word sectarian in reference to this matter of charity is wholly a false point about which to discuss it. The church that I refer to in particular has, so far as I can learn, led the way in charitable work, and has been an example to all other churches; and the great business of churches of all kinds, so far as I can understand the present theory of church organizations, centers in charity — doing good to our fellow-men. (Renewed applause.) So I dismissed from my mind very early all that idea that public money should be withheld from a charity, simply because it was under sectarian control and I looked to see what restraints ought to be put upon the application of public money to private charity.

If it were an original question, I should be in favor of prohibiting the use of any public money, the application of any public money to any private charity, and I think you will see in a few minutes that there is ground for that; but as I consider, unfortunately, some twenty years ago this State, as a State, departed from that rule. They found these children in public institutions subjects entitled to the utmost commiseration and needing rescue. They

were herded in with paupers and criminals; and so the State deliberately entered, by its law, upon a scheme of using the agency of private charities for the purpose of taking care of these wards of the State, the helpless children who had nobody else to care for them.

Well, of course, nobody questions the absolute duty of the State in that respect to provide for them in the way of care and maintenance and of the same education that we give to other children of the State and that the first article of our education amendment, as we have framed and passed it, provides for all the children of the State. And so, various institutions were formed, Catholic and Protestant and Hebrew, and every other kind, for the care of these children who were the wards of the State, and they have grown up to large proportions; and though the abuses to which I have referred do not exist, there are certain other abuses which do exist and which Mr. Lauterbach has pointed out and to which I wish to call special attention. They do not exist in particular in any one sect or in institutions under the direction of any one sect, but they are applicable to all in general.

Now, Mr. Lauterbach gave us a figure which is the starting point, and a terrible figure it is. In the city of New York to-day with eighteen hundred thousand people there are eighteen thousand children dependent upon charity for support; that is, one in every hundred people in the city of New York is a child dependent upon public charity — a most pitiable story.

How is it in the rest of the State? In the rest of the State, Mr. Lauterbach says, there are twenty-six thousand in all. Striking out the population of New York city and the dependent children of New York city, eighteen thousand, and you have eight thousand children dependent for support upon charity among forty-seven hundred thousand. That is one-sixth of one per cent, about.

Now, how does that come? Of course, it ought not to be that there should be one person in a hundred in a great city like New York, a child, dependent upon charity for support. Now, I will tell you how it has come about. It has come about by this very method of dispensing public charity through private institutions. It has tended to the pauperizing of a whole people, and there is an abuse that certainly ought to be checked, and the object of one of the clauses that I insisted be put in this amendment that it should be checked.

What is there that exists among these institutions of the city of New York that tends to this pauperizing? In the first place, children are placed by their own parents even, without commit-

ment, or, if a commitment is wanted, by going to the first magistrate, and having their own children, whom they are perfectly well able to support, put upon these institutions for their support in very large numbers.

And, then, there is another abuse growing out of it, and that is that children are kept there, not as a temporary place of refuge, but for years and years, up to the age of sixteen, I believe, long after they ought to be placed in families, and no longer held to be raised as paupers, if you please, or semi-paupers, in one of these institutions. Why, the figures are very startling, if you will read Mrs. Lowell's figures on this subject from her investigation of this subject in New York, and from that of another lady of equal standing in the city of Brooklyn. From the time they are thrown upon these dependent charities, the number of dependent children lifted from a few hundreds to as many thousands, and so it has gone on increasing until to-day you have 18,000 children in the city of New York, one out of every 1,000 population, that is in this category.

Now, what do I want to accomplish on behalf of these children? It is, that there shall be a power in the State that has never been exercised before, to go through those institutions any year, any week, or any day, and lay its hands upon this child and upon that child and say: "You shall not receive one dollar for that child, because its parents are perfectly able to support it." I was told here in Albany, Mr. Chairman, about one case that was discovered of a man earning $22 a week for work on the Capitol having three children in one of these institutions. And there are many such cases in New York, and in Brooklyn, of parents perfectly well able to sustain themselves and their children. But I do not care whether it is 100 or 1,000 or 10,000, I want a statute, if it gives money for their support, to be able to go into those institutions any day and examine and single them out and mark those children, and say: "For those, you shall not have a dollar of public money."

And there is another thing as to these children. They are kept very long after they ought to be in families, attendants upon the public school. The first class ought never to have gone in; they ought to have been in their fathers' homes, and ought to have been in the public schools. The second class were properly admitted to have been detained too long. I want the same power, the public arm, to reach within those institutions and say, "These children you may keep as long as you please on your own money, but not a dollar of public money shall be paid to them, after they have reached an age and condition when they ought to have been

turned out of this pauper establishment." And that is the object of the final provision which has been inserted in this amendment.

This is a very serious business, sir. It does not rest on any religious ground; it does not rest on any sectarian grounds; it goes to the root of the matter — to save a great community from being pauperized, having its children pauperized.

Then there are other things that result from this same thing. These institutions are being built up; the founders and the patrons and the managers are very much interested in them. It is an earnest desire to build up the institution, and they get in as many as they can, and keep them as long as they can. And I am not speaking of any one sect; I am not speaking of it in any religious bearing; that does not enter into the question in my mind, but simply as a citizen, simply as a question of political economy, as it is.

Why, the report of this lady in Brooklyn, who made the investigation there, developed the fact that there was a regular agent employed to hunt up children and get them into these institutions. Now, that certainly is a very gross abuse; it is one that ought to be put a stop to; and, as much as I dislike the perpetuation in the Constitution of any commissions that shall override the Legislature, or shall not be removable by the Legislature, I think, in view of the great work that the State Board of Charities, a volunteer board, has performed for so many years to the infinite good of this State and community, we can venture to say in the Constitution that no dollar of public money shall be paid to any inmate of a private institution, especially of those children, except under such rules and regulations as that board shall create.

Now, what will happen? This constitutional amendment being adopted, that board will lay down rules and regulations. They will say, I should suppose, that no child shall be received in any of these institutions as the recipient of public money whose parents are able to take care of it, and that no child shall be kept there at public expense, except as a refuge, a temporary refuge, and no longer than possible to have suitable provision outside, where it may take its place in society and be an attendant upon the public school. And they will provide for it in every county by other rules and regulations, not only in the county of New York, but everywhere else, and this abuse to which I refer, if this amendment is passed, can be and will be rooted out.

And there is another evil which should be dismissed in the same way. Of course, it is the duty of the State to provide for these mendicant children; but if the Convention will look at it, if this abuse which I have pointed out is corrected, instead of there being

2,300 in one establishment, which of itself is a gross and great evil, their numbers will be very materially reduced. The admission will be made more difficult and the exit will be made more easy. The difficulty is, it is infinitely easy to get a child into one of these institutions and infinitely difficult to get it out; so, then, instead of having to provide for 18,000 it ought to be reduced at least by one-half. The provision that shall be made for the maintenance of secular education in these institutions savors of this terrible evil that exists there. It is a terrible one, such a vast proportion of the children being thrown out of their families and into these institutions. I care not if they are better fed and better clothed and better taught than they would be at home. That is not the question. Are they proper wards of the State? Are they mendicants? I believe one-half of them are not. They ought to be thrown back on their parents; they ought to be thrown out of those institutions, placed in families, and put where they can be taken care of in the ordinary way, as members of society and as attendants upon the public school.

As for the matter of religious education, why, there cannot be any two opinions about that. The religion that a child is born in is the best for that child, at any rate until it can attain the years when it can think and act for itself. Let every institution, let every parent, let every sect teach its own child its own tenets and teach those at its own expense; but the reading, writing and arithmetic must be provided by the public. (Applause.)

Mr. Griswold — Mr. President, I would like to ask the gentleman a question.

The Chairman — Will Mr. Choate permit a question?

Mr. Choate — Certainly.

Mr. Griswold — You propose, then, by some commission to scrutinize, examine the children in all these institutions to ascertain which ones are there that ought not to be there?

Mr. Choate — The amendment provides this:

"Payments by counties, cities, towns and villages to charitable, eleemosynary, correctional and reformatory institutions, wholly or partly under private control, for care, support and maintenance, may be authorized, but shall not be required by the Legislature."

But here is the provision:

"No such payments shall be made for any inmate of such institutions who is not received and retained therein pursuant to rules established by the State Board of Charities."

If that is properly carried out — and I have consulted the secretary of the State Board of Charities whether, in his judgment, it was practicable, and he says it is; if that is properly applied, no child can get into such an institution without their consent, and cannot stay there a day longer than they say he ought to be kept.

Mr. Griswold — So that they will scrutinize and ascertain?

Mr. Lauterbach — That is our intention.

Mr. McDonough — Mr. Chairman, I want to say one word in reply to the President in explanation of a statement he made about the vast number of children received in these institutions, and that is this: that many of them are sent there who ought not to be there is true, but it is not the fault of the institution; it is the fault of the authorities who send them there. For instance, I know of a case in a neighboring county lately where the husband and wife quarreled. The husband ran away and left the wife with three little children and no means of support whatever. Those children were not orphans; they had a father and a mother, and their father was well able to take care of them. He fled the State. They had to be taken by the poor-master and be fed, and rather than feed them in the alms-house he sent them to one of these institutions. What would the President of this Convention do with them? What should the superintendent of that institution do with them? Throw them out on the highway? Not at all. He kept them there, and it was his duty to keep them there; and yet this good lady whom the President mentioned, who goes about inquiring to find out whether inmates of these institutions have parents, would have found that these children I refer to had parents. The father was a brakeman on a railroad and was receiving twenty dollars a week, and was able to support his children. The authorities of New York should have followed that man into the neighboring State and brought him back, but they did not do it, and the fault is not that of the institution, but that of the executive officers of the State of New York.

Now, New York city is an exceptional city; there is no other such city in the United States. Immigrants from all over Europe come in there; many are stranded there, and many children must of necessity be sent into these institutions. In the interior cities we are not troubled to any great extent with such children. Now, what would you do with these children? The law is plain enough. Why, if a child be able to support a parent, and the parent becomes so poor as to be a county charge, the law provides for compelling the child to support the parent; and the law also provides for com-

pelling the parent to support the child, and if this law be not enforced, the fault is not in the institutions, but in the execution of the law. Why, this society, which sent the members of this Convention all these circulars, actually asked me in one of their communications if I did not think the existence of these institutions was to a great extent the cause of pauperizing children; or, in other words, that people had brought children into the world for the sake of putting them into these institutions. Whether the President of this Convention say so or not, the whole of this agitation is aimed at one religion, and it is aimed at only one church, and it is aimed at what he calls "the foreign hierarchy," which he so bitterly attacked recently. I want to say that the foreign hierarchy, so called, was here before the pilgrims struck Plymouth Rock. It is everywhere. It is a universal church. I take it we are all citizens of this country and we ought to do the best we can for the good of the country, without raising this religious question, and I hope the Convention will not be carried away to-day by any such feeling. We ought not to bring these questions up. There is no one who can doubt, who looks at one of the amendments offered here, No. 2, offered by Mr. Holls, that it was introduced for religious purposes and on sectarian grounds, and aimed at one sect. Our committees, who went up and down through the State examining charitable institutions, found no abuses whatever. Those pointed out by the President are not abuses of the institution; they are abuses of the law and abuses that can be corrected by the law officers of the State; and that was the case, also, of the education matter. The Education Committee raked and scraped the State and found no parish school in the State drawing a dollar of public money, notwithstanding all that was said. I can see no reason for this outcry against the churches and charitable institutions of this State. Our courts have decided this is a Christian State, built up by religious people, and now you propose to attack them and condemn them. I, for one, will never vote to condemn religion or religious institutions, for they constitute the keystone of our liberties, our laws, and our country.

Mr. Hawley — I understand, Mr. Chairman, that amendments generally are now in order.

The Chairman — They are.

Mr. Hawley — I offer an amendment to section 1, an amendment to section 4, and a substitute for the entire bill, so that I may not be obliged again to trouble the committee.

The Chairman — The Secretary will read the amendments as they are in order.

The Secretary then read the amendments proposed by Mr. Hawley, as follows:

Amend section 1, by inserting at the end of line 2, the words "pay or emolument;" after the word "lunacy," in line 9, insert the words "without pay or emolument;" on page 2, after the word "prisons," in line 2, insert the words "without pay or emolument." Strike out on page 3, lines 2, 3 and 4, and insert in lieu thereof: "The Legislature may confer upon the commission and upon the board to be created, pursuant to the foregoing section, any powers not inconsistent with this Constitution, which shall be deemed necessary for the effective discharge of their duties, and may at any time abolish their boards and commissioners, or either of them."

Mr. Hawley — It will not be necessary, Mr. Chairman, to read the substitute which I offer, because I can state it in a single sentence or two in the course of my remarks. I desire to say, first, last and all the time, that I am heartily in favor of the fundamental idea of this amendment as it is here proposed, and that I shall vote for it as proposed, if I do not succeed in getting it better to my liking, so that there may be no misapprehension, no idea that I am seeking to undermine its fundamental principle in regard to the dependent children of the State; because, if I had my way, I would strike out the word secular. I agree, although it never found a place in any Constitution in this State. I have no quarrel with the doctrine of divorce of church and State, but I do not consent, and I never will consent, to the idea that there is to be a divorce between religion and the State. (Applause.) Because, sir, I say it is abundantly settled by authority that this government is deeply engrafted upon religion. I say that the religion and morality of the Bible is the fundamental law and the higher law of this government. (Applause.) It is so, Mr. Chairman, by the judicial decisions of this State, which were cited before the committees by Mr. Gerry. The doctrine has been reaffirmed by our Court of Appeals in a decision later than any cited by him, and not more than three years ago the Supreme Court of the United States, in the case of the rector of Holy Trinity Church against the United States, reported in 143 United States Reports, in a decision covering a wide field of historic research, covering the whole field of discussion on this question, citing numerous authorities, affirmed the doctrine for the whole nation. And I venture to say that that

is true, not only as a matter of law, but that, as a matter of fact, the religion and morality of the Bible permeate and are inherent in all our civil life. I have collected a large number of instances, with which I think it is best that I should not weary the committee, but I would like to know, Mr. Chairman, if the doctrine be not true, by what authority the sessions of our State and national Legislatures and of this Convention are opened with prayer every day? (Laughter.) So I have no quarrel with the fundamental idea of this report. But I do not agree with the committee in the methods of administration by which it is sought to reach this result desirable to us all.

It is the scheme of the committee to put upon the statute, without limitation as to numbers and without limitation as to compensation, three new constitutional commissions. I am opposed to each one of the three and to all of them. We are governed too much by commission. The first amendment which I propose is to strike out or insert, rather, in the Constitution a provision that these commissions shall serve without pay. As to two of these commissions, the Committee on Charities were in the beginning with me on that question and that provision appears in bill No. 446. Why, Mr. Chairman, the State Board of Charities, composed of eminent citizens of this State, philanthropic in their characters, generally of large means, willing to devote the labors of their declining years for the benefit of the poor and the unfortunate, has achieved a position and done a work which will be a lasting glory to this great State. It does not ask, so I am advised by a letter in my desk, to be constitutionalized.

What will happen if it be constitutionalized and this scheme goes into effect? It will at once have the supervision of a vast number of charitable institutions; it will be the disburser of a large amount of money; it will become one of the great administrative bureaus of the State, with vast amounts of patronage and numerous places under its control. After the lapse of a few years, who will be the State Board of Charities? Will it not be the political hacks of the State who seek the position for the sake of dispensing the patronage? I desire in my inmost heart to keep the State Board of Charities on the high, philanthropic and disinterested plane of action, which it has so gloriously occupied in the past.

My second proposed amendment is a plan, in case it shall be deemed necessary to raise these three commissions, to deprive them of their constitutional character. It describes them, not as the boards created by this section — a statement which is inconsistent with the first sentence of the bill, but it describes them as boards

to be created pursuant to this section, and then provides that the Legislature may at any time abolish each or all of them.

But, Mr. Chairman, I have another objection to this amendment. The State Commission in Lunacy has no claim to immortality in the Constitution. The State Commission in Lunacy, I beg leave to say, has not yet passed its experimental stage. It has done many valuable things, and many things which it had better have left undone. You cannot find a manager of the State Hospital for the Insane, a superintendent of the State Hospital for the Insane, I do not believe you can find a medical journal in the State of New York that does not think we would be better off if we had not the State Commission in Lunacy. They have succeeded in creating a great turmoil involving legislative investigations and criminations and recriminations; they have taken, instead of the high road to progress, the road of advancement in the care of the insane, a retrograde, from which the State Care Act was intended to rescue the lunatics of the State. What was that? The lunatics were taken from the county alms-houses. Why? Because every board of supervisors desiring to be elected next year was anxious to keep the lunatics as cheaply as it could, and the only excuse that I know of that the State Commission in Lunacy has for its further existence, which it has spread before this Convention is, that by a system of cheeseparing and parsimoniousness it has succeeded, as it says, in saving the State some thousands of dollars by keeping the lunatics cheaper. That is to say, the State Commission in Lunacy is traveling the roads that the boards of supervisors have traveled, and I, for one, will never consent, if I can help it, to their being perpetuated in the Constitution.

Now, Mr. President, is there the slightest need of a State Commission of Prisons? We have had another body of philanthropists who have taken that subject in charge, and have acquired great distinction, and have done a great good in the prosecution of their humane work. And so, Mr. Chairman, as a means of accomplishing exactly the purpose which is designed by the committee in regard to the orphans of the State, I have proposed in the substitute which I offer to strike out all three of these commissions, to say nothing about the insane, nothing about the prisons, and to substitute the Comptroller for the State Board of Charities, with power on the part of the Legislature to devolve the duties upon any other officer or board which the Legislature may create. That will accomplish the scheme of administration; that will save the State from being governed by three more commissions, enthroned

in the Constitution, and will do the whole work without burden and in the most effective manner.

Mr. Peck — Mr. Chairman ——

The Chairman — Mr. Peck will take the floor at eight o'clock this evening, to which time the Convention will now take a recess.

EVENING SESSION.

Friday Evening, September 14, 1894.

The Constitutional Convention of the State of New York met, pursuant to recess, at the Capitol, Albany, N. Y., Friday, September 14, 1894, at 8 P. M.

President Choate called the Convention to order.

Mr. Francis — Mr. President, we have with us this evening a distinguished soldier, one who was associated with General Grant in the movements made by him in the organization of the army, and who served with him to the end. I move that the privileges of the floor be accorded to Major-General Shetland, of Chicago.

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

Mr. Goodelle — Mr. President, I offer the following resolution:

R. 216.—"Whereas, Mr. Edward M. Seacord, of Cortland, was appointed a messenger of this Convention, and has only received pay as such, but by reason of the lack of sufficient clerical force, and the necessity for the aid of additional clerks to make the work of committees and of the Convention effective, he has been ordered to act as clerk, and he has acted as such from May 23, 1894, and has been an efficient and faithful clerk, performing with marked ability all additional services put upon him,

"Resolved, That as one of the necessary expenses of the Convention, he be paid for his additional service and responsibility the further sum of $3 per day for the sessions from May 23, 1894, making his pay the same as that of other clerks, and the payment thereof is hereby directed and authorized to be made out of the fund appropriated for the expense of this Convention."

Mr. Goodelle — I suppose, Mr. President, it will be referred to the Committee on Contingent Expenses?

The President — It is so referred.

Mr. Cornwell — I move, Mr. President, that the privileges of the floor be extended to the Hon. Sereno E. Payne.

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

Mr. Cookinham — I offer the following resolution, Mr. President:

The Secretary read the resolution offered by Mr. Cookinham, in the language following:

R. 217.—"Resolved, That proposed constitutional amendments now on general orders be considered in Committee of the Whole in the following order:

"First. G. O. 67, to amend article 5 of the Constitution.

"Second. G. O. 78, to amend article 8, by addition of a new section.

"Third. G. O. 55, to amend article 14 of the Constitution.

"Fourth. G. O. 12, to amend article 13, relating to future amendments.

"Fifth. G. O. 26, relating to civil service.

"Sixth. G. O. 42, relative to drainage of agricultural lands.

"Seventh. G. O. 57, to amend article 8, section 7, relative to liability to stockholders of banking corporations.

"Eighth. G. O. 48, to amend article 1, section 10, in relation to suppression of gambling.

"Ninth. G. O. 27, as to trusts or combinations.

"Tenth. G. O. 62, to amend article 3, by addition of two new sections.

"Eleventh. G. O. 69, to amend the Constitution relative to the liability of employers for injuries to employes.

"Twelfth. G. O. 44, to authorize Legislatures to provide for construction of dams and reservoirs."

Mr. Cookinham — Mr. President, from there on, the proposed calendar is identical with the calendar for this day as printed. It will not be necessary to read it.

The President put the question on the adoption of the resolution offered by Mr. Cookinham.

Mr. Bush — Mr. President, I object to this proposed change. The anti-trust amendment is No. 3 on the calendar at present. By this change you propose to put it down to No. 9 on the calendar. Now, this Convention has only until to-morrow noon, and then it will adjourn for nearly a week. I insist that the regular order of the calendar should be maintained. There are a great many members of this Convention, and a great many of the people of this State, who are very much interested in this anti-trust amendment, and I do not think it should be reduced from the third place on

this calendar and placed at the foot of it. It is said it will give rise to discussion here. That is just exactly what we want, and I don't think that it should be dropped down there. I understand this requires a two-thirds vote, anyway, a change in the order of business.

The President— It is all subject to the control of the Convention by a majority vote.

Mr. Veeder — Mr. President, I asked the gentleman who moved this resolution what changes, if any, had been made, and I understood him to say that none down to some order twelve or something that he has marked there. I am somewhat anxious about general order No. 48, which some members of the Convention are a little ticklish about, and I would like to know if that is advanced or retarded; that is the one relating to the suppression of gambling.

Mr. Cookinham — That has been advanced two numbers.

Mr. Veeder — What others have been advanced?

Mr. Cookinham — Mr. President, if gentlemen desire, I will state all the changes.

Mr. Veeder — Yes; we would like to act intelligently.

The President — I would suggest that with proper expedition, if gentlemen do not spend too much time in discussion upon this, they can all be reached.

There were numerous calls for the question.

The President proceeded to put the question.

Mr. Veeder — I call for the ayes and noes. I demand to know where we are. If we are running in the dark here; if brute force is to control, let us know it.

Mr. Cookinham — Mr. President, the rule has been changed so that the ayes and noes cannot be demanded on this motion. I now move the previous question.

Mr. Veeder — Does the President insist upon recognizing some one else when I have asked a legitimate question as to the order of business, and have the floor, allowing another gentleman to rise and move the previous question?

The President — Mr. Cookinham moves the previous question on his resolution.

Mr. Veeder — How has he the floor except by the Chair driving somebody else off the floor?

The President — I think Mr. Cookinham has the floor; I do not know that he ever lost it.

The President put the question, "Shall the main question now be put on the resolution of Mr. Cookinham," and it was determined in the affirmative.

Mr. Burr — Mr. President, I rise to a point of information.

Mr. Cochran — I rise to a point of order.

The Chair recognized Mr. Cochran.

Mr. Cochran — I just understood the Chair to state that this required merely a majority vote. I submit to the President that the rule which was changed was rule 24 or 29, which relates solely to the making of special orders, but rule 37 has never been changed, and that rule provides that the third reading of proposed constitutional amendments shall take place in the order in which they have been ordered to a third reading, unless the Convention, by a vote of two-thirds of the members present, direct otherwise. That rule, sir, has never been amended, and I, therefore, contend ——

The President — This has nothing to do with third readings; this is general orders.

Mr. Burr — Mr. President, I desire to know from the chairman of the Committee on Rules why the amendment on trusts was put down out of its regular order.

Mr. Root— Point of order, Mr. President; the gentleman is not entitled to interrogate the chairman of the Committee on Rules on that subject.

Mr. Burr — Mr. President, while I have the floor, I now move that the Committee on Rules be discharged from the further consideration of the resolution which I offered on the eleventh of September.

The President — Mr. Burr's motion is out of order, the previous question having been ordered on Mr. Cookinham's resolution.

The President put the question on the adoption of the resolution offered by Mr. Cookinham, and it was determined in the affirmative.

Mr. Burr — I now move, Mr. President that the Committee on Rules be discharged from the further consideration of the resolution (No. 204) which I offered on the eleventh of this month, and which I ask to have the Secretary read.

The President put the question on Mr. Burr's resolution.

Mr. Wiggins — On that motion I move the previous question.

Mr. Burr — Upon that I desire to say something. I desire to have the Secretary read.

The Secretary — The rule is in the hands of the committee.

Mr. Burr— Will the chairman of the committee produce the resolution which I offered on the eleventh of this month?

Mr. Root — It is not convenient.

Mr. Burr — Mr. President, that resolution was to the effect that this Convention continue in session until the disposition of several amendments which were named in that resolution.

Mr. Root — Mr. President, I rise to a question of order.

The President — Please state your point of order.

Mr. Root — It is, sir, that the Convention has already decided upon every matter involved in Mr. Burr's resolution since that resolution was introduced and referred to the Committee on Rules.

The President — The Chair is of the opinion that the point of order is well taken, and that unless the vote last taken is reconsidered the matter cannot be entertained.

Mr. Root — Mr. President, I move that we go into Committee of the Whole.

Mr. Burr — I have not yielded the floor, Mr. President.

The President — Now that Mr. Root has stated his point of order I think Mr. Burr has the floor still, but the Chair has ruled your motion out of order, Mr. Burr.

Mr. Burr — The motion that I made to discharge the committee from the further consideration of the resolution?

The President — Yes, sir; because the Convention has already arranged the whole matter.

Mr. Burr — Very well. If the Chair decides I am out of order; if the chairman of the Committee on Rules is satisfied to state that he will not reply to my interrogatory as to why my first amendment was ruled out, I am perfectly willing to allow the situation to remain in that condition.

Mr. Root — I move, sir, that we now go into Committee of the Whole upon the report of the Committee on Charities, and on that I move the previous question.

The President — It does not require any motion.

Mr. Vedder will please take the chair.

Mr. Holls — Before that is done, Mr. President, I move that the

privilege of the floor be extended to Hon. Benjamin F. Tracey, of Brooklyn, during his stay in Albany. (Applause.)

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

The House then resolved itself into Committee of the Whole in consideration of general order No. 67, introduced by the Committee on Charities and Charitable Institutions, to amend article 5 of the Constitution, and Mr. Vedder took the chair.

Mr. Peck — Mr. Chairman and gentlemen of the committee, I hope that some of you remember the discussion which took place in this committee upon the educational article at the time that section 4, known as the sectarian amendment, was adopted. We were considering at that time a class of children in this State, numbering nearly 36,000, who were in the hands of the State, and by the State had been committed to the custody of institutions which were established by private enterprise. It was considered at that time that the educational article was not the place to provide for the education of such children, because they were, to some extent, governed as charitable institutions, and it was proposed that, if the section was adopted, as was suggested on that hearing, a provision for the education of those children would be assured in the article on charities. It becomes, therefore, at this time our duty to examine the report from the Committee on Charities, and determine whether that report does provide for the education of these wards of the State, because I think we all agree that if there are any children in the State who should be educated at the expense of the State it is these waifs, these orphans, these delinquents, upon whom the State has laid its hands and turned the key. Now, when we turn to the educational article again, we find it provided in the first section that the State shall provide for the education of all its children in the common schools. Now, if we had stopped there, under such a provision of the Constitution the State would have a right, and would, as it already has done and now does, establish common schools where these children can be educated in their own institutions, where the children are numerous enough to warrant it. But that is not the way in which it was left. It was left in this way: the State shall provide for the education of all its children, unless the State has taken the custody of those children and placed them in institutions where religious tenets are at any time taught; but if the State has taken those children and placed them in those institutions by its own initiative, and turned the key upon them, then it is provided they shall not be educated by the State — these

children who, of all others, the State should educate. Now, what is proposed in the report of the Committee on Charities? Does it answer the promise? Does it provide that these children, that the State has taken in custody, shall be educated at the expense of the State? We all agree here that parochial schools, schools connected with parishes, are to have no aid or assistance from the State; that secular institutions of learning are not to be assisted by the State. Nobody asks it; nobody demands it; but what is this report of the Committee on Charities that is to take the place of the exception from the first section of the educational article? All it does is this: now, mind you, as to all other children, except those upon whom the State has turned the key, "it shall provide" for the education of those children; but where they are so situated that they cannot attend the common schools, that they cannot be marched out from reformatories, protectorates or large asylums two or three times a day, in all weather, to the common school that is established outside of the institution, utterly impracticable on account of its expense and on account of the added care required and all that — as to all other children, mind you — "the State shall provide;" but these, placed by the State in secular institutions where religious tenets are taught, shall not be educated in the common school system. And before I proceed to this charities article, let me say one thing further, and that is that the educational article is the place for it; because we have an educational system in this State, spending millions of money a year. It educates teachers; it determines the qualifications of teachers; it determines the propriety of text-books; it prescribes the course of instruction that shall be given to the children attending the common schools. Therefore, when you place public instruction in the hands of the public, we know what we get; we know the teachers we are to have; we know the books we are to use; we know the course of instruction that is to be pursued; but, with regard to these 36,000 dependent children, all that it is proposed to provide is that this Constitution shall not prevent. Just think of it. We never have had any educational article in the State before. We have gone on for a century, and a great system of free schools has grown up in the State, and yet here at the end of 110 years we say a free school system shall be established for all the children of the State, except those placed by the State in sectarian institutions, and as to those the Constitution shall not and does not prevent their being educated by counties, towns, cities or villages, but the State will have nothing to do with them. Is that right? Is that proper? The cities have no department of public instruction; the towns have

none; the villages have none. There is no prescription as to the qualifications of teachers, none of school books, none of the course of instruction. Nobody is required to do anything, but the Constitution is not to prevent these civil divisions of the State from educating these parties, these children who have been separated from the body of the State, and the charge of them assumed by the State. Now, is that the position for the State of New York to take with regard to that class of children? Ought it not to be said in the educational article itself, "but as to dependent children, the Legislature may authorize cities, villages and towns to send teachers, with qualifications required by law, with books prescribed by the public departments, into those institutions, there to pursue the course of instruction of the common schools," and that they shall be the sole teachers of secular education during those school hours? Is not that the place for it, and is not that the proper provision, rather than to come down into the charities article and say that these subdivisions of the State may do it, but the State itself will not do it, and cannot and shall not.

But further, Mr. Chairman, with regard to this charities report, what does this mean? Now let us see: "Nothing in this Constitution shall prevent any county, city, town or village from providing for the care, support, maintenance and secular education of inmates of orphan asylums, whether under public or private control." Now, if we will end it there we will have no trouble; but what does this mean? It must be construed with: "Payments by counties, cities, towns and villages to charitable, eleemosynary, correctional or reformatory institutions, wholly or partly under private control, for care, support and maintenance, may be authorized, but shall not be required, by the Legislature." You notice that in the second branch of that provision secular education is not specified, which means that the Legislature shall not prescribe, or allow, or authorize cities, counties, villages or towns which have no department of public instruction, which have no prescribed course of instruction, no means of applying it, and which the State refuses to allow its own departments to attend to, that they shall not employ these institutions to do it. They may authorize them to take care of their bodies, but they shall not provide in any way through those institutions for the education of the inmates. Now, I do not know where those children can get education under such circumstances; or, if they do get it, I do not know what kind of education will be obtained. Think of it — the civil divisions of the State may, so far as this Constitution is concerned, if they choose, they may educate these wards of the State; they may do it; utterly

without the appliances for doing it, and the State refusing to do it, not allowing it to be done in its name, it shall not be done by the institutions themselves. Now, who is going to do it? There is only one solution of this in my judgment. We have a department for the care of this kind of instruction. Now, it is a perfectly simple matter to say that the teachers and the schools and the course of instruction and the books shall be subject to the approval of the Department of Public Instruction, and that they and their teachers shall have the occupation of the secular school hours, as in all other common schools; that is, there may be provided by the Legislature a common school, with all that that term implies in the State of New York, in these orphan asylums, in these reformatories, under circumstances to be regulated by the Legislature. If you put that into the educational article you have a perfected article. It provides then for the education of all the children of the State. As it is now it does not. It is simply permissive on the subdivisions of the State giving education to this branch. It seems to me that there are, therefore, two very decided criticisms to be made on this report. I think that, so far as secular education is provided for, it should be taken from this article and put in the public instruction article, where common schools can be provided for, where everything is already understood, and then this matter of payments will take care of itself; but if you leave the secular education of the inmates of these institutions to the civil divisions that have no public departments of instruction, in that case you should also provide that under the regulations of the Legislature the civil divisions may contract with anybody they see fit to procure this education for the children. The principle is that every child of the State must be educated. That is the principle. Now, so far as the means of doing it are concerned, that is simply a method; and let us, when we go back to our citizens, when we send to the people a completed Constitution, let us, so far as education is concerned, if anything is to be done, present to them an educational article with provisions made for the education of every child in the State who needs it.

Mr. Root — Mr. Chairman, may I ask the gentleman from Rensselaer two questions?

The Chairman — Does the gentleman from Rensselaer give way?

Mr. Peck — Certainly.

Mr. Root — The first is, whether he knows of any town of this State in which provision is not made for the education of children?

Mr. Peck — I know of common schools in towns, district schools

and the same in villages; but there it would require, in order to educate the children of asylums, that they should be taken out in all kinds of weather, that they should be provided with clothing and wraps and everything of that kind for all kinds of inclement weather; more care would be required; more nurses, more keepers, all that kind of thing; and it is utterly unnecessary.

Mr. Root — May I ask the gentleman again to answer my question, if whether he knows of a town in this State in which provision is not made for the education of children?

Mr. Peck — That is a quibble; that is a scheme.

Mr. Root — Will the gentleman answer it whether it is a quibble or not?

Mr. Peck — I say, practically, there is not, for the children or orphan asylums and protectories, where the key is turned upon them. Practically, it is not true.

Mr. Root — He still does not answer the question, Mr. Chairman.

Mr. Peck — I do answer it for all practical purposes, and every practical man in this assemblage knows that the common school does not provide education for orphan asylums, or protectories, or hospitals, or anything of that kind, for children.

Mr. Root — Mr. Chairman, may I suggest to the gentleman that that is precisely why two provisions are included in these amendments, one a provision which is to the first section of the educational article which we have sent to a third reading, that the Legislature shall provide for the maintenance and support of a system of free common schools wherein all the children of the State can be educated; and the other in this proposed article, which provides that "nothing in this Constitution shall prevent any county, city, town or village from providing for the secular education of inmates of orphan asylums, homes for dependent children or correctional institutions." May I now ask another question?

Mr. Peck — Well, let me reply to the suggestion. As a supplement to that first section, we have the fact of the State turning the key on 36,000 children, turning the key between those children and the common schools ——

The Chairman — Does the gentleman from Rensselaer give way for another question?

Mr. Root — Mr. Chairman, I would like to ask him this question, whether the real difficulty in his mind with this proposed article is not that under the amendment which he has read, while counties, cities, towns and villages are permitted to provide for the secular

education of children in orphan asylums, they are not permitted to pay the money to the institutions for them?

Mr. Peck — No, sir. My criticism on that is instead of allowing the civil divisions to do it, that they should be required to do it. "They shall provide for the education of children" upon whom the State turns the key.

Mr. Holls — Mr. Chairman, I had not intended taking any part in the debate of this charities article, and I do not propose to take an extended part now; but reference having been made in the speech of my friend from New York (Mr. Lauterbach), this afternoon, to the amendment No. 2, introduced by me by request, and as the report of the Charities Committee, as now presented, does, in my opinion, strengthen and fortify the report of the Committee on Education, which has been sent to a third reading, a few words from me may not be out of place. First, as to that amendment No. 2. It was, sir, as I have just said, introduced by request, and that request came from an organization open as the day, perfectly frank and straightforward in its methods and its aims, and including in its membership distinguished laymen of every church in the State, both Protestant and Roman Catholic. That organization wished to have that amendment introduced as it was introduced. As to the state of mind of any particular members of this Convention toward the questions therein raised, that is a matter of comparatively little moment; but I wish to say, sir, that the description of his own opinion upon the subject given by our distinguished President this afternoon, in his admirable address, entirely describes also the feelings which I have had at successive periods of this discussion. I have taken occasion in the debate on the educational article to say, and I may be allowed to repeat it here, that not one suggestion or amendment has been here introduced by me, or advocated here or before committees by me, with any other spirit toward the noble charities about which we have heard so much in the speech of my friend from New York (Mr. Lauterbach), except that of profound interest and the utmost good feeling and anxiety for their support and continued well-being. When I have advocated — and I am ready to stand by anything I have said on the subject, for I have said very little — when I have advocated as an abstract proposition the entire severance of the State and its aid from private charities of any kind, I have done so in the interests of the institutions and of the churches which support those institutions, just as much, or more, as I did it for the interests of the State or of any of the citizens of the State. Sir, in my native State of Pennsylvania this question was debated with great ability, and I

regret to say also with great bitterness, on both sides previous to their Constitutional Convention of 1873. The prophecies of dreadful disaster which would come to the institutions if public aid were cut off, were there very dire and very extensive, and the arguments in favor of the continued use by the State of these private means of charity were made with as much ability I dare say as we have witnessed here. The amendment cutting off all State aid for any benevolent, industrial or charitable purpose was carried by an overwhelming majority, and that happened over twenty years ago. I know from experience, and through information from those best qualified to speak, that that decision in Pennsylvania has worked only good and no harm, and I am told by men of the highest authority that there is not to be found in that great State to-day a man, belong he to any church, on either side of the question, who would ever want to return to the old system; but, sir, that merely by way of illustration of the fact that the argument of the question if it were a new question, as our President has expressed it, is not by any means so one-sided as some of our friends here might think. I still believe that if it could be done without crippling and injuring these charities at all, that if at some future time they were told to stand upon the benevolent, the religious and the philanthropic spirit of the members of the church alone, it would be better for the institutions and for their inmates, and I dare say it would be better for the State; but that it would be better for the churches and the institutions I have no doubt whatever; but, sir, there is a difference between New York and Pennsylvania, and there are particular circumstances which confront us here. This State, as Mr. Lauterbach has well expressed it, contains the great city which is the gateway of all Europe coming to this country. The problems confronting us are very singular; and I am satisfied, sir, from my own inspection, observation and study that at this time the Empire State cannot afford to do without the assistance of these private charities, and I am satisfied that it is not wise for this Constitutional Convention to say that it ought to do without them at this time. Under these circumstances what is it our duty to do? Those of us who believe in the absolute separation of church and State, and I hope they are the vast majority of this Convention on both sides of the chamber, must certainly recognize one demand which came in thunder tones to this Convention from every part of the State, and that demand was for absolute protection of our public school system. That, sir, I believe, has been afforded in the best and strongest language possible in the article as reported by the Committee on Education. I am willing to take my stand

on that so far as the educational system of the State is concerned, and so far as we have met the highest ideals of every man in this State who really desires that separation and that protection.

Now, then, we come to the more difficult question of charities, and there I am very glad to state that after a debate which has lasted for months, which has not been without its misunderstandings, nor entirely without its bitterness, there has at last come out of the discussion a paragraph reported here, unanimously, as I understand it, by the most able, conscientious and careful Committee on Charities of this State, an article which in my opinion not only protects all the noble charities which our friends on the other side are so anxious to protect, although not more anxious than I am — protects them in all that is right and good, and at the same time lays down a principle which shall not be violated, namely, that the State's money shall not be paid to a private institution for education; and, secondly, that all these institutions receiving public aid shall be under the strict control of a Board of Charities representing the sovereign power of the State. In my opinion, sir, that is a great and glorious advance over the condition in this State to-day, and for that reason I stand here to advocate this report just as it is, without any change whatever. To my mind the argument of the gentleman from Rensselaer (Mr. Peck) proved, beyond question, and with his acute legal mind he saw the point at once; that this paragraph does carry out the intentions of its friends. It does prevent payments of money to these institutions for education, but, on the other hand, it does not prevent payments of money for care, maintenance and support, which are the principle sources of expense. It absolutely prevents the payment of money for religious education in any sense, and it also prevents those uses which were so clearly and fully stated by our honored President this afternoon. It prevents those forever by putting a board in control which can prevent them.

Now, I have been asked, "Does not the educational article prohibit something to which the charities article opens the door widely?" I answer to my friends, it does not. The charities article, so far from being a limitation upon the educational article, upon anything which in that article is of high and great importance, is a strengthening article. It supplements it at every point where it needs to be supplemented; and on the other hand it is admitted by every one here, by all the friends of particular charities and of any of these grand institutions, that it does not in any way interfere with their usefulness. Now, Mr. Chairman, I may be pardoned when I say that I think that this agreement, and the making of

two articles which supplement each other in the vital points so well as these two on such a question, a question which bore in it the seeds, if they had been nursed by demagogues, or by race or sectarian prejudice, of great conflicts all over the State — that that is a consummation at which we have arrived, is a cause for most sincere congratulation to gentlemen on both sides of this chamber. I sincerely hope that this article will pass this House by a substantially unanimous vote. I sincerely hope the same as to the educational article; for together, in my opinion, Mr. Chairman, they constitute one of the best and highest and greatest achievements of this Constitutional Convention.

Mr. A. B. Steele — Mr. Chairman and gentlemen, having been upon the Charities Committee, I thought, perhaps, it would be no more than proper that I should speak for just a few moments. I shall not attempt to inflict upon the Convention any speech, but merely to express my views and tell of some of the things that we learned while investigating this subject. Now, like Mr. Peck of Rensselaer, I am not quite satisfied with the article as finally reported; but not for the reason assigned by that gentleman. As I understand, his reason is that it does not go far enough. In my peculiar mood of mind, I think it goes farther than it ought to go, and my reasons for that, Mr. Chairman, are briefly these: First, my idea is that charitable institutions, so-called — private charitable institutions — should be charitable We should not rob them, Mr. Chairman, of all their charitable features. Mind you, I am not saying that persons in charitable institutions should not be educated; but if we are to pay for the care, the support, the maintenance and the education, in the name of common sense I ask, where does the charity come in? What is the charitable part that charitable institutions are to do? One gentleman suggested to me that it was to educate their inmates religiously in the particular tenets of the charitable institutions. I fail to see where there is any charity in that. But, Mr. Chairman, I desire to go a little further. In the investigation that we have had I have acted candidly and, I believe, in good faith, and I believe that every one who differs from me upon this subject will concede that I have acted in good faith in this matter and endeavored to gain true light. In making the investigation, Mr. Chairman, we had, as is understood, joint meetings. We had before us the able gentleman from New York, and I refer especially to Mr. George Bliss. He not only appeared before the joint committee and delivered a very able address, but he also furnished for us a speech which has been put in print, that

we might read it at our leisure; and by referring to page 25 of the speech that was made at that time, wherein he proposed a Constitution that would be satisfactory to the great charitable institutions of the State of New York, he used this language, and I wish every one would notice that, because I do not believe, although the gentleman from Rensselaer may repudiate that great man, that the charitable institutions in the State of New York desire to do so, but upon the contrary, I believe if the charitable institutions, and especially the good sisters and brothers who are doing such wonderful work were to choose, they would rather repudiate the gentleman from Rensselaer (Mr. Peck) than the gentleman from New York (Mr. Bliss). At page 25, and under the fourth proposed provision of the Constitution, he uses this language, in speaking of the money to be furnished. He says: "Furnish only for a certain percentage of what it costs the institution to support them," meaning the inmates, "so as to require that they shall keep up the necessity of private benevolence, and shall allow to each institution the same sum per capita for the same class of services and inmates." Not a word said with reference to education, but all he asked, as I understand from that proposition, was merely that a portion of the necessary funds for care and support should be given by the State. Then we come to the next proposition: "No public money shall be used for the compensation or support of any person whose time is employed, either in whole or in part, in religious instruction of the institution." Therefore, if a person acts as an instructor, both mentally and religiously, according to George Bliss, and according to his proposed Constitution, that gentleman does not ask the State or any municipality, any part of the State, to contribute one penny.

But, Mr. Chairman, I desire to go a little further in respect to the investigation which the committee made. It has been asserted by the gentleman from Rensselaer, that it is impossible to educate the inmates of asylums at public schools. I ask the gentleman to go with me to Buffalo. We find there the Buffalo orphan asylum, where are domiciled over 100 orphans. Every one of them, except those in the kindergarten department, attends the public schools, mingling with the other children. They are not dressed in any uniform, Mr. Chairman; there is nothing by which they may be marked as unfortunates in an asylum, and in conversation with the lady who had charge of the institution, as to the effect of this system, I made the inquiry, among others, what class of children attended that school. I was told that they were those "away up," or, as it is termed by some of the New York parties, of the "four

hundred," the middle class and the poor. We asked if there was any trouble in any manner, whether there was any prejudice against these unfortunates, and the answer came, "no." Then the next inquiry was made, "Does it not prejudice parents against the school to have these inmates of an asylum sent there?" And these were prison inmates, sent for vagrancy, or something of that kind; and she replied "Why, no. The idea that a little child should be a criminal!" She claimed there was nothing of that kind. But let me go a little further. If I remember rightly, in the very city from which the gentleman hails, the city of Troy, one of the institutions sends children to the common schools and no fault is found; and I think we can go to New York and find the same thing obtaining in one of the grandest institutions they have there. Now the general assertion is made that the children are cared for better in private institutions than they are in public institutions. That undoubtedly is true of those of tender age, but if you will go with me for a moment to the city of Rochester, go with me to the industrial school there, you can see one of the grandest institutions in the State of New York controlled entirely by the public, nonsectarian, not private, in any sense. Every child there worships his Creator according to his own views or according to the views of the parents or the persons who had charge of him prior to his being sent there; and Mr. Chairman there is not a more exemplary institution in the State of New York; and when I say that I say it knowing full well what grand institutions there are in the city of New York and what a grand work they are doing.

Mr. Dean—Mr. Chairman, I believe there is a substantial consensus of opinion in this Convention that the public schools in this State should be maintained free from all religious influences. I believe that it is equally clear that the charitable institutions of this State should not be deprived of public aid simply because they are in the control of sectarian institutions. Education is an essential element of charity; they must go together in order to make the system complete. While we are agreed upon these propositions, my friend Holls, from Westchester, has lugged into the article a constitutionalization of a lot of respectable, but antique gentlemen, known as the Board of Regents, as now Mr. Lauterbach proposes to impose upon us a State Board of Charities, a Commission in Lunacy, and a Commission of State Prisons. I want to call the attention of this committee, for a few minutes, to the experiences which we have had in this State within the past year under the administration of the State Board of Lunacy, and to ask this Convention if it is willing to constitutionalize such a body. In August, 1893, George

Felton, a citizen of Chautauqua county, became insane and was taken to the asylum in the city of Buffalo. On the ninth day of October, he was found in the corridors of that institution horribly mutilated and dead. A coroner's jury was called which viewed the remains and brought in a verdict of murder. The newspapers of western New York — outside of the city of Buffalo, whose newspapers never say anything in reference to those public institutions that is derogatory thereto — insisted upon a legislative investigation of this murder. The State Board of Lunacy was notified of the case, but up to the last of December not a move was made. In the week between Christmas and New Years, four days prior to the session of the Legislature, the State Commission in Lunacy appeared in Buffalo; one of its members made a stump speech over the remains, stating that they were going to see that justice, with a large J, was done in that case; the newspapers published the speech; it was something over a column in length, something that was entirely out of the proper domain of a public investigating body; and that was spread broadcast over the State. During the session of the Legislature, this Commission in Lunacy held several sessions of its investigation, and Mr. John Killeen, the man who was supposed to be the murderer, offered to produce evidence showing who was the murderer that committed this crime and the State Commissioners in Lunacy refused to receive that evidence. He was dismissed from the service, and as quick as the Legislature adjourned, the Commission in Lunacy suddenly dropped its investigation. This is the character of the commission which it is now proposed to inject into the Constitution of the State of New York. I can see no possible excuse for it. It is the duty of the Legislature to take charge not only of its paupers, but of its delinquents, and there is no reason in the world why the Legislature should not be allowed to select its own agents in whatever form it may deem proper. The State Board of Charities is to-day made up of a very respectable but an entirely impractical body of ladies in this State. Their visits to these institutions are heralded; everything is made ready; they are ushered in, treated nicely, and go home and report that everything is fine — just too elegant for anything. A much more practical way of giving the public information of the true condition of these institutions is to make them open to visitation by a reasonable number of citizens at any time and without previous notice of any intention to visit them. Certainly this is a matter that should be left to the Legislature to be dealt with. It is not a proper subject for constitutional consideration. If we must have an educational article and a chari-

ties' article, let us not drag into the Constitution a lot of commissions. If there is one thing in this State which is unpopular with the people, it is the system of cowardly commissions which has grown up during the past ten or twelve years. I want to say at this time that if there is any one thing more than another that will tend to destroy the usefulness of this Constitution and to bring about its repudiation by the people, it is to insist on asking for these commissions. The people do not want them. There is no need of them; they are not essential to the efficacy of either of these articles; and to have these commissions and boards brought in, it seems to me to be entirely unwise at this time for either of these committees to insist upon such a thing.

Mr. Woodward — Mr. Chairman, I wish to make a suggestion, and not a speech. This article on education proceeds upon the principle that it is the duty of the State to educate the children of the State. That is the principle upon which we start. We are all agreed as to that. Then the question rises, how are we to educate the children in these sectarian institutions? I will tell you how I would do it, and that is what I wanted to get up for. It seems to me that there is a common sense way of getting at this thing. It may not strike your common sense as it does mine, but I will tell you how my common sense would fix it, and that is this: in every one of these sectarian schools I would have the teachers examined, would see that they were thoroughly well qualified. Let the State pay them with the agreement, to start with, that they are not to teach any sectarianism; the moment they do, they are to forfeit their position as teachers and lose their place. They are to teach simply the common branches, and see that they teach those common branches thoroughly. I know that in many of these sectarian schools the common branches are not taught thoroughly. Their pupils are not thoroughly educated when they come out. These teachers can be sent into those institutions and the State can pay for them. If it is necessary to afford any aid to these asylums, afford it outside of the educational objects. Let the educational part remain distinct by itself; have the teachers examined and qualified, with an agreement when they go in there as teachers that they are not to teach sectarianism or anything of that kind, but simply the common branches. Let the State pay for them, as it should, as it does for your children and mine. We send them to the common schools and the State pays; and why should it not pay for these orphan children as well, and see to it that they are all educated by teachers who are qualified? That, it strikes me, is the proper solution of this question; and if you take it up in that

way and adopt some principle of that kind, you do not appropriate any money to sectarian education, but you appropriate it simply to ordinary, common school education, the branches that ought to be taught; and, furthermore, you see to it, then, that these children are properly taught. I know that a great many of these children are not taught by qualified teachers. I have known the teachers of some of those sectarian schools to come out and endeavor to get into the common schools. They could not pass the examination; they had not education enough to enable them to qualify. For that reason, in those schools, inmates are not taught so thoroughly as they ought to be. We want the children of the State to be thoroughly taught, and I think the State is under legal obligations to do it, especially when it establishes free common schools. Why should it not teach the children in these asylums? Not a cent need be paid toward sectarianism. Have it understood that these teachers are not to teach sectarianism; see to it that they are qualified; have an inspection to insure that they will teach properly; let the sectarianism be taught by those who take care of the institution. That would be my solution of it, and it seems to me that it is a common sense solution. In that way you pay for nothing but education. If you choose to pay anything for the charitable support of these children, do it outside of that. I am not speaking now either in favor of this report or against it. I merely make this as a suggestion that commends itself to my common sense. Perhaps I am all wrong, but I thought it was worth while to mention it at least that it might be thought of and considered. I have been in schools a great deal and have had a great deal of experience with them. I have taught Catholic pupils and Catholic teachers, and I know something about education, although I may not be so highly educated myself. I think that is the true way to get along with this matter. That will do full justice to these children and it will do no injustice to anybody in the universe. Nobody can object to that. I care not how sectarian a man may be, he cannot object to teaching the common branches and their being taught by the State and paid for by the State.

Mr. I. S. Johnson — Mr. Chairman, having dissented from the report of the Committee on Charities when it was presented, it is proper that I should state at this time why I dissented. I desire to state now that I did not dissent from the principle that is involved in the last election. I came to this Convention prejudiced, no doubt as many others did, against any appropriations to what were known as sectarian institutions, whether they were educational or charitable. I had been led to believe from circulars, papers and

speeches that had come under my observation, that there had been a great abuse in this direction. But, sir, when this matter came before the Committee on Charities the proposition was made by the chairman of that committee that a thorough investigation should be had, that the committee might make whatever recommendation it did make intelligently and honestly, and go before the people when they got through, knowing what they were doing, and almost at the first meeting after that suggestion was made I made the further suggestion that in no case, in no single instance should the institutions that we were to visit be notified in advance of our coming, in order that when we reached those institutions we might reach them and see them in their every-day clothes, and doing business just as they did when we were not present; and, sir, after making the investigation, after going through the great charitable institutions in the city of New York, after coming all the way up to Troy, Hudson, Buffalo and Rochester, we unanimously came to the conclusion that those institutions should not, by any act or word of ours, be injured in the least; and I stand by that to-day. I was proud of the city of New York when I went through its great charitable institutions. I said that whatever blot there might be upon it, if there were any, it was more than overcome by their noble men and noble women who were carrying on the charitable binstitutions of that great city. But there was another thing I noticed, that the chairman of the committee did not mention, and that was, that these charitable institutions are breaking down the divisions which apparently have existed between the Catholic, the Protestant and the other religious adherents; that when we went to New York and visited Catholic institutions we were led there in many instances by a hard-shell Baptist, and every time that he entered one of those institutions he was received heartily by the members of that institution. The sisters, the brothers and the fathers everywhere recognized that noble man who had spent almost an age in deeds of charity. In visiting the charitable institutions of another place we were led by a noble priest, a father, and we learned that the Humane Society in the city of Rochester possessed, as one of its first members, a priest, and as another, a minister of a Presbyterian institution. We found that these charitable institutions everywhere were breaking down bigotry; we found that everywhere the people were growing better as they knew one another better. But, sir, with all these things we came unanimously to the conclusion that we ought not to do anything that would injure them. However, when we went a step further, when we went out of our line of duty, when we said we would do

the business of other committees and provide for a set of commissions that were not asked for by the men who are sought to be provided for in the Constitution, and to create three commissions that were to last for twenty years, then I said that if that was done I was opposed to this article; and I am opposed to it to-day if you see fit to create three new commissions. Why was it necessary for us to go outside? Why there appeared on the scene here some two or three weeks ago emissaries from Elmira, asking us, sir, to brand the men who had done their duty by investigating the institution at Elmira, and creating another commission, that we might take from the Committee on Charities the power which had heretofore been given to it and place it in the hands of another institution, another commission, and to create it for that purpose. I am opposed to these commissions, and I think, sir, if we are going to carry out the scheme, that we ought to offer a substitute which I have prepared, and which I will read, which is directly in line because of the demand for the appointment of a Prison Commission for the purpose of taking away the power of the State Board of Charities to investigate the reformatories of this State. In the place of the three commissions I would amend by a resolution for the benefit of the public, and I would have it read in these words:

"Whereas, It appears from the statement of its officers that the Elmira Reformatory, so-called, is a noble and humane institution, which should be a model for all others; and

"Whereas, In the opinion of your committee, Superintendent Brockway is a saint, and ought to be embalmed in the Constitution; and

"Whereas, The State Board of Charities has dared to investigate that reformatory and tell the truth in relation to it; therefore,

"Resolved, That, in the opinion of your committee, the usefulness of the State Board of Charities is past, and the powers and duties heretofore exercised by it should be conferred upon Superintendent Brockway, and, on account of his services to humanity in inventing new instruments of torture for the reformation of juvenile and other delinquents, he should be given power to name his successor; and that a committee be appointed to prepare an amendment carrying that humane object into effect.

"Your committee further desire to emphasize their opinion that all departments of this State should be governed by commissions, and although it was not in their province to provide for other than State Commissioners of Charities, they have kindly provided for two others; and if the Convention will extend their time they will

endeavor to provide a commission for each of the departments of this State and for all the subdivisions thereof." (Laughter.)

Now, Mr. Chairman, I have no doubt, if you will give us time, that we can prepare so that this whole State may be governed by commissions. It is nearly so now. And, now, what do we ask? Why, sir, we ask for three commissions. What their size, I do not know; what their pay is, I do not know; but I know that generally when you get a commission that is bound to be recognized, that you cannot do away with, the next thing will be to get the Legislature to have a salary attached to their commission. But, sir, further than that, I am opposed to this provision, because it takes out of the jurisdiction of the Commissioners of Charities the reformatories. Now, I wish just briefly to call attention to the manner in which the Elmira Reformatory was organized. It was first provided that a commission should be appointed to establish a State prison or reformatory. It was designated then as a State prison. The object was to put boys there from the age of sixteen to thirty for the purpose of being reformed — boys who had never before been convicted of a crime of any nature. The whole idea was that of a reformatory. That there might be no stigma upon boys that were sent to the institution; that they might come out and hold office; that they might go to the polls and vote; that they might not be destroyed forever, it was said, in 1887, that the usual penalties should not be enforced; that the right of suffrage should not be taken from them; and all over this State to-day you will find young men who have been in that reformatory who are now holding high positions. It is because they have not been branded as criminals. Now, I say you are putting into the Constitution a provision that shall declare that to be a prison, that it shall hereafter be known as a prison, and that every boy when he comes out of it, must come with his skirts tainted, with the knowledge of all the world that he has been in a State prison. I say it is an outrage. I say that it never ought to be done. I say that if it is put into this article I will not vote for it. Why, sir, when we went to Rochester we found there an industrial school built up on the basis substantially of the Elmira Reformatory. There no boy is punished. The severest punishment is to put him into a cell, and when he is put there a card is placed on the door showing the day on which he was put there, and the offense for which he was put in; and every man that goes through the institution, whether a friend of that boy or not, knows exactly how long he has been incarcerated and how much punishment he is receiving. That is the kind of reformatories we want; that is

the kind of institutions we want; and such institutions, being reformatory, being for the purpose of bringing the boys up, leaving them in a situation, sir, where they will not be tainted as criminals, should be under the charge of that noble institution, the State Board of Charities. There is a contest going on to-day. It is all over, it is in the mouth of every person in the State. Every newspaper has it in hand, and to-day they are denouncing this Convention because they show that they are about to take part in the contention between the State Board of Charities and the Elmira Reformatory; and when you have passed this amendment, if you pass it, it is to be understood, sir, that you have taken part. But, they say it is a prison. I say it is a reformatory, and I want that distinction forever kept between a reformatory and a prison; and when a boy comes out of an institution I want him to come out of a reformatory, and not out of an institution which permits it being said that he has been in a State prison. Now, as to the other institution, the State Board of Lunacy ——

Mr. C. B. McLaughlin — Mr. Chairman, I rise to a question of order. We entered upon this discussion at 11.15 this morning, and the time, as I understand it, was fixed by the committee's rule at four hours. According to my figures, that time has expired, and I think that the courtesy of this Convention is due to the chairman of this committee to allow him at least five minutes in which to close the debate.

Mr. E. A. Brown — Mr. Chairman, I move that the time be extended thirty-five minutes for this question.

The Chairman — That could not be done in Committee of the Whole. I would say though that a few minutes were taken up by other matters this evening which should be deducted from the time allotted to this amendment. Gentlemen will necessarily be brief.

Mr. Johnson — I desire to state that I will offer an amendment which will strike out the clause that takes the Elmira Reformatory out of the first section.

Mr. Lauterbach — Mr. Chairman, that will be offered.

Mr. McDonough — I laid an amendment on the desk, Mr. Chairman.

Mr. McKinstry — Mr. Chairman, I would like to send an amendment to the desk.

The Chairman — The Chair will recognize the gentleman from Chautauqua in a moment. His amendment is received at the desk. The Chair recognizes the gentleman from New York.

Mr. Root — Mr. Chairman, the chairman of the Charities Committee has asked me to say a few words before this debate closes, and what I shall say will be a statement of what I conceive to be the occasion for the new fourth section of the proposed amendment, a statement of what I conceive it to mean and what I conceive its effect to be. I am in favor of the adoption of an amendment including that section, Mr. Chairman, upon the same ground upon which I opposed any proviso to the educational article when that was before the Committee of the Whole. As I view the situation, sir, this Convention having been called upon to deal with the great question of charities has virtually come to the conclusion displayed by the report of its Charities Committee, by the absence of any dissenting report from that committee, by the absence of any proposition to the contrary of that report, that it will not change fundamentally the system under which the unfortunates of this State are maintained; that it will not take from private enterprise, from private asylums, hospitals and houses of refuge, the sick, the blind, the deaf and dumb, the infants, all the great rank of the unfortunates. As we have in effect determined not to change this existing system, we must deal with it as it is. The people who are the wards of the State must be supported where they are. The infants who, by the thousand, are being brought up to be American citizens in our orphan asylums must be educated where they are. How are we to do it, sir? The system as it exists has abuses, gross abuses, intolerable abuses, which it is our duty to remedy. How are we to do it? We cannot do it without mentioning the institutions; we cannot do it by ignoring the subject in our Constitution; we must deal with it and deal with it in a practical sensible way. What is that way, sir? Why, in the first place, observe that we have adopted an educational article which prevents the payment of any money by the State, or any civil division of the State, to any institution of learning or school. Now, the first thing we must do is to see that the effect of that article is not to close the gates of knowledge to the blind, the deaf and dumb and the infants in the asylums. We must do it or we are recreant to a great trust. Accordingly, sir, this section has been drawn, and in its first clause it leaves the existing exception of the Constitution in regard to the blind, the deaf and dumb, and juvenile delinquents and in the very language that is now in the Constitution, it declares that nothing in the Constitution contained shall prevent the Legislature from making such provision for the education and support of the blind, the deaf and dumb and juvenile delinquents as to it may seem proper. Second, it provides that nothing shall prevent any

city, county, town or village from providing for the care, support, maintenance and secular education of inmates of orphan asylums, homes for dependent children, or correctional institutions. We must either set up institutions ourselves, which will take care of the orphans and dependents, or we must prevent our Constitution from precluding the civil divisions of the State from taking care of these unfortunates where they are, supporting, maintaining and educating them. We cannot have the 18,000 children who are now in orphan asylums in the city of New York brought up in dense ignorance. They must be educated. They are to be American citizens. The highest duty we owe to them is that of educating them, above even food and clothing and shelter. If we do not take them out and put them into institutions of our own we must say that the State or some civil division of the State may provide for their education. But this clause, Mr. Chairman, does not say how these civil divisions of the State are to provide for any of these things. Will the gentlemen of the Convention observe that this clause says that nothing shall prevent any county, city, town or village from providing for the care, support, maintenance and secular education of inmates of orphan asylums, etc.? There are four things, care, support, maintenance and secular education. They are to be provided for them. If that stood alone they might provide in various ways. They might provide for them by paying money to an institution, paying ten thousand dollars a year to such a home, twenty thousand dollars to such an asylum, for all four of those things; or they might provide by a per capita allowance. They might provide by sending supplies, by sending teachers to educate. In the next clause, Mr. Chairman, this section proceeds to make a distinction between the first three of these and the last; and that distinction is this: payments by counties, cities, towns and villages to charitable, eleemosynary, correctional and reformatory institutions wholly or partly under private control, for care, support and maintenance, may be authorized by the Legislature. You will perceive, gentlemen, that that leaves out secular education. These civil divisions are not to be cut off from providing for secular education. They are to provide for care, support, maintenance and secular education. They may be authorized to provide for care, support and maintenance by payments to the institution, but their provision for the secular education is left in accordance with the general school system of the State, just as it is done now, Mr. Chairman, in the vast majority of these institutions. Teachers are provided to teach these children, and whether it be in the building of the

institution or in a building across the way, or in a building in the next block, or ten blocks off, I care not. Teachers are provided and paid at public expense. They may have their school in the building. In some cases they do; in many cases they do; in some cases they do not. They may have it in another building. It is of no consequence. The State, answering to the great principle which governs the educational article that we have adopted, provides education for these unfortunates, as it is required to provide education for all the children of the State. Money for care, support and maintenance may be paid to the institution. The teachers, the school books, the desks, the blackboards, all the paraphernalia and material of the school that is a part of the school system of the State, and the vouchers for it, go to the Comptroller or the Treasurer, who is a civil officer, and are paid by him. The control is a part of the general system of control of the institutions of the State. And thus, Mr. Chairman, this line which we started to draw in the educational article is still drawn through the charities article; but in this article every right, every interest, every welfare of every child and every unfortunate is preserved, and every interest of all these noble institutions is guarded, so that they may receive full measure of public aid and support in accordance with the principles which we have adopted; and then, Mr. Chairman, we proceed in this section in a single clause to put an end to what has been one of the greatest abuses, by saying that while these payments to these institutions may be authorized, they shall not be required; so that one who has gone to the local authorities to obtain aid for an institution which they, with all their knowledge, are unwilling to give, cannot go to the Legislature and have them overruled and a mandatory provision put into the law requiring them to give so much money to such an institution. And then, sir, we proceed in this clause to provide against the abuse of this generosity of the State by subjecting inmates of these institutions, so far as they shall receive State aid, to the scrutiny, the inspection and the establishment of rules by the Board of Charities which we establish. Mr. Chairman, this supplements the educational article. It relieves that article, I hope, from the burden of the feelings which have been directed against it by many gentlemen in this chamber whom I respect and admire. It is consonant with the great principle declared there; it is consonant with the rights of these institutions; it is consonant with the welfare of the wards of the State; it carries out every generous impulse, every great principle which is involved in the discussion, which we have had for so many days, and I hope it may be agreed to by this Convention.

Mr. C. B. McLaughlin — I desire to rise to a point of order. The time has expired which was allowed for the discussion of this question.

Mr. McKinstry — I rise to a point of order.

Mr. Acker — Mr. Chairman, I think I have the floor.

Mr. McLaughlin — I ask for a ruling.

The Chairman — The gentleman from Steuben has the floor. The time has not quite expired, the Secretary says.

Mr. Acker — Mr. Chairman and gentlemen of the committee, I, for one, am willing to stand by the report of the Committee of the Whole. The trend of the discussion so far seems to be in favor of that portion of the article which justly and wisely provides for taking care of the charitable institutions of the State; but there are many persons who have raised a cry against constitutionalizing the commissions named in this proposition. To their defense, gentlemen, I come, fearless, and in their defense I beg leave to give you the reason for the faith that is within me. I feel, when I stand up in defense of the State Board of Charities, of the State Commission in Lunacy, that I am among my friends and among the friends of humanity; and they are not superseded, they are not exceeded, they are not equaled, by any person who can or dare denounce them. One of the reasons, gentlemen, why these boards should be constitutionalized is that they may be taken away from the threats of the men and women whom they dare to correct. Let me give you an instance. The State Board of Charities may come to my city and inspect the hospital there and criticise it; and the next thing that is done the management come to me and employ me to go to the Legislature as soon as it meets, to try and lobby a bill through to deprive them of their power. And what is true of the management of the city hospital in my city is true of every other institution in this State; and the reason why, year after year, people have gone to the Legislature and asked that these commissions be removed, and their power taken away, is because they have been made to smart for their illegal and improper actions. You leave them so that the people who have been corrected can come back here every year, and you keep the contest on and on. Now, Mr. Chairman and gentlemen, in respect of the State Commission in Lunacy, I admit there has been conflict; I admit that there has been trouble between them and some of the institutions which they supervise, and now I propose to give you some of the reasons. One State hospital of this State, for the winter 1893-94, presents a bill of nearly a thou-

sand dollars for high-class wines and champagne. Do you wonder, when the State Commission in Lunacy puts its finger upon that kind of expenditure, that they cried out against it? Do you wonder that they send telegrams into this Convention to-day? Another institution presents a bill for men's rubbers at eight dollars and sixteen cents per dozen; another institution, at the same time, buying them for three dollars and fifty cents. When the State Commission in Lunacy puts its finger on the eight dollars and sixteen cents, do you wonder that the commission is charged with committing a great outrage against this particular management because they make it come down and work on a par with the other? And do you wonder that they come to the Legislature with a bill to abolish them? Not at all. And you leave it where it is, and they will always come. Do you wonder, when one superintendent, only three years ago, invested $1,800 in a Holstein bull, that when those corrections are sought to be made, they want to abolish the commission? Again, gentlemen of this committee, within the past year the State Commission in Lunacy has gone into the several State hospitals of this State and weeded out persons who were being supported by the State, who were able to support themselves, at a saving of $60,000 a year to the people of this State. Do you wonder that people then come down here and want to abolish them because they step on somebody's corns who is stealing the State's money? (Applause.) That is the reason why I, for one, am in favor of constitutionalizing them and taking them out of the fret and foam arising from the efforts of those who are made to walk upright and honest. Within this same year the State Commission in Lunacy have gone into these State hospitals and taken out foreigners and sent them across the water or into other States, at a saving of $100,000 to this State. Whenever we begin any such correctional work as that, then you will find squirming, then you will hear people cry out, "Abolish them, oh, abolish them!" Let your commission stand; give it authority so it can work, and do not take away their pay and then turn it over to some single clerk. The State Commission in Lunacy, we are told, has begun a cheese-paring plan, cutting down everything, even as bad as the boards of supervisors. One of the rules they have adopted is an order prohibiting the purchase of adulterated food supplies of any kind for the State hospitals. We are also informed that nearly every superintendent of State hospitals is against this commission. I think, at one time or other, some of them have quibbled, but since that statement was made I have been investigating

it a little, and I desire now to read to you, to offset what it has been said these superintendents say ——

Mr. C. B. McLaughlin — Mr. Chairman, I rise again to a question of order.

The Chairman — The gentleman from Essex will state his point of order. The Secretary informs me that the limit of time expires at ten minutes to ten.

Mr. McDonough — I ask, Mr. Chairman, that the time be extended half an hour.

Mr. Lauterbach — May I ask for an extension of time for five minutes? I wish to speak a few moments after Mr. Acker has finished.

The Chairman — The Chair will inform members that it is impossible for the committee to extend the time. That was fixed by the Convention.

Mr. Acker — As regards the Commission in Lunacy, I read from a letter dated Binghamton, N. Y., March 21, 1894, and signed by Charles C. Wagner, and which relates to State hospitals:

"I desire to say that there is no cause for friction. The new system of revising monthly payments, provided for by chapter 214 of the Laws of 1893, is now fairly in operation and is working smoothly. The commission seems disposed to treat the hospital fairly and to allow proper and reasonable expenditures. I believe the Commission in Lunacy are desirous of securing to the patients in the hospitals the highest possible grade of care, and should regard the abolition of their office as a public calamity."

I might read from a dozen or more letters from different superintendents all over the State, but I desire to skip them and read briefly from a letter which is dated Ward's Island, N. Y., March twenty-sixth, and signed by A. E. McDonald. I leave it to the gentlemen of this Convention to say whether he is good authority or not. He says:

"The ill effects of the abolishment of the State Commission in Lunacy would, in my judgment, be intensified if their present duties, or any portion of them, were assigned to any unsalaried body of officers. The defects complained of in the State asylums, if they exist, are mainly traceable to the fact that the board of management are gentlemen of affairs, fully occupied therewith, and unable to give the time and attention to the asylum matters which a salaried officer can give, and which are essential to its practical and beneficial results."

If any gentlemen want to look at these letters, they will find that nearly every superintendent not only is in favor of the continuation of the commission, but commends the good work that they have done.

The Chairman — The gentleman from New York (Mr. Lauterbach) has one minute.

The Chair wishes to say that he presumes the committee will observe the usual courtesy, notwithstanding the limit, of extending to the mover of an amendment the right to close the discussion. (Applause.)

Mr. Lauterbach — Mr. Chairman, I appreciate the extension of time which has been accorded to me, and will show my appreciation by being exceedingly brief.

I am glad to say that, so far as the fourth section is concerned, there is an almost absolute unanimity of sentiment, that that is essential for adoption, now that the educational section has been adopted, and that the two things must run *pari passu* in order to destroy existing interests; so that nothing further need be said upon that subject. It would appear to me as though the result of a discussion would be to have absolute unanimity in respect of the adoption of that section. The only difference of opinion that manifests itself is as to the appointment of commissions. I endeavored to say this afternoon that there is an expenditure of twenty millions of dollars, substantially without supervision. Three million and a half of that amount is expended by the present lunacy commission. The State Prison Commission that is intended to be appointed, while not supervising the expenditure of much money now, will be called upon to supervise an expenditure of over two million dollars as soon as the amendment is adopted which was passed the other day abolishing contract labor in prisons. In respect of the State Board of Charities, there must be that State supervision in order to carry out the scheme as it had been agreed to, because it is understood that this vast expenditure of money to sectarian and other institutions must have some regulation. It can only be regulated by a responsible body, and the notion is that the State Board of Charities, subject to general laws to be passed by the Legislature, shall have that supervision. We are, therefore, unanimously agreed, I take it, that there must be a State Board of Charities, or the whole scheme that we have endeavored to devise must fall to the ground. Now, that State Board of Charities will have jurisdiction of 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, in all a population of 62,154, together with the supervision of a number of charitable and benevolent societies not included in the above list.

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

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

President Choate resumed the chair.

Mr. Root — Mr. President, I move that the session this evening be extended to twelve o'clock.

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

Mr. Root — Mr. President, I move that we go into Committee of the Whole on the charities article.

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

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

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

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

Mr. Lauterbach — I have finished, Mr. Chairman.

The Chairman — The time for debate has expired. The first question will be on the amendment offered by Mr. Osborn, which the Secretary will read.

Mr. Osborn — I do not desire to make a speech upon this amendment, but simply state that the object of it is to leave the reformatories of this State under the supervision of the State Board of Charities, as they are now. That is a question that has been much talked about by our citizens, and I think it should be brought before the committee in the form of an amendment.

Mr. Gilbert — Mr. Chairman, may I be allowed to state the object of the amendment which I have offered?

The Chairman — Very briefly.

Mr. Gilbert — Mr. Chairman, the reason why I voted for the educational provision is substantially the same reason why I vote against this. This proposition recognizes this principle, namely,

that public funds may be appropriated for private institutions. Now, there ought to be no mistake about this ——

Mr. Lauterbach — A point of order, Mr. Chairman.

The Chairman — The gentleman from New York will state his point of order.

Mr. Lauterbach — My point of order is that the time for debate has expired, and that we are now to vote upon amendments.

The Chairman — That is true. The gentleman from Franklin simply wishes to make a statement.

Mr. Gilbert — I think, Mr. Chairman, this hardly comes with good grace from the chairman of this committee, when we have listened with so much instruction and delight to his argument in favor of the measure. It seems to me that five minutes should be allowed against it.

Mr. Lauterbach — How can I help myself, Mr. Chairman? If any requests had been made I would gladly ——

The Chairman — The point of order, if insisted upon, is well taken, that no debate can be had upon this amendment. The question is on the motion of the gentleman from Putnam, to amend in the particulars which the Secretary will now read.

The Secretary read: Page 1, line 9, strike out all after the word "reformatories" and the first four words of line 9.

Mr. Osborn — I ask for a rising vote upon that.

The Chairman put the question on agreeing to the amendment offered by Mr. Osborn, and it was determined in the negative by a rising vote — 41 to 56.

The Chairman — The question is now upon the motion of the gentleman from Franklin (Mr. Gilbert), to amend in the manner which the Secretary will read.

The Secretary read: Add the following to the fifth amendment proposed by the Committee on Charities: "The provisions of this Constitution shall be subject to the following section:

"Section —. After the 1st day of January, 1905, no money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect or religious denomination, or in aid of any sectarian institution."

The Chairman put the question on agreeing to the amendment, and it was determined in the negative.

The Chairman — The next question is upon the amendment of

the gentleman from Chautauqua (Mr. McKinstry), which the Secretary will read.

The Secretary read: Mr. McKinstry moves to amend by striking out all mention of, and provision for, the State Board of Lunacy in this article.

A count was called for and the Chair appointed as tellers, Messrs. Lester and Cochran.

The Secretary again read the amendment of Mr. McKinstry.

The Chairman put the question on agreeing thereto, and it was determined in the negative by a rising vote — 33 to 60.

The Chairman — The next is upon the amendment of Mr. I. S. Johnson.

The Secretary read: Mr. Johnson moves to amend the first section by striking out all after the word "reformatories," in line 8, page 1, down to and including the word "confined," in line 9, same page.

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

The Chairman — The next is upon the amendment of Mr. McDonough, which the Secretary will read.

The Secretary read the amendment offered by Mr. McDonough in the language following: "In the fifth amendment offered by the Committee on Charities, insert after the word 'maintenance' the words 'and secular education.'"

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

The Chairman — The next is upon the amendment of the gentleman from Seneca (Mr. Hawley).

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

Amend section 1, by inserting at the end of line 2, the words "without pay or emolument;" after the word "lunacy," in line 9, insert the words "without pay or emolument;" on page 2, after the word "prisons," in line 2, insert the words "without pay or emolument."

Mr. McDonough — I call for a division of those questions.

Mr. Hawley — There are three separate provisions, Mr. Chairman, depriving each one of the three commissions from any pay or emolument. The first one, I believe, is the State Board of Charities.

The Chairman then put the question on agreeing to the amendment proposed at the end of line 2, of section 1, as read, and it was determined in the negative.

The Secretary then read again the amendment proposed by Mr. Hawley, in line 9, of the committee's proposition.

The Chairman put the question on agreeing to this amendment, and it was determined in the negative.

The Secretary then read again the amendment proposed by Mr. Hawley, in line 2, page 2.

The Chairman put the question on agreeing to this amendment, and it was determined in the negative.

The Secretary then read a further amendment, heretofore offered by Mr. Hawley, in the language following:

On page 3, strike out lines 2, 3, and 4, and insert in lieu thereof the following: "The Legislature may confer upon the commissions and upon the boards to be created, pursuant to the foregoing sections, any powers not inconsistent with this Constitution, which it shall deem necessary for the effective discharge of their duties, and may, at any time, abolish said board and commissions, or either of them."

The Chairman put the question on agreeing to this amendment as read, and it was determined in the negative.

The Chairman — The question will now be upon the amendments offered by Mr. Lauterbach, which the Secretary will read.

Mr. Hawley — Mr. Chairman, I have a substitute for the entire bill. Should not that be read?

The Chairman — After all the amendments have been disposed of then the substitute will be in order. We must perfect before we strike out.

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

After the ward "are," in section 1, page 1, line 6, insert the word "hereby."

The Chairman put the question on agreeing to the amendment as read, and it was determined in the affirmative.

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

In section 1, page 1, line 7, strike out the word "these" and insert instead thereof the word "the."

The Chairman put the question on agreeing to this amendment as read, and it was determined in the affirmative.

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

Section 1, page 1, line 9, strike out the words "board of," and insert instead thereof the words "commission in."

The Chairman put the question on agreeing to this amendment, and it was determined in the affirmative.

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

On page 2, at the end of line 14, insert the following: "The visitation and inspection herein provided for shall not be exclusive of other visitation and inspection now authorized by law."

The Chairman put the question on agreeing to this amendment as read, and it was determined in the affirmative.

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

On page 2, strike out lines 15 to 22, inclusive, and insert instead thereof, the following:

"Nothing in this Constitution contained shall prevent the Legislature from making such provision for the education and support of the blind, the deaf and dumb, and juvenile delinquents, as to it may seem proper, or prevent any county, city, town or village from providing for the care, support, maintenance and secular education of inmates of orphan asylums, homes for dependent children, or correctional institutions, whether under public or private control. Payments by counties, cities, towns and villages to charitable, eleemosynary, correctional and reformatory institutions, wholly or partly under private control, for care, support and maintenance, may be authorized, but shall not be required, by the Legislature. No such payment shall be made for any inmate of such institution who is not received and retained therein pursuant to rules established by the State Board of Charities. Such rules shall be subject to the control of the Legislature by general laws."

The Chairman put the question on agreeing to the amendment as read, and it was determined in the affirmative.

The Chairman — The last question is upon the substitute of Mr. Hawley, which the Secretary will read.

The Secretary read the substitute offered by Mr. Hawley, in the language following:

"To article 5 of the Constitution add the following section:

"Section 1. The Comptroller shall visit and inspect all institutions, whether State, county, municipal, incorporated or not incorporated, which are of a charitable, eleemosynary, correctional or reformatory character, except only such institutions as are hereby made subject to the visitation of either of the commissioners hereinafter mentioned, but including all reformatories except those in which adult males convicted of felonies shall be confined.

"Sec. 2. Existing laws relating to institutions referred to in the foregoing section, and to their supervision and inspection, so far as such laws are not inconsistent with the provisions of the Constitution, shall remain in force until amended or repealed by the Legislature. The visitation and inspection herein provided for shall not be exclusive of other visitation and inspection now authorized by law.

"Nothing in this Constitution contained shall prevent the Legislature from making such provision for the education and support of the blind, the deaf and dumb, and juvenile delinquents as to it may seem proper, or prevent any county, city, town or village from providing for the care, support, maintenance and secular education of the inmates of orphan asylums, homes for dependent children, or correctional institutions whether under public or private control.

"Payments by counties, cities, towns and villages to charitable, eleemosynary, correctional and reformatory institutions, wholly or partly under private control, for care, support and maintenance, may be authorized, but shall not be required, by the Legislature. No such payment shall be made for any inmate of such institution who is not received and retained therein pursuant to rules established by the Comptroller. Such rules shall be subject to the control of the Legislature by general laws.

"The powers and duties herein devolved upon the Comptroller may be transferred to any other officer or to a board to be appointed by law."

The Chairman put the question on agreeing to the substitute offered by Mr. Hawley, and it was determined in the negative.

Mr. Lauterbach — Mr. Chairman, I move that the committee rise and report the amendment as amended favorably, and recommend its passage.

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

President Choate resumed the chair.

Chairman Vedder — Mr. President, the Committee of the Whole have had under consideration general order No. 67, have gone through with the same and 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. Gilbert — Mr. President, I move to disagree with the report of the committee, and that it be referred back to the Committee on Charities with instructions to amend, by adding a section as follows: "After the 1st day of January, 1905, no money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect, or religious denomination, or in aid of any sectarian institution." Mr. President, I heartily concur in all the noble, warm and generous words that have been uttered upon this floor on behalf of the unfortunate children and adults of the State. Everything said, or that can be said, in favor of giving them proper care and support has my cordial approval. No issue can be made on that point.

Mr. President, we came to this Convention, many of us, with the idea that something ought to be done by way of excluding the appropriation of public moneys to private and sectarian institutions. The arguments thus far made upon the proposition as it now stands have been almost entirely in its favor. The opposition to it has practically not been heard. I think that ought not so to be, in common fairness and with a view to intelligent action. We passed the proposed educational amendment upon the theory that public moneys ought not to be appropriated for private or sectarian purposes. The charities amendment as now adopted is in exact opposition to that principle. Let there be no misunderstanding about this. One of the gentlemen from New York declares that he supported this proposition on the same ground that he supported the educational measure. On the contrary, the ground on which he supported that amendment requires him, in ordinary consistency, to oppose this. I want to make that plain. It is not a matter of opinion, it is a matter of absolute certainty. I read the fifth amendment as it was adopted in Committee of the Whole. "Nothing in this Constitution" — that refers to the entire Constitution, including the article on education recently adopted; it covers that — "Nothing in this Constitution contained shall prevent the Legislature from making such provision for the education and support of the blind, the deaf and dumb, and juvenile delinquents as to it may seem proper, or prevent any county, city, town or village from providing for the care, support, maintenance and secular education of

inmates of orphan asylums, homes for dependent children, or correctional institutions." Now, mark, gentlemen, what is said next, this, namely: "Whether under public or private control." County, city, town or village, all of them may appropriate their money, the public money, for the support of institutions under private control. That is the way it reads. Now, let us read a little further. "Payments by counties, cities, towns and villages to charitable, eleemosynary, correctional and reformatory institutions;" now, mark, "wholly or partly" under what? "under private control for care, support and maintenance may be authorized, but shall not be required by the Legislature." Let us not deceive ourselves, or let any one else do it, as to the real meaning and intent of this proposed amendment.

The gentleman from Westchester, in support of this proposition, refers to the constitutional provision of the State of Pennsylvania. I have it before me; and I ask that gentleman or anybody else to see if he can find anything there which provides for the support of institutions under private control. This is the way it reads: "No appropriations, except for pensions, or gratuities for military services, shall be made for charitable, educational or benevolent purposes to any person or community, or to any denominational or sectarian institution, corporation or association."

That is the way the Constitution of the State of the birth of our distinguished member from Westchester reads, and it is an honest declaration of a right principle. There is nothing in that provision which allows money to be appropriated from the public treasury for institutions wholly or partly under private control. Pennsylvania has adopted the only sound and safe principle on this subject. It is the American doctrine, and should be universal in every State of the Union.

Now, gentlemen, we have got as far as this in the argument, namely, that, beyond all controversy, in adopting the amendment as it now stands, we are violating this salutary principle, which some men here, and multitudes of men and women throughout this State, believe in as of vital importance to the welfare of the State and its highest development. We are violating that principle. But, you say, "shall we not take care of the unfortunate children of the State?" I say, yes. Care for them tenderly, care for them intelligently, care for them sufficiently. But how? Side by side, Mr. President and gentlemen, with the principle which forbids the payment of public moneys for private institutions is another of equal extent and importance, namely, religious liberty, in the largest and fullest sense of which the nineteenth century can con-

ceive. We all believe in that. What will that enable us to do? It will enable the generous, humane and noble instincts of philanthropic men and women to appropriate their own private money for private institutions in behalf of the unfortunates. They may establish private schools if they like; they may establish private hospitals if they like; they may establish private institutions of eleemosynary character of one kind and another, without let or hindrance, and they may teach them according to the tenets which they themselves hold most true. Nothing stands or should be allowed to stand in the way of that. I would say to all these philanthropic private institutions, "Use your own money for these several purposes, according to your own belief and your own inclination, but if there are left any of the unfortunates who are not cared for by private philanthropy, by private benevolence and generosity, then it is the solemn duty of the State to come in and provide for the residue." What shall be done for the education of this residue? At this point, Mr. President, I desire to correct the erroneous impression of any who misunderstood what I said on a former occasion. It was thought by some, when I addressed the committee upon the subject of the educational article, that I was advocating the exclusion of religious instruction; that I would banish religion from the State schools. Now, I want to correct that impression. I thought I made myself understood before, but it seems I did not. Now, Mr. President, I make a clear, broad and constant distinction between religion itself, which underlies all creeds on the one hand, and all denominations and the denomination itself on the other; or, to put it more exactly, there are certain things which we hold in common. As was well said by the member from Seneca (Mr. Hawley), this is a Christian State. Nobody objects to prayers being said in our presence. We believe in it. But there has been nothing sectarian here. We have had religion here every morning; we have addressed the throne of the Almighty for his blessing upon the labors of each day; we have sought that our minds might be illumined for the performance of high and sacred duties. That was religious; but was it sectarian? Was it denominational? I answer, no. It was religious, but there was nothing denominational about it. Therefore, it was proper to come into this chamber. It offended nobody. We did not care whether the man who voiced our aspirations was a Roman Catholic, or a Methodist, or a Baptist, or a Presbyterian, or what not. We cared nothing about that; we asked no questions about it. Now, Mr. President, I maintain that in the public schools and the public institutions of the State, religion ought to enter. Both

men and institutions need the guidance and sustainment of religion — not my particular sect, or your particular sect, but religion, broad, deep and high. Thus I would bring it into the institutions of the State, but I would not bring anything sectarian into them. I would not appropriate the money of the people, whether of the State or of the municipality, for any private sectarian institution. Many members have said to me: "This is a difficult question, a perplexing question." A question that involves a right principle, gentlemen, to which we do not give our practical assent, always involves us in complications and in difficulties, and ultimately in defeat. But when we adopt a right principle, and are loyal to it from beginning to end, the difficulties disappear, the way opens before us; the very stars in their courses fight for us, the mighty forces of the universe that are making for righteousness are on our side, and with a wisdom that infinitely transcends our own short-sightedness, those mighty forces are working out their own beneficent results. And so I say, Mr. President, that as I believe in God, so do I believe in a righteous principle; and as belief in God implies walking sometimes by faith and not by sight, so is it with regard to such a principle, a governmental principle, not less than any other, we must walk by faith in it. To commit ourselves to it, to go where that principle goes and to stop where that principle stops, is the highest practical wisdom. My amendment provides for the ultimate and absolute application of the principle of non-appropriation of public moneys for private institutions, and at the same time gives proper time for adjustment to the new conditions about to be. I recognize the fact that the State has for about twenty years adopted the policy of making such appropriations, and that it cannot break away from it instantly; that is to say, I do not think it would be a right thing to withdraw public support immediately from those institutions that now receive it. They are not prepared for it. They need a little time for readjustment. Let us embody the principle in the Constitution and require its perfect application to be effected as soon as it can practically and fairly be done.

I believe that within ten years the State of New York, on the one hand, and the private benevolences on the other, will adjust themselves to the needs of the unfortunate classes concerning whom we are speaking. I think some such temporary opportunity for adjustment to the conditions that are then to be should be given. It has seemed to me that ten years would be long enough for that purpose. Let us now consider how the amendment as it now stands is likely to operate. You have voted against Mr. Hawley's

amendment requiring these boards and commissions to serve without pay or emolument. This makes it highly probable, at least, that such boards and commissions will be salaried. What will be the result of creating these paid commissions? One result will be that they will become more or less political bodies, unlike the Board of Regents. The latter receive no compensation. Men of high character are called into this position of honor and important service with no political debts to pay or political service to render, or political favors to bestow, and, consequently, it is not political. But with salaried commissions managing these institutions they become political, and there will be a constant contention for positions upon them. If you had adopted the opposite course, you would have obviated that objection, but you have not done it. You voted it down, and you are going to have politics in it, politics and sectarianism. Yes, you are about to inject both politics and sectarianism into this proposed constitutional amendment. You have a combination of those two, and we may say of it as Coleridge did of age and want, "O, ill-matched pair." If this amendment goes into the organic law of the State, we shall have politics and sectarianism working and counter-working and inter-working in the affairs of the State. See how this will operate in regard to the matter which the President so ably presented this afternoon; I refer to the matter of excluding those who are improperly in these institutions, public or private, at the case may be. You are likely to have a paid board to manage these institutions. There will be the usual scramble for those positions. Men of different sectarian beliefs will contend for them. When this board comes to select out of these institutions those who have been there long enough, or who ought never to have been there, it is quite likely that there will be, or will be thought to be, a great deal of partisanship, no end of sectarianism, and, consequently, continual dissatisfaction and mutual distrust. If this amendment goes into the organic law, you will have done what has never been done before in the State of New York; you will have constitutionally recognized the principle that public money may be used for private and sectarian institutions. You are putting into the Constitution that vicious, dangerous principle; you sow the seeds of politics and sectarianism in the Constitution, and from that sowing shall spring harvests that will trouble us in time to come. Mr. President, I believe there is no light by which to guide our course as public men, except the light of eternal truths that shine like the steadfast stars in the heavens. When we undertake to go by the shifting headlands about us we are liable at any moment to incur the dangers of

hidden rocks, or treacherous quicksands. We are now summoned to fidelity to the principle that no public moneys shall be used for private or sectarian institutions. Shall we be faithful, or shall we be faithless to it? That is the question. I tell you, Mr. President and gentlemen, it is not a safe thing to array ourselves against that principle. The statesman with necessarily limited vision, nevertheless, may commit himself to a principle that reaches on eternally, and so his little circumscribed horizon is supplemented by the vast stretches that are beyond it, but which can never escape the eye that sees the end from the beginning. My final word is that the only wisdom for the man, the statesman or the State is in complete fidelity to principles that are righteous and eternal. (Applause.)

Mr. Hawley moved the previous question on the pending amendment.

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

The Secretary read Mr. Gilbert's amendment.

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

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

Mr. Forbes — Mr. President, I deprecated once before the fact that we were required to vote upon an amendment which was simply read from the desk and which we, perhaps, did not fully understand. Upon the understanding which I have of this amendment, I vote aye.

The amendment was lost by the following vote:

Ayes — Messrs. Allaben, Barnum, Brown, E. A., Carter, Clark, G. W., Clark, H. A., Coleman, Cookinham, Cornwell, Countryman, Crosby, Durfee, Forbes, Frank, Augustus, Fuller, O. A., Gilbert, Hill, Johnson, I. Sam, Lester, Lewis, M. E., Mantanye, McMillan, Moore, Parker, Redman, Springweiler, Steele, A. B., Steele, W. H., Woodward — 29.

Noes — Messrs. Acker, Ackerly, Arnold, Baker, Banks, Barhite, Barrow, Blake, Bowers, Burr, Cady, Cassidy, Chipp, Jr., Church, Cochran, Danforth, Deady, Dean, Deyo, Dickey, Doty, Durnin, Emmet, Faber, Farrell, Floyd, Foote, Francis, Fuller, C. A., Galinger, Gibney, Giegerich, Gilleran, Goeller, Goodelle, Green, J. I., Griswold, Hamlin, Hawley, Hecker, Hedges, Hirschberg, Holcomb, Holls, Hotchkiss, Hottenroth, Jenks, Johnson, J., Kinkel, Lauterbach, Lewis, C. H., Marks, Marshall, Maybee, McClure, McCurdy, McDonough, McKinstry, McLaughlin, C. B.,

Mereness, Meyenborg, Morton, Mulqueen, Nichols, Nostrand, Ohmeis, Osborn, Pashley, Peck, Platzek, Powell, Pratt, Putnam, Roche, Root, Schumaker, Smith, Sullivan, T. A., Sullivan, W., Tekulsky, Titus, Towns, Tucker, Turner, Vedder, Veeder, Wellington, Whitmyer, Wiggins, Williams, President — 90.

The question will now be upon the report of the committee.

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

The President — The amendment is ordered to a third reading and goes to the Committee on Revision and Engrossment.

Mr. Root — Mr. President, the Committee on Rules proposes the following limit of time: For the amendment of the Committee on Cities, one-half hour further time. It has already been very fully discussed in Committee of the Whole.

The President put the question on agreeing to this report of the Committee on Rules, and it was determined in the affirmative.

Mr. Root — Mr. President, for the amendment proposed by Mr. C. H. Truax, No. 55, to amend article 14 of the Constitution, the Committee on Rules proposes one-half hour. The amendment relates only to the striking out of some obsolete matter.

The President put the question on agreeing to this report of the Committee on Rules, and it was determined in the affirmative.

Mr. Root — For the amendment proposed by the Committee on Future Amendments, which has already been fully discussed, fifteen minutes further time.

The President put the question on agreeing to this report of the Committee on Rules, and it was determined in the affirmative.

Mr. Root — For the amendment relating to the civil service, No. 26, one hour.

The President put the question on agreeing to this report of the Committee on Rules, and it was determined in the affirmative.

Mr. Root — For the amendment proposed by Mr. Parker, relative to the drainage of agricultural lands, one-half hour.

The President put the question on agreeing to this report of the Committee on Rules, and it was determined in the affirmative.

Mr. Durfee — Mr. President, while we have so very little time on each of these matters, it seems to me that speeches ought to be limited. I suggest that there should be a limit of five minutes fixed for each individual speech on the propositions as to which the Committee on Rules has reported.

The President put the question on limiting individual speeches to five minutes each, and it was determined in the affirmative.

Mr. Cookinham — Mr. President, I move that we now go into Committee of the Whole on the cities article.

The President put the question on the motion of Mr. Cookinham, and it was determined in the affirmative; whereupon the Convention resolved itself into Committee of the Whole, and Mr. Hirschberg took the chair. (Applause.)

The Chairman — The Convention is now in Committee of the Whole on O., I. No. 394, P. No. 464, general order No. 78.

Mr. Jenks — Mr. Chairman, are substitutes now in order?

The Chairman — Certainly.

Mr. Jenks — Mr. Chairman, I offer the following substitute.

Mr. Nicoll — Mr. Chairman, I offer two amendments.

Mr. Dean — Mr. Chairman, I desire to offer an amendment.

Mr. J. Johnson — Mr. Chairman, in connection with this proposed amendment, it having been so fully discussed, I shall not take the limit of time. If it is adopted, it will introduce into the Constitution the proposition that local and special laws affecting cities shall be referred to the city for advice, and that the record of the advice given shall be made a part of the statute of the State; that laws of a general character relating to cities, shall relate to cities by classes, thus obviating the difficulty of laws general in form, but special in application. The result of this amendment, if it should be adopted, would be to introduce into the Constitution the proposition of responsibility for legislation; that the city's responsibility will be shown by the record of the statute; and the Legislature, if it passes without the assent of the city, shall likewise be responsible for that assent. That, sir, we think introduces into the policy of the State, as far as is now possible, the home rule proposition, and carries it further, certainly as far, as it has been carried or attempted in any other State in the Union.

Mr. Nicoll — Mr. Chairman, the amendments which I have offered to this article are those which were proposed by the President of this Convention in Committee of the Whole when the matter was first under discussion. It will be recollected that when this article was first brought in by the chairman of the Committee on Cities, it not only provided for separate elections, but also contained an absolute prohibition against the interference by the Legislature in the affairs of cities. The President of the Convention — upon this floor — moved an amendment providing that

after a special city law had been passed, when the mayor objected to it, it could not be repassed by the Legislature without a three-fifths vote. I have introduced that proposition of the President as an amendment to the present article. During the discussion of this article in Committee of the Whole in the first instance, some proposition was made which substantially agrees in terms with that now introduced by the chairman of the Committee on Cities, to the effect that after a special city law had been passed by the Legislature, and had been referred to the mayor or to the local authorities in a city, it might then again be passed by a majority vote of the Legislature. It was thought possible that some progress might be made with that proposition, and the leader of the majority, the distinguished gentleman from New York, Mr. Root, ran down this aisle on my left, and, standing alongside of Mr. Holcomb, denounced as ridiculous the very proposition which we now find in this last home rule proposal. I agreed with the gentleman from New York that it was ridiculous. What could be more ridiculous than saying that when a Legislature has passed a bill by a majority vote, and the mayor or other authorities of the city object, the Legislature may pass it again by a majority vote. Nothing could be more absurd than that. It was declared to be absurd by the leader of the majority upon the floor of this Convention, and yet for some reason or other that despised and ridiculous and absurd proposition is the final home rule proposal of this Convention. The mountain has brought forth a mouse after four months of hard labor. Now, this home rule proposal really amounts to nothing more than what now exists in connection with city affairs. We all know that now the mayors of cities, either in person or through the corporation counsel, attend the Legislature, make objection to special city laws, are entitled to a hearing, have a hearing, urge their objections, and then the Legislature proceeds to pass them or not to pass them by a majority vote. This is doing nothing more than incorporating in the fundamental law what is the common practice, and I do not think that the distinguished chairman of the Committee on Cities should be allowed to palm off any such manikin measure as this, as a substantial home rule proposal. Is it better than nothing at all? Well, in the language of the song, "not much." Not much better than nothing at all. It provides that after the bill has passed the Legislature it shall be sent to the mayor; fifteen days shall be allowed for the consideration, and whether the mayor objects or not, the Legislature may pass it over again. Well, perhaps, the time given for consideration, the distinct time of fifteen days while the matter is in the hands of

the mayor, amounts to something. Practically, I think it amounts to very little. That is all there is of it. It is a shadow, most attenuated, and if we adopt it and give it the sanction of our votes, we ought to do it with the understanding that it is a mongrel measure of home rule, which bears no more resemblance to a real measure of home rule than a monkey does to a man. I think I may vote for it when it comes up on its final passage, but I do not want to vote for it or have anybody suppose that I vote for it, with my eyes shut. It is perfectly manifest to me that the whole object of this article is to give the people of this State some idea that this Convention is giving home rule. That is the idea, isn't it? Well, it will not fool anybody. You may depend upon that. (Applause.)

Mr. Jenks — Mr. Chairman, the substitute that I have offered is the report of the minority of the Committee on Cities. That represents a substantial home rule article. It confers upon cities the right of local legislation on all matters which are properly of municipal concern. It intrusts to the State all the great police powers which belong to the sovereign government. This present article has one good feature, and that is the feature which has been filched from the minority report of the Committee on Cities. As for the rest of it, it is childish, weak and silly. I would as soon think of attacking a charlotte russe with a trip-hammer as to discuss this measure seriously. It provides that after the Legislature passes special laws the mayor of a city may pass upon the laws. If the mayor is of the same political complexion as the Legislature, then he will agree with the Legislature. If the mayor be of a different political complexion from the Legislature, then the Legislature will pass it over his veto, on the ground that it is political, and that he is a partisan mayor.

This is a great disappointment to me. It may be a balm of solace. It may be something which may cure the wound of the distinguished chairman of the Committee on Cities. Perhaps I shall vote for it. I love him better than my favorite brother, and on account of that I shall give it the complimentary vote which perhaps it deserves. Mr. Chairman, when Saladin, the Sultan, twice conqueror of Syria, the man who made the desert blossom with civilization, the man who withstood the cohorts of Richard the Lion-hearted himself, died, there was carried before him in his funeral procession, his shirt; and before the shirt walked the crier, who cried unto the people: "This is all that remains of Saladin the Conqueror of the East." (Applause and laughter.)

Mr. Chairman, when Robert Bruce of Scotland died, he committed his heart in a golden casket to the Douglas, and when the Douglas set forth upon the crusade, he bore the golden heart of Bruce, as his most sacred charge; and on his way to the great crusade, he was surrounded, in Spain, by the Moors. Seeing the tide of battle turning against him, he flung far the heart of Bruce into the very midst of battle, and cried, "Lead on, oh heart of Bruce; dead or alive Douglas will follow thee!" I hoped to follow the heart of Bruce; I have got to accept the shirt of Saladin. (Applause.)

Mr. Bowers — Mr. Chairman, just a word. There is a certain charm of innocence about my associate from New York, Mr. Nicoll, which is at all times most entrancing. Even in his remarks this evening, I could not but wonder that he should have referred to these days of three weeks ago when our President was still engaged with us in the hope of effecting a Constitution that might be pleasing to the people of the State. My friend, Mr. Nicoll, in his innocence, seems to have forgotten that the days have changed; that the President no longer speaks his own individual views, but that for some days — nay, more for some weeks — we have proceeded under the guidance and direction of those who are seeking to put into the Constitution some outside matters that might help them to curry popular favor in behalf of this apportionment bill. He has entirely forgotten the situation and talks as if we were still a deliberative body, and as if the words we speak might have some effect upon the questions before us. He is almost as charming in his innocence as is my associate from Kings (Mr. Jenks); quiet, and frequently misapprehended in the kindly remarks he makes of his associates from the same city. I have wondered at times whether the chairman of the Committee on Cities was fully able to appreciate the entrancing compliments that are paid him and his article. There was one thing more that could have been said, and that should have been said — that while you are giving to us but the semblance of home rule, under the desire to throw out to the people of the State the claim that you are, indeed, putting into the Constitution something partaking of the nature of home rule, it should have been added that the people of the State are not the only ones who are being at this time misled; there should have been added the statement that the chairman of the Committee on Cities is at length, after devious ways and hard poundings and pretty bitter words and various knock-downs, only permitted by his caucus to offer to the people of the State that which is but an empty shell. From the time when he disemboweled

his own article he should have known that there was an end to home rule for cities, and that there never could be presented by him, or any one else, any article which did in fact even approach to home rule. And to-night, still speaking of his little article as an article giving home rule to cities, he proposes, as has been done by this Convention in the last day or two with several other articles, to give us the law as it stands, clothed in different words — words taken, as was well said by the gentleman from Kings (Mr. Jenks), from the work of his minority associates. Proceed, Mr. Chairman of the Committee on Cities; proceed, gentlemen of the Convention, to pass this measure; but do not think that you will fool the people of the State, even though you fool the chairman of the Committee on Cities.

Mr. Hotchkiss — Mr. Chairman, we have now reached a point in the obituary proceedings where an opportunity is afforded the friends of the deceased to look upon all that remains mortal of home rule. (Laughter.) Born some thirty-eight years ago of Democratic parentage, he was strangled to death in the year 1894 by a Republican majority in a Constitutional Convention. If this article, Mr. Chairman, were not so ridiculous, it would suggest serious consideration for this body. Probably, when this Convention was called, there was no subject in which the cities of the State took so much interest as they did in that of home rule. Whatever may have been the successes of this government in national affairs, it is conceded by all students of municipal affairs, that in them we have accomplished only a signal failure. The opportunity was afforded the Republican party in this State, not simply to grant relief from these conditions, but so to remedy and correct them that for the next twenty years we might have an opportunity to exhibit to the world how far we were capable of self-government. That responsibility rested upon the Republican majority in this body, and that responsibility they have steadily failed to meet. We came here from the cities asking for bread, and we have received less than a stone. The measure that is about to be passed here by this Convention has not within it one single advantage for the cities. It is absolutely barren of all good purpose or result. It will accomplish nothing, and it will remain for the cities to work out their own salvation upon the crude lines which now rest in the mere statutory law of the State.

Mr. Vedder — Mr. Chairman, there has probably never been in any legislative body a term so misunderstood and so misused as that which is denominated home rule. There seem to be in this

Convention three different ideas of what home rule is. On this side of the Convention we mean by home rule, that in all the communities of this State, in the towns and villages and cities thereof, that which has no connection with the State at large, the people may do themselves, without the supervision or guardianship of the State. In other words, it is permitting that to be done by a political community which affects only the community where the thing is done. That is what we understand by home rule. The other idea of home rule that some others entertain is a sexless dream of impossible purity; it is a phantom of the early, uncertain dawn of Mugwumpian intellectuality; it is the fetish of an Utopia of political fools. The other idea, that which seems to be entertained by the other side — the Democratic side — as demonstrated by what they have said here this evening and at other times, is the home rule of the very distinguished gentleman who lived in the country of Douglas, where the heart of Bruce is at last at rest in Melrose Abbey. It was near Loch Katrine, where a gentleman by the name of Rob Roy once lived, where the shirtless and naked Democratic proposition of home rule had its origin, and concerning whom the poet sang in this lofty strain:

"Among these rocks and caves he lived,
'Mid summer's heat and winter's snow,
The Eagle, he was lord above,
And Rob was lord below."

It is the home rule of Rob Roy that our friends on the other side desire. (Applause.) I believe in the home rule enunciated by the distinguished gentleman from Kings, the best fruit of whose legislation in this body is before us to-night. (Applause.)

Mr. J. Johnson — Mr. Chairman, it would have been much better if the quartet that appeared in solo in opposition to this measure, as they sang the same tune in the same doleful monotone, had appeared and sung together. It would have saved ten minutes. (Laughter.) If they had sung, instead of the querulous monotones, "Breath and blow, breath and blow, winds of the western sea," they would have struck this case more nearly.

Now, I want to say to the quartet, and to all that are back of them, that there is more in what they call this "shirt" of home rule, to bring responsibility into New York city, than anything they have thought of in all their imaginings. And I want to say that now and to-night we will rivet it, like the shirt of Nessus, on the animal to whose lair they go for advice. (Applause and laughter.)

Mr. M. E. Lewis — Mr. Chairman, I simply desire to say that I am sorry that I do not agree with my friend, the chairman of the Committee on Cities, in what he says ——

Mr. Root — Mr. Chairman, I rise to a point of order, that the time in opposition to this measure is ended. Under the rule, the time allowed was to be equally divided between those in favor and those opposed. More than half the time has been occupied by those opposed.

Mr. M. E. Lewis — Mr. Chairman, I simply desire to say that I agree with the distinguished gentleman from Kings (Mr. Jenks) in his opinion that this proposition is weak, silly and ridiculous. I believe it to be all of that, and for that reason I agree, also, with the distinguished gentleman from New York (Mr. Nicoll) in his amendment submitted this evening, in the form submitted by the distinguished President of this Convention several weeks ago. I trust that the amendment submitted by Mr. Jenks may be adopted, as I believe it is now the best proposition which it is possible for this Convention to agree upon.

The Chairman — The time limit for debate has expired. The Secretary will read the amendment proposed by Mr. Dean.

The Secretary read the amendment as follows:

"Add to"— something —"that a commission to consist of ten non-partisan men be appointed to take general charge of cities." (Laughter.)

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

The Secretary read the amendment proposed by Mr. Nicoll as follows:

Insert in line 2, page 3, after the word "Legislature," "by a two-thirds affirmative vote of the members elected to each branch thereof."

Mr. Nicoll — Mr. Chairman, I took it from the second proposal of the Committee on Cities.

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

The Secretary read Mr. Nicoll's second amendment as follows:

Insert in line 2, page 3, after the word "Legislature," "by a three-fifths affirmative vote of the members elected to each branch thereof."

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

The Secretary read the amendment proposed by Mr. Jenks as follows:

ARTICLE —.

"All cities are classed according to the latest 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 concern 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 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."

Mr. Jenks — Mr. Chairman, I ask for a rising vote.

The Chairman put the question on the adoption of the substitute proposed by Mr. Jenks, and it was determined in the negative, by a rising vote — 36 to 59.

Mr. J. Johnson — Mr. Chairman, I move that the committee now rise, report this proposed amendment favorably, and recommend its passage.

Mr. Banks — Mr. Chairman, before that is put I would like to offer an amendment.

The Chairman — It is too late for amendments.

The Chairman put the question on the motion of Mr. Johuson, and it was determined in the affirmative, whereupon the committee arose and the President resumed the chair.

Mr. Hirschberg — Mr. President, the Committee of the Whole have had under consideration proposed constitutional amendment (introductory No. 394, printed No. 464), entitled "To amend article 8 of the Constitution by the addition of new sections," have gone through with the same, have made no amendment thereto, and instructed the chairman to report the same to the Convention and recommend its passage.

Mr. Banks — Mr. President, I move that the report of the Committee of the Whole be referred back to the Committee on Cities, with instructions to report immediately the following amendment: "All certificates of indebtedness or revenue bonds issued in anticipation of the collection of taxes which are not by their terms to be

paid within five years after their date of issue, and bonds issued to provide for the supply of water and any debt hereafter incurred by any portion or part of a city, if there be any such debt, shall be included in ascertaining the right of the city to become otherwise indebted. Whenever hereafter the boundaries of any city shall become the same as those of a county, the power of the county to become indebted shall cease, but the debt of the county at that time existing shall not be included as a part of the city debt."

Mr. Johnson — I would say, Mr. President, that this is a proposition introduced by Mr. Banks as to a debt limitation. The debt limitation is now ten per cent on all cities above 100,000. It makes that limitation on all cities. There are probably no cities anywhere near it except the larger cities, but still it is a very valuable contribution. The committee has reported it unanimously, and I should be very glad to have it adopted.

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

Mr. Johnson — Mr. President, I move you now that we agree to the report of the Committee of the Whole, and that this proposed amendment, as it now stands, be ordered to a third reading.

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

The President — The matter now goes upon the order of third reading by way of the Committee on Engrossment.

Mr. Foote, from the Committee on Revision and Engrossment, to which was referred the proposed constitutional amendment introduced by Mr. Cassidy (introductory No. 252), reported by the Committee on Canal and State Finances and Taxation, and by the Committee of the Whole, entitled proposed constitutional amendment to amend sections 1, 2, 4 and 5, of article 7 of the Constitution, in relation to the canal debts and the maintenance of the canals, reports the same as examined and corrected, and as correctly engrossed.

Mr. Foote, from the same committee, to which was referred the proposed constitutional amendment introduced by the Committee on Canals (introductory No. 387), reported by the Committee on Canals, and by the Committee of the Whole, entitled proposed constitutional amendment to amend section 6 of article 7, relating to canals, reports the same as examined and corrected, and as correctly engrossed.

Mr. Foote, from the same committee, to which was referred pro-

posed constitutional amendment introduced by the Committee on Charities (introductory No. 392), reported by the Committee on Charities, and by the Committee of the Whole, entitled proposed constitutional amendment to amend article 5 of the Constitution, reported the same as examined and corrected, and as correctly engrossed.

The President — The next general order is No. 55, introduced by Mr. C. H. Truax.

Mr. Marshall — Mr. President, I move that we go into Committee of the Whole on general order No. 55.

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

The Chairman — The Convention is now in Committee of the Whole on (O., I. No. 256, P. No. 432) general order No. 55, which the Secretary will read.

The Secretary read the amendment as follows:

"Article 14 of the Constitution is hereby amended by striking out all of said article except the thirteenth section, and by amending that section so that the article shall read as follows:

ARTICLE XIV.

"This Constitution shall be in force from and including the first day of January, one thousand eight hundred and ninety-five, except as herein otherwise provided."

Mr. Marshall — Mr. Chairman, I do not think that much explanation is required of this proposed amendment; it has been considered by the Committee on Future Amendments. Mr. Truax, who introduced the amendment, not being present, I have decided to make the explanation which he would ordinarily make. The sections which are stricken out are sections 1 to 12, inclusive, of article 14, they are all dead matter. They relate merely to the officers who were incumbents at the time of the adoption of the Constitution of 1846, and in respect to the jurisdiction of the courts which were in existence at that time, and jurisdiction over pending suits. The only provision of the article which should be continued in force is section 13, and to that the amendment has been made making it applicable to the present Constitution, that it shall be in force from and including the 1st day of January, 1895, instead of 1847, as in the existing Constitution.

The Chairman — Is there any other gentleman that desires to be heard upon this proposed amendment?

Mr. Marshall — Mr. Chairman, I move that the committee rise and report favorably this proposed amendment and recommend its passage.

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

Mr. Nicoll — The Committee of the Whole have had under consideration proposed constitutional amendment (printed No. 432), entitled "to amend article 14 of the Constitution" have gone through with the same, have made no amendments thereto, and instructed the chairman to report it 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 goes upon the order of third reading by way of the Committee on Revision.

Mr. Burr — Mr. President, in view of the fact that there is more business to be done, and I know that the Committee on Rules are anxious that their program shall be carried out, I move that the session be extended to three o'clock.

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

Mr. Marshall — Mr. President, I move that we go into Committee of the Whole on general order No. 12.

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

The Chairman — The House is now in Committee of the Whole on (O., I. No. 368, P. No. 436) general order No. 12, and the Secretary will read the first section of the amendment.

The Secretary read the first section as follows:

"Article 13 of the Constitution is hereby amended so as to read as follows:

ARTICLE XIII.

"Amendments.

"SECTION 1. Any amendment or amendments to this Constitution may be proposed in the Senate or Assembly; and if the same shall be agreed to by a majority of the members elected to each of

the two Houses, such proposed amendment or amendments shall be entered on their journals, with the yeas and nays taken thereon, and referred to the Legislature to be chosen at the next general election of Senators, and shall be published for three months previous to the time of making such choice; and if the Legislature so next chosen, as aforesaid, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each House, then it shall be the duty of the Legislature to submit such proposed amendment or amendments to the people for approval in such manner and at such times as the Legislature shall prescribe.

"Such approval shall be expressed in one of the following methods: First, if such amendment or amendments are submitted at a general election, by the affirmative votes of a majority of all the electors voting at such election, or second, provided two-thirds of all the electors voting at such election shall vote thereon, by the affirmative votes of a majority of such electors voting thereon; third, if submitted at a special election by a number of affirmative votes equal to a majority of all the electors voting at the last previous general election; or fourth, provided two-thirds of the number of electors who voted at the last previous general election shall vote thereon, by the affirmative votes of a majority of such electors voting thereon. Any amendment or amendments so approved shall go into effect on the first Tuesday of January next after its approval."

Mr. Marshall — Mr. Chairman, I offer an amendment to section 1. It in effect strikes out the portion in italics. (The last paragraph.) But I am of the opinion that the principle there enunciated in the portion stricken out is a proper principle which should find its way into the Constitution. I believe at this stage of the work of the Convention it would be improper to press it, and I, therefore, move to strike out those words so as to leave the first section of the article as it now is.

Mr. Bowers — Mr. Chairman, I do not understand the amendment that was offered.

Mr. Marshall — It strikes out the new matter, leaving section 1 in the same language as the present Constitution.

The Chairman — The Chair will state to the House that the amendment has not yet been read. The Secretary will read it.

The Secretary read the amendment as follows:

Strike out lines 9 to 22, inclusive, on page 2, and add after the word "prescribe," line 9, page 2, the words "if the people shall

approve and ratify such amendments by a majority of the electors voting thereon, such amendment or amendments shall become a part of the Constitution from and after the first day of January next, after its approval."

Mr. Dickey — Mr. Chairman, I would like to inquire of the mover of this proposition whether it permits the majority of the voters voting on a particular proposition to carry it?

Mr. Marshall — Certainly; yes, sir.

Mr. Dickey — It is a radical change, then?

Mr. Marshall — It is.

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

The Secretary read the second section as follows:

"Section 2. At the general election to be held in the year nineteen hundred and sixteen, and every twentieth year thereafter, and also at such times as the Legislature may by law provide, the question, 'shall there be a Convention to revise the Constitution and amend the same?' shall be decided by the electors of the State, and in case a majority of such electors shall decide in favor of a Convention for such purpose, the electors of every Senate district of the State, as then organized, shall elect four delegates at the next ensuing general election at which Members of the Assembly shall be chosen, and the electors of the State voting at the same election shall elect fifteen delegates-at-large. The delegates so elected shall convene at the Capitol on the first Tuesday of April next ensuing after their election, and shall continue their session until the business of such Convention shall have been completed. Every delegate shall receive for his services the same compensation and the same mileage as shall then be annually payable to the Members of the Assembly. A majority of the Convention shall constitute a quorum for the transaction of business, and no amendment to the Constitution shall be submitted for approval to the electors as hereinafter provided unless by the assent of a majority of all the delegates, the yeas and nays being entered on the journal to be kept. The Convention shall have the power to appoint such officers, employes and assistants as it may deem necessary, and fix their compensations and provide for the printing of its documents, journal and proceedings. The Convention shall determine the rules of its own proceedings, choose its own officers, and be the judge of the election returns and qualification of its members. In case of a vacancy, by death, resignation or other cause, of any district delegate elected to the Convention, such vacancy shall be filled by a vote of a

majority of the remaining delegates representing the district in which such vacancy occurs. If such vacancy occurs in the office of a delegate-at-large, such vacancy shall be filled by a vote of the remaining delegates-at-large. Any proposed Constitution or constitutional amendment which shall have been adopted by such Convention, shall be submitted to a vote of the electors of the State at the time and in the manner provided by such Convention, at an election which shall be held not less than six weeks after the adjournment of such Convention. Upon the approval of such Constitution or constitutional amendments, in the manner provided in the last preceding section, such Constitution or constitutional amendment shall go into effect on the first day of January next, after its approval."

Mr. Ackerly — Mr. Chairman, I move to amend on page 3, line 6, by inserting "three" in the place of "four."

Mr. Cochran — Mr. Chairman, I desire to amend section 2, page 3, line 11, by adding at the end of the line, after the word "completed," the words "not to exceed five months." Those words were in the original article as proposed by the committee, but seem to have been now stricken out; and the amendment as it now stands would permit the Constitutional Convention to remain in session from the day it convenes until another Constitutional Convention came into existence.

Mr. Dean — Mr. Chairman, I move to strike out the entire section. I should not be true to the memory of the distinguished dead, the Honorable Richard P. Marvin, who drew the section under which this Convention is now assembled, if I did not protest at this time against the sacrilege of entering new statutory enactments in the place of a constitutional provision.

The Chairman — The Chair holds that the motion of Mr. Dean is not in order until the amendments are disposed of. The Chair will recognize Mr. Dean to make his motion at the proper time.

Mr. McClure — Mr. Chairman, I offer an amendment ——

The Chairman — The Chair will not entertain any more amendments until the amendments already offered are disposed of.

Mr. Bowers — Mr. Chairman, it seems to me that this entire amendment ought to fail. The very suggestion made that we should change from four to three, and that we should limit the time the Convention is to continue in session to five months, shows that it has been but carelessly conceived. Undoubtedly the article was originally conceived when there was a supposition that a judiciary

article would be passed which would be sufficient for the people of the State for the next fifty years or more, but as is apparent from the large vote that was given the other night upon the amendment to the judiciary article, which put in the second division of the Court of Appeals, it may be necessary in the future that the Legislature should have power with comparative ease to pass amendments, and the people ratify them, as they have now, it is perfectly plain that this whole amendment ought to fail. And I do not think merely because the gentleman who introduced this may desire to show that there is still some remnant to be saved, that there is any particular reason why we should keep this last general clause as to the manner of calling the other conventions. The Constitution seems quite good enough in that regard at present. It is a pretty late hour of the night, and we are going along with a pretty important matter rapidly, and there is evidently a great divergence of opinion about it, and I think the words that were spoken by Mr. Acker yesterday concerning the Niagara matter, while they scarcely at that time seemed to apply, now apply. We do not know what we do want. Nobody knows exactly what we do want. We have the clock set away back, and here we are, tired, talking upon a matter which may be of serious moment to the people of the State, and I think we better leave it alone, defeat the amendment and defeat the measure.

Mr. Choate— Mr. Chairman, I am surprised to hear of any Democrat being tired; but I rose to say that we know exactly what the working of the present provision as to future constitutional amendments in the present Constitution is. It has served for the calling and the consummation of the work of two Conventions already, and I should be perfectly willing to let it alone.

Mr. McMillan — Mr. Chairman, I concur in the suggestion made by Mr. Bowers, that there is a good deal to this matter and we ought to move slowly; and I, therefore, move that the committee now rise, report progress and ask leave to sit again.

A count having been called for on the motion of Mr. McMillan, the Chairman appointed as tellers Messrs. Morton and Titus.

The Chairman put the question on the motion of Mr. McMillan, to rise, report progress and ask leave to sit again, and it was determined in the negative — 35 to 38.

Mr. Marshall — Mr. Chairman, I am willing to accept the amendment of Mr. Ackerly, to have three delegates from each district instead of four.

The Chairman — The Chair rules that the gentleman from Onon-

daga cannot accept the amendment. It must be put to the committee.

Mr. Marshall — I desire to say just a few words with reference to this section, Mr. Chairman. It was very fully discussed in the Committee of the Whole on a prior occasion. It was then shown to the committee that the reason why this amendment was framed in the language which is contained in this proposition was that, although the Constitution required a Convention to be held every twenty years if the people so voted, and the people in 1886 voted to have a Constitutional Convention, seven years elapsed between the time when the people declared their will and the time when the Convention was held, because the Governor and the Legislature could not agree as to the manner in which the Convention should be held and as to the number of delegates who should be chosen and the manner in which they were to be selected. And it was, therefore, deemed important that that should be specified in the Constitution, so as to make it a self-executing provision. Mr. Veeder introduced an amendment to that effect. Several other gentlemen did the same thing, and their ideas upon that subject were adopted by the committee. The next principle which is contained in this section is, that some provision should be made for submitting to the people the work of the Convention. A very serious question now exists under the present Constitution as to whether or not, when a Convention has adopted a series of amendments, they do not become a part of the Constitution of the State. This amendment will solve that question. I desire to add another section to this proposed amendment, section 3, which meets a contingency which now exists.

The Chairman — The Chair has ruled that it would not accept any further amendment, but inasmuch as there is a time limit to this debate the Chair will accept the amendment of Mr. McClure, which takes precedence of the amendment of Mr. Marshall.

Mr. Forbes — Mr. Chairman, I rise to a point of order. My point of order is that the hour has expired. I will be very willing to sit here until six o'clock to-morrow morning, but I do not want to sit here under a dishonest clock. We have now sat here until half-past twelve, or whatever time it is.

The Chairman — The Chair has no means of knowing that the clock is dishonest. The point of order is not well taken.

Mr. Bowers — I desire to offer an amendment to the amendment offered, making this three, that one of the delegates be selected

from the Democratic party, one from the Republican party and one from the labor party.

The Chairman — The gentleman will please send his amendment in writing to the Secretary at the desk.

Mr. I. S. Johnson — Mr. Chairman, I rise to a point of order. The constitutional day has expired, and my point of order is that we cannot continue.

The Chairman — The Chair regrets to hold that the point of order is not well taken.

Mr. Nicoll — I move, Mr. Chairman, that the committee now rise and report this amendment adversely.

Mr. Holcomb — Mr. Chairman, I would like to offer an amendment, to insert after the words "delegates," line 20, page 3, the words "elected to the Convention."

The Chairman — Will the gentleman please put his amendment in writing and present it at the desk?

Mr. Nicoll — Mr. Chairman, is there any part of the Constitution of 1846 that this Convention can let alone? Must we tinker with every article? Was there no wisdom whatever in our fathers? (Cries of "No.") Do we know so much more than they did? (Cries of "Yes.") Cannot you keep your sacrilegious hands off of something? (Cries of "No," and laughter.) Mr. Chairman, those interrogatories having been answered to my satisfaction, I now move that the committee rise and report this measure adversely.

The Chairman — The Chair will hold that the motion of the gentleman from New York is not in order until the time limit has expired.

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

A count having been demanded on the motion of Mr. Mereness, the Chair appointed as tellers Messrs. Morton and Deady.

The Chairman then put the question on agreeing to the motion of Mr. Mereness, and it was determined in the affirmative — 46 to 35.

President Choate resumed the chair.

Chairman Jenks — Mr. President, the Committee of the Whole have had under consideration proposed constitutional amendment (printed No. 436), entitled proposed constitutional amendment to amend article 13 of the Constitution, relating to further amendments, 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, being in doubt as to the vote, appointed Messrs. Morton and Deady as tellers; whereupon the question was determined in the affirmative by a rising vote — 56 to 30.

Mr. Goodelle — Mr. President, I move that we do now adjourn.

The President put the question on the adoption of the motion to adjourn, and it was determined in the affirmative, and the President announced the Convention duly adjourned until 9 A. M., Saturday, September fifteenth.

Saturday Morning, September 15, 1894.

The Constitutional Convention of the State of New York met at the Assembly Chamber, at the Capitol, Albany, N. Y., Sept. 15, 1894.

President Choate called the Convention to order at 9 A. M.

The Rev. A. Kennedy Duff offered prayer.

On motion of Mr. E. R. Brown, the reading of the Journal was dispensed with.

The President — Are there any motions or resolutions this morning? If not, reports from committees are in order.

Mr. Lyon — I have two joint reports to submit from the Committee on Contingent Expenses and the Committee on Privileges and Elections.

The President — The Secretary will read the reports.

The Secretary read as follows:

"The Committee on Contingent Expenses and the Committee on Privileges and Elections, to which was jointly referred the annexed claim of Kiendl Bros. for counsel fee and disbursements as attorneys for Messrs. Kinkel, Pashley, Nostrand, Deterling and Kurth, contestants for seats from the Sixth Senatorial District, being for $6,000 counsel fee and $542.25 disbursements, would respectfully report that, in the opinion of said committees, a total counsel fee of $1,500, with said disbursements of $542.25, aggregating $2,042.25, would be fair and reasonable in the premises.

"M. H. HIRSCHBERG,
"*Chairman Committee on Privileges and Elections.*
"GEORGE F. LYON,
"*Chairman Committee on Contingent Expenses.*"

Mr. Cookinham — I move, Mr. President, that the report be laid on the table for the present.

The motion to lay on the table was adopted.

Mr. Lyon — I sent another report to the Clerk.

The President — The Secretary will read it.

The Secretary read as follows:

"The Committee on Privileges and Elections and Contingent Expenses, to which jointly was referred the annexed claim of Herman W. Trapper, for counsel fee and disbursements, aggregating $1,704, incurred in obtaining and endeavoring to obtain a writ of prohibition against the Convention, would respectfully report that, in the opinion of said committees, said counsel fee and disbursements having been incurred solely in connection with the writ of prohibition, and no part thereof in the contest upon the merits as to the rights of the contesting parties to the seat, ought not to be allowed.

"M. H. HIRSCHBERG,
"*Chairman Committee on Privileges and Elections.*
"GEORGE F. LYON,
"*Chairman Committee on Contingent Expenses.*"

The President — What action will be taken on this report?

Mr. Cookinham — I move that it be laid on the table for the present.

The Chairman put the question on the motion to lay on the table for the present, and it was decided in the affirmative.

Mr. Cookinham — I move that we go into Committee of the Whole upon the civil service bill.

Mr. Holls — I rise to a point of order, and that is that under the order of the Convention third readings are in order.

The President — The Chair holds the point is not well taken.

The President put the question on Mr. Cookinham's motion to go into Committee of the Whole on the civil service bill, and it was decided in the affirmative.

The Convention then went into Committee of the Whole on the civil service bill, Mr. McClure taking the chair.

The Chairman — The Convention is now in Committee of the Whole on (O., I. No. 206, P. No. 393) general order No. 26. The Secretary will read the title.

The Secretary read the title, as follows:

To amend the Constitution relative to civil service of the State and cities.

It proposes as follows:

"Article 8 of the Constitution is hereby amended by adding a new section to read as follows:

"Appointments and promotions in the civil service of the State, and of cities, shall be made, so far as practicable, according to merit and fitness to be ascertained by examination, which, so far as practicable, shall be competitive.

"Laws shall be made to provide for the enforcement of this section."

Mr. Gilbert — Mr. Chairman, I move to strike the words "so far as practicable" from line 4, and place the same words immediately after the word "ascertained," in line 5. The words "so far as practicable," in line 4, transferred to line 5, immediately after the word "ascertained." It is a verbal, expressional change, rather than one of substance. I suppose, Mr. Chairman, that a simple statement of what this is will be the best argument for it and probably all that this Convention will require.

This embodies first a principle, namely, that appointments to and promotions in the public service shall be based upon merit. I have no doubt everybody acquiesces in that proposition.

Now, merit ascertained how? The answer to the proposition is, ascertained by examination so far as practicable. The question might arise, "Why not make it always to be ascertained by examination?" Obviously, there are cases where that would be impracticable, therefore, we inserted those qualifying words.

Now, in order to make the examination effective, it should be competitive. And here, again, we recognize the fact that there are limitations to that. Now, if we should undertake to prescribe definitely the limits within which this rule should apply, whether by examination non-competitive or examination competitive, we should find ourselves quickly involved in a mass of details; and so, it seemed best to the committee, after very careful and repeated consideration, to leave the application of the principle to the good sense of the Legislature — the application of it. So that the effect of the proposed amendment, as a whole, is to embody in the organic law the proposition that appointments to and promotions in the civil service ought to be based upon merit, fitness — fitness for the particular service to be rendered — and that that fitness should be ascertained by examinations where practicable and those examina-

tions should be competitive, so far as experience shows that such examination is practicable.

I am rather disposed to assume that the Convention is ready to adopt it, that they have already thought about it and believe in it and know about it, and so I will simply make one or two general statements which I suppose will meet ready approval. One is, that this policy of appointments to and promotions in the civil service based upon merit is no experiment. It has been tried now for ten years in this State, and it has been tried in the United States government service, and I believe that I may safely say that while there has been some unwise application of the principle it is, nevertheless, true that the principle has vindicated itself. In this State, particularly, I think, we began at the wrong end. We undertook to carry it too far. In the United States government service they began the other way. They began by trying, feeling their way along to the application of this principle; and the two methods, that of the general government and that of our State, are meeting each other upon a common ground of practicable limit within which to apply this wholesome principle.

Now, with one other statement I am done. This principle, as the Constitution now stands, cannot be applied to public works and to State prisons. The Court of Appeals has so held in respect to one of those departments, and the principle which applies to one would apply with equal force to the other. So that the committee and a very large number of petitioners of high character, very many of whom would be personally known to the members of this Convention, if the large list of names were ready, all concur in this, that we want the principle incorporated in the Constitution, and we want to provide for its application in State prisons and in public works as well as in other departments of the State. Now, if there is no opposition to this, as I will venture to say there will be none, I will take no more time of the committee, but shall be very happy to answer any questions I can that anybody may propose.

Mr. A. H. Green — Mr. Chairman, I would like to ask the gentleman a question, whether the civil service mentioned here is what was called civil service before this last arrangement of eight or ten years ago, which was called civil service organization? Now, the term civil service is a pretty general one as distinguished from that of the military service. I favor the merit system in the civil service. But suppose I happen to be the treasurer of a large fund; I want the power to put my men in to take care of the funds, the safe keeping of which I am charged with. I do not want men who are appointed to put on me a lot of fellows I know nothing at all about.

I have been in such a position. The men in charge of public funds are obliged to appoint men whom they do not know anything about and do not care anything about, who can only be turned out when it is found they have stolen something. I do not approve of it, so far as my experience goes in the civil service. I won't say it is humbug, but it is very wanting in efficiency. And another thing. I think it very desirable to avoid building up a class of men in this community, putting them into office and keeping them there for life, and that is the effect of it in foreign countries. I do not believe in that at all; but if you say that the head of the department itself is to see that the men he employs are men of honesty and men of ability, then I am for civil service.

Mr. Gilbert — That is correct as to men employed in fiduciary capacities.

Mr. Green — But if it is to be put into the Constitution, this stupendous piece of humbuggery which, for the last six or eight years, we have been told is civil service, I am entirely opposed to it.

Mr. Gilbert — Mr. Chairman, I am very glad Mr. Green has raised this question, and in reply would say that the committee considered just the point that he has made and has provided for it. The objection raised by the honorable gentleman was fully considered by the committee, and its absolute propriety was recognized; that is to say, that the objection raised is a valid objection, but not to this amendment; because this amendment contemplates, among other things, just what the gentleman desires. We only say, "so far as practicable." Now, obviously, in cases of fiduciary capacity, it would be impracticable. It is important that a public officer should know the moral quality — the reliability of the man whom he is to employ in a fiduciary capacity — and not to be required to take one of three strangers presented to him.

The Chairman — The experience of the gentleman in parliamentary matters should make him understand the custom, and address the Chair.

Mr. Gilbert — I beg pardon of the Chair. Then, I will say in a word that we have anticipated and provided for just the objection that was raised. There are cases where the application of this examination system would be impracticable, and the Legislature and those charged with the execution of this duty can easily draw these lines, and the opportunity is given by making this as elastic as could be desired. Now, I do not want to take the time of the Convention, but I would be very glad, so far as I can, to answer any further questions.

Mr. E. R. Brown — Mr. Chairman, I move that we rise and report this measure favorably to the Convention and recommend its passage.

Mr. Green — There is an amendment which Mr. Tibbetts wishes to present.

Mr. E. R. Brown — I withdraw my motion then.

Mr. Tibbetts — Mr. Chairman, I desire to present an amendment.

The Chairman — The Secretary will read the amendment presented by Mr. Tibbetts.

The Secretary then read the amendment of Mr. Tibbetts as follows:

To add to the end of the section the following: "Honorably discharged Union soldiers and sailors, who are not otherwise disqualified for such appointment or promotion, shall be exempt from the provisions of this section."

Mr. Gilbert — Mr. Chairman, one word. This is entirely separate from the amendment which I propose, and, with the gentleman's permission, I will ask a vote upon my amendment.

The Chairman — I will announce to the committee that the time limit for this matter is one hour.

Mr. Tibbetts — Mr. Chairman, speaking on the amendment which I have proposed, I have this to say: the proposition which has been introduced here as an amendment is very sweeping in its terms, working a virtual disfranchisement of a large body of noble, patriotic citizens of this State who have heretofore rendered services to the State and nation, which, for years following the war, the State and nation were vying with each other to recompense.

In passing in grand review in May, 1865, through the streets of Washington, I personally saw this legend stretched across the entire east front of the Capitol at Washington: "The only debt which the nation cannot pay is the debt which it owes its brave defenders." In all the northern States of the Union, in the United States statutes, and heretofore in the statute law of this State, the principle has been laid down, that those brave defenders of the nation should not be cut off from employment in the public service, by reason of the fact that their arms and hands have become palsied with age or disease, nor because their intellect has become befogged or weakened by reason of the disease, the seeds of which were sown in the swamps, in the camp, on the march, and on the battlefield in that great war for the preservation of the Union; whose brain peradventure has become weakened by the shock of

battle, or the roar of artillery during those terrible days from '61 to '65. Most of these are old men now, whose life lease is about closed. Before another Constitutional Convention shall have convened very few of them will be left as charges on the bounty, or as applicants for employment in State or national service.

This amendment which I propose will, within that time, very likely become a dead letter. Of those brave men who twenty years from now will be living, perhaps none will be young enough, or physically or intellectually strong enough, to seek or ask employment from this State. Heretofore this class has been deemed worthy of exception from the dreary detail and technical work of a written civil service examination. Why should you now inflict this burden upon them when they are less able by reason of increasing years and diseased bodies, to properly pass the ordeal of such an examination. I repeat, gentlemen, why should you now, for the first time, make this sweeping provision, shutting almost that entire noble body off forever from a possibility of earning their own livelihood in this, the State which, as an integral part of the great Union, they saved to you and yours? Is it because the thirty years that have elapsed since the close of that great rebellion have dimmed your recollections, have dulled your memories to the debt of gratitude which, in the years immediately succeeding that rebellion, it was your proud boast you owed these brave men? That this proposition to amend the Constitution without this proposed amendment will work this great injustice is but too apparent to the most casual observer. These men are neither fitted by technical education or recently-acquired knowledge to cope with the many and intricate questions which are too often asked in such examinations. Their schooling ended when they left schools and academies and colleges of this State to take up arms in defense of this nation and of this the great Empire State. They have neither the youth nor the acquirements to successfully pass such an examination as these civil service reform commissions propose for applicants for public employment.

Let me entreat you, gentlemen, do not do this great wrong in this, the second Constitutional Convention since the close of that war. The other Convention, held so soon after the war, when the memories were green, the recollections fresh, recognized the services of and threw ample safeguards around these wards of the nation. Do not let it be said that this second Constitutional Convention to be held in the Empire State since the close of the war had so forgotten or so little cared for these wards that they were willing, by an actual provision in the Constitution, to debar them from earning

a livelihood in the public works, in the municipalities, or among the other public employments of this State. Gentlemen, if there were not ten veterans who would hereafter make application for employment in the public service of this State, I would still put this exception into this amendment as a fitting tribute, as a monument of the fact that you had not so soon forgotten those services; that you had not so soon forgotten what you owed these brave men; that you were still willing to recognize their services and allow this recognition to remain in the Constitution, if for no other purpose than as a reward of merit.

Gentlemen, very few of us members of this Convention could successfully pass a high per cent on the technical questions which are embodied in the civil service examination papers. Most of them require the knowledge of students fresh from the halls of learning. How much more incapacitated, and how much less chance will those stand of passing such an examination who are aged and palsied and diseased, and whose intellect and brain are dimmed and dulled by the suffering and hardship brought upon them by their devotion to the common cause of our common land.

Gentlemen of the minority, you have not usually been found wanting when the old soldier made application for charity or for employment. Your record and the record of the Legislatures which you have controlled has been a good one in this respect. Applicants, veterans of the late war, have not applied in vain to such Legislatures for justice. It is the proud boast of the veterans all over this great land that this great State has made ample and liberal provision for its wards of the Civil War. Much of this has come from Democratic Legislatures, and I, as one of those veterans, am willing to make this public acknowledgment of that fact. Therefore, I do not believe that we shall be compelled to appeal to you in vain when we ask that you come to our assistance in grafting this righteous exception upon this amendment to the fundamental law of this State.

You of the majority, who are the acknowledged champions of, and whose proud boast is that you have never turned any of those veterans empty-handed from the doors of the Legislature which you have controlled in this State, and which boast is most worthily founded, do not at this late day dim the proud record of all these past years by refusing to amend this proposition, and thereby deny even-handed justice to those noble men in their struggle for existence in competition with the generations born since the war.

Mr. Dickey — Mr. Chairman, lest the voice of Mr. Tibbetts may not have been heard, so that the whole Convention will under-

stand this proposition, I raise my voice in order to attract the attention of the committee to his proposition. It is that the honorably discharged soldiers and sailors of the late war be exempt from this civil service provision, and I take it that when you understand the nature of his proposed amendment, nothing more need be said, because undoubtedly it will receive, as it deserves, the unanimous vote of this committee.

Mr. H. A. Clark — Mr. Chairman, I had the honor of introducing the original amendment in the Convention at the request of certain good government clubs of the city of New York. I claim no credit for the amendment myself, but on considering the matter I believe that if the question of the exemption of soldiers had ever been brought to their attention they would, in framing this amendment, have annexed to it the amendment now proposed by Mr. Tibbetts. The matter never was called to my attention until after it was introduced into this Convention, and I think the question never came before the committee. So far as I am concerned, I am willing to adopt and accept the amendment, and I hope the Committee of the Whole will favor it.

Mr. I. S. Johnson — Mr. President, I do not think it ought to be necessary to call the attention of any committee to such a question as this. It ought to be granted without request; it ought to be put in the Constitution. There ought to be a recognition of the men who made it possible for us to sit in this hall to-day with a united country. I believe, sir, that if we were to look back for thirty years, we would find that there had been another engagement which had lasted as long and substantially over the same days that this Convention has lasted, and during that time there was an army marching for 118 days, fighting 100 days of the 118, from Chattanooga to Atlanta, and during the days like this they were resting a few days before they should commence the march to the sea, where many of them lost their health and their strength, and many of them lost their lives. I hope, Mr. Chairman, that this matter will be put into this amendment without a dissenting voice, and that the old soldiers shall not be forgotten on this thirtieth anniversary of the march of Sherman to the sea.

Mr. Dean — Mr. Chairman, during an active experience in the politics of this State of something over fifteen years, I have never met a man who believed in civil service reform. They have put it on dress parade, they talk it in caucuses and in conventions; but I have never seen a man, unless it may be my distinguished friend, Mr. Gilbert, who seriously entertains the idea. It is simply a cant-

ing piece of hypocrisy introduced from England, and, so far as I am concerned, I want to go on record in this Convention as opposing it. It is illegal and un-American and absurd.

Mr. Jenks — Mr. Chairman, if this proposition is to be embodied in the Constitution, I am very heartily in favor of the amendment of Mr. Tibbetts. This Convention, at this late hour, can make some reparation. It has seen fit not to confer the right upon the brave soldiers and sailors of the war who are living in asylums, who were marching in the dreary struggle at the time that other men were making much, perhaps, out of army contracts. This is simply a reward — not a pension, but a reward — which says to the soldier or sailor that if he be able to pass a civil service examination he shall go to the head of the list when the appointments are to be made. Whether or not this principle is to be embodied in the Constitution it is not for me to say; but if it be embodied, let us make some recognition of the toils and the struggles and the bravery of these men by according them a precedence on a roll of merit. I hope the amendment will be adopted.

Mr. Cassidy — Mr. Chairman, I do not see any necessity for opposing this amendment. It does not mean anything. There are a certain class of people who have to be appeased in this way, and it is not intended here to state a great principle that anybody subscribes to, but merely to throw out baits for votes. This is an exalted principle, put in the Constitution merely for that purpose, and then claim is made that soldiers and sailors ought to be exempt from the provision. Why, Mr. Chairman, no longer than a week ago I knew of a soldier here, in one of the departments, who was sent by the Comptroller, because he was of no earthly use in the Comptroller's office, into another department, and he was bound to be of no earthly use there, and the head of that department wanted to remove him, and the Comptroller said: "Why, we cannot remove this man; we have got to show cause, and inefficiency probably would not be any cause." The man cannot write his name, and yet he is a clerk in one of the principal departments of this State, and it is all folly to say that because a man was a soldier he ought to be thrust upon the people of this State and compelled to remain in a department when he is unfortunate and not capable of doing the work of that department.

Now, Mr. Chairman, if there is any class of men on God's footstool that ought to feel prouder, act nobler, than another, it is the soldier. And yet we are all along trying to pauperize him, trying to treat him as if he were an inferior class of being, as if he were a ward of this great State. I think the soldiers of this State ought

to resent the inference that they are not just as honorable and do not entertain just as lofty ideas as any other class of people; and I do not believe an exception of this kind ought to be made in favor of a class of people that are entitled to the honor and the credit received by the soldiers of this State.

Mr. Countryman — Mr. Chairman, as a member of this committee, I voted in favor of reporting the measure which was before it as constituting the report of that committee. But if this amendment is to be tacked on to it, I give notice now that I shall vote against it. I am opposed to creating or recognizing in the Constitution any particular class of men as entitled to greater rights and preferences than their fellow-citizens. I have no objection to soldiers as such. I would recognize their rights and their merits, and I was in favor of giving them liberal pensions in addition to their regular compensation for the service which they rendered to their country in its hour of terror. But, sir, you have already emptied the national treasury; you have already mortgaged the revenues of this country for the next fifty years. You have required taxation to be imposed upon all the citizens of the country for the purpose of hiring the soldiers and obtaining their votes, and if we have not paid them enough now for all their votes during their natural lives we had better quit. I am opposed to this amendment and shall vote against the entire article if it is incorporated in it.

Several delegates — Question, question!

Mr. Bowers — A point of order, Mr. Chairman. I do not know how it is that gentlemen are in the habit of calling out "Question, question," when there is no motion to which the remarks are properly addressed, and which have not been addressed to the Chair.

The Chairman — It is rather late, Mr. Bowers. Amendments have been offered and are under discussion. The point of order is not well taken.

Mr. Moore — I simply wish to state the ground on which I understand the committee to stand and to explain my position on this point. I am opposed to civil service from A to Z, and while I will permit this measure to go to third reading in order to save time now, I give notice now that I will oppose it at that time.

Mr. J. Johnson — Mr. Chairman, when this subject was presented early in the Convention I had this conversation with a man who is a pronounced advocate and a leader in the cause of civil service reform. I asked first, "Is not such a proposition legis-

lative?" He said it was. I asked, "Is there any reason for putting that which is legislative into the Constitution until it appears that in some degree the Legislature has failed in its duty?" And he was compelled to say there was no reason. I then asked him, "Has not the cause of civil service had all the support in the Legislature, practically, that it has asked?" And I understood him to say it had. So that I can see no reason, from any failure of the Legislature, from any necessities of the case, for putting such a proposition in the Constitution. The suggestion now is to make an exception. May there never, in the emergencies of the future, anything occur that will require other exceptions? I think, sir, that the position then taken was sound.

Mr. Gilbert — Mr. Chairman, only a word. The soldiers who saved the country are fast passing away. This simply provides that, other things being equal, they shall have the preference. That is about the substance of it, and I, for one, am willing to accept the amendment of Mr. Tibbetts, and if there is no further argument offered I hope the vote will be taken.

Mr. O. A. Fuller — Mr. Chairman, I am heartily in favor of this amendment. I believe if we adopt a civil service amendment we should adopt the amendment offered by Mr. Tibbetts. I am sorry to hear my young friend from Schuyler speak in derogatory terms of the old soldiers. He is young and does not know what they suffered during those long and terrible years of the war; he does not know of the terrible battles that they won and the services that they rendered to their country; he was too young at the time of the war and cannot remember. But my friend from Albany is old enough to remember their heroic and noble efforts in the service of their country, and I could only believe, when he would make the same utterances and say that they had robbed and were robbing the treasury of the United States, he was one of the men who were against the soldiers during those dark days, as many of the Democrats were.

Mr. McKinstry — Mr. Chairman, I simply want to say that this Convention has refused to recognize what our soldiers fought for, on a previous occasion. Now, if we refuse to recognize them, as this amendment provides, it seems to me our infamy is about complete. There has been no civil service in the Constitution heretofore. Now, if you are going to transfer to the Constitution the provisions of the civil service statute, transfer with it the exemption of honorably discharged soldiers. Mr. Chairman, these soldiers will not be in our way very long. The roll of the honored dead

grows longer each year as the length of the line that marches to the cemetery becomes shorter. Long after the last soldier is dead, I want it to go down into history, I want it read in this Constitution, that this Convention, assembled thirty years after the war, still appreciated and honored the services of the brave men who saved the Union.

Mr. Galinger — I am in favor of the amendment, but against the original proposition of civil service. It is nothing more than I expected, that opposition to the old soldiers would come from those who wore the flower of woman suffrage. I offer this substitute for the amendment, which I hand up to the desk.

Mr. McMillan — I understand from Mr. Gilbert, who has this matter in charge, that he has accepted, so far as is in his power, the amendment of Mr. Tibbetts, and for the purpose of making progress in this matter, I move the committee do now rise and report progress, and ask leave to sit again. I do that for the purpose of permitting Mr. Gilbert upon the coming in of the report to move to disagree with the report of the committee, and recommit it to the standing committee having the matter in charge, with directions that they report the proposed amendment complete, with his own amendment and that of Mr. Tibbetts.

The Chairman — The limit of time for debate has not yet expired. Does any other gentleman of the committee desire to discuss this question?

Mr. Cochran — Mr. Chairman, I do not desire to have my vote on the amendment misunderstood. I will vote for the amendment, but I will vote against the entire proposition.

The Chairman — The Secretary will read Mr. Gilbert's amendment.

The Secretary read Mr. Gilbert's amendment as follows:

Strike out the words "so far as practicable" from line 4, and place the same words immediately after the word "ascertained," in line 5.

The Secretary will read Mr. Tibbetts's amendment.

The Secretary read Mr. Tibbetts's amendment as follows:

Add at the end of the section the following: "Honorably discharged Union soldiers and sailors, who are not otherwise disqualified for such appointments or promotions, shall be exempt from the provisions of this section."

The Chairman — The question is on Mr. Tibbetts's amendment.

Mr. Tibbetts — Mr. Chairman, at Mr. Gilbert's request, I ask that the words "and shall be given preference" be added.

Several voices: No, no.

Mr. Tibbetts — Very well, I withdraw it.

The Chairman put the question on the amendment of Mr. Tibbetts.

A count was called for, and the Chairman appointed Messrs. Jesse Johnson and Mr. Cochran as tellers.

The gentlemen named acted as tellers, and announced that the vote was 65 to 5.

The Chairman — The amendment is carried.

The Secretary will read Mr. Galinger's substitute.

The Secretary read Mr. Galinger's substitute as follows:

"That honorably discharged soldiers and sailors of the late war be exempted from the civil service examination, and that all that shall be required of them shall be capacity to perform the service for which they are applicants."

Mr. Gilbert — Mr. Chairman, I hope that that will not be adopted.

The Chairman put the question on Mr. Galinger's substitute, and it was determined in the negative.

Mr. Gilbert — Mr. Chairman, I move that the committee now rise, report this amendment to the Convention, and recommend its passage.

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

The President resumed the chair.

Chairman McClure — Mr. President, the Committee of the Whole have had under consideration proposed constitutional amendment (printed No. 393), entitled "To amend the Constitution relative to civil service of the State and 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.

The President put the question on agreeing with the report of the committee.

Messrs. Durfee and Kimmey acted as tellers, and announced the vote as 69 to 22.

The President — The report of the Committee of the Whole is

agreed to, and this amendment goes to the order of third reading by way of the Committee on Revision.

The President — The next business in order is the consideration of general order No. 42 (printed No. 417), introduced by Mr. Parker, relative to the drainage of agricultural lands.

Mr. Holls — Mr. President, with the consent of the friends of this proposition, I shall move, if this amendment is not disposed of at ten minutes after ten, that the committee rise and report progress, for the purpose of getting down to the order of third reading on the bills now before us.

The President — The question is on the motion of Mr. Parker, to go into the Committee of the Whole on the drainage amendment.

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

The Convention resolved itself into a Committee of the Whole, Mr. Osborn in the chair.

The Chairman — The Convention is now in Committee of the Whole on general order No. 42 (introductory No. 327, printed No. 417), introduced by Mr. Parker. The Secretary will read.

The Secretary read the proposed amendment as follows:

"Section 7 of article 1 of the Constitution is hereby amended so as to read as follows:

"Sec. 7. When private property shall be taken for any public use the compensation to be made therefor, when such compensation is not made by the State, shall be ascertained by a jury or by not less than three commissioners appointed by a court of record, as shall be prescribed by law. Private roads may be opened in the manner to be prescribed by law; but in every case the necessity of the road and the amount of all damage to be sustained by the opening thereof shall be determined by a jury of freeholders, and such amount, together with the expenses of the proceedings, shall be paid by the person to be benefited.

"General laws may be passed permitting the owners or occupants of land to construct and maintain necessary drains and ditches for agricultural purposes across the lands of others, under proper restrictions and with just compensation, but no special laws shall be enacted for such purposes."

Mr. Parker — Mr. Chairman, at last we have come to a proposition in this Convention that is in the interest of one of the most important classes in this State. I almost feel that I am a delegate-at-large in this Convention, for there are only two or three others

who belong to the agricultural class in this Convention. I came here with this proposition in their interest. It is the first time a proposition has been introduced here that is decidedly in their interest. The committee to which it was referred unanimously agreed with me that it is a proposition in their interest; that it is not legislative in character; but it gives the Legislature opportunity to pass laws in the interest of the farming community of this State. I want to set an example for this Convention. I have been a very good listener, and I will not now take up the time of the Convention in making a speech. I made a canvass among the members to find out if there was any opposition to this amendment, and could find none. It has received the unanimous report of the committee to which it was referred, and I hope that this Convention will concede this much to one of the largest and most important classes of people in this State. I hope there will be no objection whatever. I think it is a proper thing to put in the Constitution. The farming communities of this State have labored for years and years without the advantage of draining their lands unless they first proved that it was in the interest of public health. That was the only way they could get a drain across the lands of others. This will enable them to do that without going about it in that roundabout way. I think this proposed amendment will commend itself to the judgment of every member of this Convention. The amendment itself is only a new clause added, and does not in any way change the Constitution. The last six lines, from 3 to 7, on the second page, is all there is that is new, and it seems to me that there cannot be any opposition to it.

Mr. Foote — Mr. Chairman, I desire to propose an amendment.

The Chairman — Mr. E. R. Brown has the floor.

Mr. E. R. Brown — Mr. Chairman, I desire to offer an amendment for the sake of perfecting this proposed constitutional amendment, and if the Convention will give me a moment's attention, as it is desired to report this matter within five minutes, I will say that this amendment is the amendment which was agreed upon in the Convention of 1867, and it was submitted in this Convention and referred to the committee which was made up of delegates in this Convention who were also members of the Convention in 1867, and is brought before us for consideration. It is a very proper amendment, and is the result of experience, and from decisions of the Court of Appeals, which has decided time and time again that there is no way of forcing a drain across the lands of another. Now, the drainage of lands is analogous to the private right of way. If

the private right of way is desired, after the necessity judged by a jury of freeholders, it can be done upon proper compensation, and we propose to put the drainage of lands upon the same basis, guarded by the same limitations and same restrictions. The amendment as reported only comprised drains and ditches, and I want to add, if the committee will permit, "and dikes."

Mr. Foote — Mr. Chairman, I agree with the proposer of this constitutional amendment as to the propriety and as to the necessity of the amendment, but I wish to go further and amend the section now under discussion by enlarging the scope of the public use for which the Legislature may permit the exercise of the power of eminent domain so as to include the storage of water, to promote not only agriculture, which is the amendment of the gentleman from Orleans (Mr. Parker), but manufacturing, domestic and sanitary uses. For that purpose, Mr. Chairman, I desire to submit a substitute for the pending measure, which is broader in its terms, but includes all that is desired by the gentleman from Orleans; and it permits the Legislature to declare by law that the erection of works to exclude or convey water for manufacturing, domestic or sanitary purposes, may be declared by the Legislature to be a public use, and bearing upon that proposition I desire to say a single word.

We have in this State a large number of rivers upon which are situated water-powers, the usefulness of which has been seriously affected by the cutting off of the timber which had served to retain the water and let it come down gradually throughout the summer. Now, the freshets in the spring carry off this water and by midsummer the streams run dry and the water-power becomes of no avail. With the development of uses of electricity in this State it becomes very important that this water-power should be preserved and every means adopted to make it more and more useful. I refer to the case of the Genesee river, where nature has provided a place where the waters of that river may be stored in the spring by means of a dam, benefiting miles and miles of water-power along the river to its mouth. As the situation stands to-day, it is not in the power of the Legislature to authorize the construction of a dam across that river and charge the expense upon the property benefited. Now, the question is whether or not this can be put upon the broad basis where the Legislature can permit the majority of the owners of the property to be benefited to construct that dam.

Mr. Dean — Mr. Chairman, I simply desire to say that this provision should be amended so that we can go down town and take

possession of a grocery store or bowling alley. It would seem as if private property has no rights here at all.

Mr. Schumaker — Mr. Chairman, the Committee on Preamble and Bill of Rights had an all summer's discussion upon this measure, and I think it was pretty well agreed by that committee that the amendment of the gentleman from Monroe (Mr. Foote), was wrong, and should not be in the report, and so we reported the amendment in favor of the agricultural interests which was proposed by Mr. Parker. This will overturn all the old regulated rules and laws in this State, with the amendment of the gentleman from Monroe in it. It will divert streams in every direction throughout this State. There will be general laws passed by which it will be impossible for any person to feel secure in his water privileges. I have known of several instances, where whole streams have been diverted into a new direction by the consent of the property owners along the line of such stream. It was done by consent, and consent only. But there are a great many instances where attempts have been made in the different Legislatures of this State to take the rights of the people away from them, and the only barrier that stood between the people and the Legislature was the Constitution of 1846, which said, you shall not divert the course of a stream. I know the Genesee river has plenty of water that can be obtained for manufacturing, and there is plenty of manufacturing along its line. I believe, also, that Niagara Falls has plenty of water that can be utilized almost in every direction for the use of manufacturing. But when you get into the country where there is a small mill and there is a large manufacturer who wishes to erect a large establishment, who would have the advantage as far as pecuniary means in the obtaining of laws from the Legislature are concerned, and the people having the small mill would be swept away, and the large aqueducts would be built by which they could establish larger establishments on the same line. I do not think it is fair to the old-established mill or the people who live upon the streams, where they have lived for years and years, to have the Legislature give the power by which these larger concerns can take the privileges of the smaller concerns away from them. The larger establishments utilize both water and steam-power at the same time. The small mills have no steam-power. I hope this Convention will not approve of Mr. Foote's amendment.

Mr. A. H. Green — Mr. Chairman, as has been said by Mr. Schumaker, this matter was very fully discussed in the Committee on Preamble and Bill of Rights. Now, it is a question for the committee to determine, whether private property shall be taken for

private uses. That is a novel proposition in this State. This is entirely distinct from drainage for agricultural purposes, whether a man's property can be taken for private purposes. I wish to offer another amendment to this proposed amendment. On page 1, line 1, section 7, strike out the words "as shall be prescribed by law," and insert in lieu thereof "at the option of the owner of the property to be taken, and the expenses of the proceedings shall be paid before the property is taken."

That comprises two propositions. One is that the owner of the property which is to be taken by force — by public proceedings forced from him — by all these proceedings by eminent domain is having taking property away from him against his will. The question now is, who is to fix the price for that? I would say that the owner of the property should say whether he shall go to a jury and be paid for the property in full.

The other proposition is that he shall be paid in money before the property is taken. I know of proceedings where the report of the commissioners came in after years of delay, and after the title had passed. For instance, under the late Rapid Transit Act, the minute the commissioners take the oath of office the title passes and you are left to get your money as best you can. I think this is all wrong. I think before a man's property is taken from him the cash should be put in his hands, and he should not be left to the delays of the court before he gets his money. I think it is a principle which should be adopted and put into the Constitution. I have seen enough hardship that has come to men after their property has been taken away from them. Ten years since a proposition was put into law that a man's property could be taken from him before payment. Before that time payment was always made at the time the property was taken, but now by some decision of the courts you take the man's property from him without paying him until after a long delay.

Mr. Peck — I think, Mr. Chairman and gentlemen of the committee, that it is very unfortunate that this proposed measure is to be discussed in so limited a time, and during such confusion. There is a changed state of things since the last Constitutional Convention. At that time water-powers were not of the public benefit that they are now; but with the discovery of electricity as a conductor of power from one locality to another, the water-power has again become of great commercial value, because electricity can be generated by it with a very small expenditure; whereas, where it is generated by the consumption of fuel it is very expensive proceeding. Therefore, water-powers have become of great

public use and benefit, and I am heartily in favor of the substitute proposed by the gentleman from Monroe (Mr. Foote), because it will enable the public to take advantage of the water-powers in the State of New York, as it will be taken advantage of in other localities, to the great benefit of the community. I don't think that I ought, under the circumstances, to take any longer time than to simply point out to the members of this Convention the necessity, as a public benefit, of utilizing our water-powers and taking from the water-power electricity to be carried to more distant points.

The Chairman — The Chair would remind the gentleman that only five minutes more remain for the time allotted to this amendment.

Mr. Marks — Mr. Chairman, I desire to offer an amendment.

The Chairman — Mr. Marks will send his amendment to the desk. Do you desire to speak on your amendment, Mr. Marks?

Mr. Marks — No, sir.

Mr. Goeller — I also have an amendment which I will send to the desk.

The Chairman — Does Mr. Goeller desire to speak on his amendment?

Mr. Goeller — Yes, sir.

Mr. Francis — Mr. Chairman, I do not propose to enter into an analysis of science, or to make an argument covering all the principles embraced in this proposed amendment, but simply I have this to say: that the subject had the careful and patient attention of our committee, and after much consideration it was adopted and recommended for passage by a vote unanimous, or nearly unanimous.

Mr. Goeller — Mr. Chairman, unfortunately this provision in the first seven lines is not broad enough, and it has even been indicated in this Convention that there is danger of passing general laws of this kind — they are ill-considered laws. The objection which I find to the first seven lines of this amendment is, that it repeals too many laws — pardon me, Mr. Chairman, I find I am a little premature in my remarks owing to the fact that the amendment that I offer has not been read. I ask, Mr. Chairman, that it be read. I will briefly state what the amendment is. It is to the effect that all existing laws in reference to street opening in the city of New York and other cities are not to be affected by the passing of this amendment.

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

The Chairman — The gentleman will state his point of order.

Mr. Schumaker — The gentleman is talking about another amendment.

Mr. Goeller — I was speaking in reference to Mr. Parker's amendment, general order No. 43.

The Chairman — We are on No. 42.

Mr. Barrow — Mr. Chairman, I am in favor of the proposed amendment offered to this bill by Mr. Foote. It has been suggested by the opponents of this proposed amendment that this is a novel proposition. It is not a great many years ago when it was considered a novel proposition that railroad companies should have the power of exercising the right of eminent domain.

Now, I simply want to present to this Convention one single illustration of this matter which has come under my notice. I have in mind a large manufacturing establishment which required water for its washing purposes, its ordinary purposes, and not for power. Some three miles from their establishment they sank some large wells to procure this water and proposed to carry it to their establishment. They had not the power to lay pipes to conduct the water to their establishment through the lands of other people, and those people asked for the privilege such an exorbitant price that they could not afford to do it. If the mill that I refer to had this privilege it would enable it to employ a large number of men, and without this provision it will be unable to do very much. I, therefore, hope the amendment will be adopted.

Mr. E. R. Brown — Mr. President ——

Mr. Woodward — There was a similar case in reference to the village of Batavia. There was a large number of springs from which they could get the best of water ——

The Chairman — Mr. Brown had the floor, Mr. Woodward.

Mr. E. R. Brown — Mr. Chairman, I desire to withdraw the amendment which I offered. I think this proposed amendment has been well considered and has received very careful attention by the Committee on Preamble and Bill of Rights, and it ought not to be loaded down at this hour with amendments. I, therefore, withdraw my amendment.

The Chairman — The gentleman from Jefferson withdraws his amendment, and the time for debate upon this matter having expired, the first question will be upon Mr. Marks's amendment. The Secretary will read it.

The Secretary read Mr. Marks's amendment as follows:

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

"But the compensation to be made for property taken for any public use by any civil division of the State, shall be ascertained by a jury or by not less than three commissioners appointed by a court of record as shall be prescribed by law.

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

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

The Chairman — The question now arises on the amendment of Mr. A. H. Green. The Secretary will read it.

The Secretary read the amendment as follows:

Page 1, line 1, section 7, strike out the words "as shall be prescribed by law," and insert in lieu thereof the words "at the option of the owner of the property to be taken, and that the expenses of the proceeding shall be paid before the property is taken."

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

The Chairman — The question now arises on the amendment proposed by Mr. Goeller. The Secretary will read it.

The Secretary read the amendment of Mr. Goeller as follows:

In line 7, after the word "law," insert "this provision shall not affect, impair or repeal the law or laws now existing relating to street openings and the taking of land or private property for street openings in the cities of New York and Brooklyn, and this provision is not to be construed as altering or repealing wholly or in part any such existing laws."

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

The Chairman — The question now arises on the substitute proposed by the gentleman from Monroe (Mr. Foote), which the Secretary will read.

The Secretary read the amendment as follows:

"Section 7 of article 1 of the Constitution is hereby amended so as to read as follows:

"When private property shall be taken for any public use, the compensation to be made therefor, when such compensation is not made by the State, shall be ascertained by a jury, or by not less than three commissioners appointed by a court of record, as shall be prescribed by law. The necessary use of lands for the construction and operation of works serving to retain, exclude or convey water for agricultural, manufacturing, domestic or sanitary purposes may be declared by the Legislature to be a public use. Private roads may be opened in a manner to be prescribed by law; but in every case the necessity of the road, and the amount of all damages to be sustained by the opening thereof shall be first determined by a jury of freeholders, and such amount, together with the expenses of the proceedings, shall be paid by the person to be benefited."

The Chairman put the question on Mr. Foote's substitute, and it was determined in the negative.

Mr. Parker — Mr. Chairman, I move that the committee now rise, report this amendment to the Convention, and recommend its passage.

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

The President resumed the chair.

Chairman Osborn — Mr. President, the Committee of the Whole have had under consideration proposed constitutional amendment (printed No. 417), entitled "Proposed constitutional amendment to amend section 7 of article 1 of the Constitution, so as to include therein the right to construct and maintain necessary drains and ditches for agricultural purposes across the lands of others," have gone through the same, made no amendment thereto, and 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.

Mr. E. R. Brown — On that I move the previous question.

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

The President 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 order of third reading by way of the Committee on Revision.

The Chair is in receipt of a communication from the Compiler in answer to the demand made upon him yesterday by the Convention. The Secretary will read it.

The Secretary read the communication as follows:

To the Constitutional Convention:

"Gentlemen.— Pursuant to the resolution of your honorable body, the Compiler respectfully submits the following report:

"In ordering and directing the printing for the Convention your resolution of date June thirteenth, page 227 of the Journal, has been carefully followed. This resolution provides, among other things, that 'If the total copy delivered to the printer in any one day exceeds fifty pages, no more than that number of pages shall be governed by the rule hereby established, and the matter to be so governed shall be specifically designated by the Secretary or Compiler. The Compiler or Secretary may enlarge the time herein fixed by specific direction, given in writing, at the time any copy is delivered to the printer.'

"The total copy delivered to the printer nearly every day since July thirty-first has been much in excess of the specified fifty pages, of which total The Argus Company has printed an average of sixty pages daily, thus more than complying with the conditions of your resolution.

"The proposed amendments, calendar, documents, Journal and other printing designated by the Secretary to be delivered at once have been given precedence over the debates, the printing of which has been thus delayed.

"GEORGE A. GLYNN,
"*Compiler.*"

The President — The communication will be placed in the archives of the Convention.

Mr. Holls — Mr. President, I move that we now proceed to the third reading of the article on education.

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

Mr. I. S. Johnson — Mr. President, I rise to a question of order. On the third day of September the amendment in reference to bribery was reported favorably from the Committee of the Whole and ordered to a third reading. I would like to know why it has not been delivered to the Revision Committee.

The President — The Chair has no information upon the subject. Can the Secretary inform Mr. Johnson?

Mr. Foote — I think I can inform the gentleman. The gentleman from Erie (Mr. McMillan) moved to reconsider the vote by which that amendment was adopted, and that that motion lie upon the table. Under the ruling of the Secretary, it took to the table with it the amendment itself.

Mr. Johnson — The amendment was then upon the order of third reading, and at the time Mr. McMillan's motion was put this Convention was not in the order of third reading.

Mr. Holls — Mr. President, I call for the regular order.

The President — The Secretary will read the title of the educational bill.

Mr. Johnson — What is to become of my point of order? I submit that we should have this amendment here so that it can be acted upon.

The President — The Convention has decided to take up the third reading of the educational article. I would suggest that a motion to take it from the table would accomplish what Mr. Johnson desires. Does Mr. Holls withdraw his motion to enable Mr. Johnson to do that?

Mr. Holls — No.

The Secretary will read the title of the educational article.

The Secretary read the title as follows (O., I. No. 388, P. No. 439):

"Proposed constitutional amendment to amend article 9 of the Constitution, relating to free common schools."

The President — The matter is now open for debate.

Mr. McKinstry — Mr. President, I shall vote against this educational amendment, as reported by the committee, because I am not one of those who consider the great danger menacing this nation by the union of church and State. That possibility becomes more and more remote each passing year, and the condition against which we may well feel the greater apprehension is of the time when we

may have no church and no State. The forces with which civilization has to contend, even now, are not the religious organizations, but that great mass of ignorant, desperate population transplanted to our shores, destitute of respect for law, and of every sentiment that even savors of religion.

I hear complaint that in some public school in this State the local authorities have seen fit to employ Sisters of Charity to teach a primary department. The proposed amendment will not stop that, for it does not forbid boards of education from employing teachers of any particular religious sect, nor proscribe their accustomed garments, and it is denied that these teachers are instilling any particular religious doctrine. But even if they should intimate to some ragged little boy that there is a life beyond, that there is a higher responsibility than forced obedience to a human teacher, that there are other faculties to be cultivated than those which master arithmetic and spelling, the sight of those devoted women, in garb of black, is far more pleasing to me than the scenes which even the present generation in Paris has witnessed, of women in red, armed with incendiary torches and leading mobs imbued with the spirit which President Garfield aptly called "The red fool fury of the Seine."

I have comparatively few Roman Catholic constituents, and my ancestors lived in the region of old Londonderry, where it was considered an act of the highest service to God to kill a Catholic. I have no predilections in favor of that sect, but I have lived long enough and traveled extensively enough to coincide with the conclusion of General Lew Wallace, the author of the greatest Christian romance of the age, when he says that "Any religion is better than no religion." Place your amendment on the solid ground of public school money exclusively for public schools, and then add your prohibition of religious teaching, and I will vote for it, because it does not discriminate unfairly, but this amendment reported by the committee says to every private corporation now conducting or which may hereafter establish a school or academy in this State: If you are infidel or atheistic, if you have no religion about you, the State treasury is at your service; but if you are controlled by religious people of any sect, you shall be forever barred from receiving one dollar of public money. For such a discrimination as that I shall never vote.

Mr. President, gentlemen glibly talk of the absolute divorce of church and State. The English-speaking race has always recognized religion in the State. Would you uproot it? Then you must abolish our form of solemn oath in the halls of justice; no longer

permit public officers to qualify with hands upon the holy Bible; cease the morning ministrations of clergymen upon yonder rostrum; never again recognize the priestly office in the rite of matrimony; cut from our school books the account of Washington's prayer at Valley Forge; omit the closing invocation from our National Hymn. Our Anglo-Saxon tongue speaks the chosen language of liberty. Wherever upon the face of the globe its accents are heard, there law and order and also religion are established.

Thirty-seven years ago the great historian Macaulay wrote to a friend in New York the following gloomy prediction concerning our future:

"Either some Caesar or Napoleon will seize the reins of government with a strong hand, or your republic will be as fearfully plundered and laid waste by barbarians in the twentieth century as the Roman empire was in the fifth — with this difference: that the Huns and Vandals will have been engendered within your country by your own institutions."

Mr. President, I trust that dire prophecy may never prove true, but I believe that the first step toward its realization will be the act of setting religious bodies against each other and filling the people with the insane idea that their great danger lies in recognizing religion in the State. With vice rampant and corruption triumphant in high places, the flood of ignorance and anarchy constantly increasing, let us welcome rather than repel every possible means of good to the human race. At least, let us not discriminate against them as this amendment proposes.

Mr. Peck — Mr. President, I move to recommit, with instructions to report forthwith amended as follows.

The President — The Secretary will read Mr. Peck's amendment.

The Secretary read Mr. Pecks amendment as follows:

Add to section 4 the following: "This section shall not prevent the Legislature from making provision for the secular education of the blind, the deaf and dumb, juvenile delinquents, orphans and other dependents, or legally committed children, inmates of charitable institutions, by the employment of persons duly qualified, according to law, as teachers of public schools, to give instruction in such institutions during usual school hours."

Mr. Foote — Mr. President, I beg to offer the following amendment.

The President— Mr. Foote moves to recommit, with instructions to report forthwith an amendment.

The Secretary read the amendment as follows:

Amend section 4 so as to read as follows:

"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, not wholly owned or controlled by the State or a civil division thereof.

"No creed, doctrine or tenet of any religious sect or denomination shall be taught in schools or institutions of learning receiving such maintenance or aid."

Mr. Foote — Mr. President, the section as it now stands provides that no public money shall be used to support any school or institution of learning, wholly or in part under the control or direction of any religious denomination. Now, what does that language mean? What is a school or institution of learning in part under the control of a religious denomination? Does it apply to and affect the academies and seminaries of learning of this State which are known as denominational schools, but which are incorporated by law, having boards of trustees who manage the same, exactly as private institutions are managed? If so, what is to prevent the change of all existing religious schools upon the same basis, so as to become entitled to public money? I submit that this language is indefinite and uncertain, capable of infinite evasion by persons in charge and control of these seminaries and academies, which may be reorganized so as to make them in form fully entitled to receive public money. I submit that the only proper basis for an amendment of this kind is one to provide for public money for public schools only, that the amendment submitted by me accomplishes that purpose and at the same time prevents the teaching of religious dogmas in those schools.

Mr. Bigelow — Mr. President, I move to strike out the first section of this amendment, which provides that 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. There is, I am happy to say, a very considerable number of the children of the State that can be educated at the expense of their families, and are so educated. I see no occasion for providing schools for that class. That is my first objection.

My second objection is that it is entirely out of all propriety to tie up the Legislature in regard to the degree and extent to which it will provide education for the people. It seems to me that both

of these propositions are so simple and plain that it is unnecessary to discuss them. I move that the first section be stricken out.

Mr. H. A. Clark — Mr. President, I do not understand this amendment as some of the other delegates seem to understand it. It has been said here upon the floor that it would prohibit the reading of the Scriptures even in the public schools of the State; it would prohibit the teaching of any religious doctrine in the public schools of the State. I must confess, in examining the language of this amendment, I do not construe it in that way. I do not believe that it means that the fact that there exists a deity should not be taught, or that the great principle of religion should not be taught, but, on the other hand, that denominationalism should not be taught in the schools of the State. It does not say anything about the great principles of religion. It means to say that Catholicism, Presbyterianism, Methodism, the doctrines of immersion, the doctrines of the different sects, should not be taught in the public schools of the State. I believe that the amendment is right; that the proposition as it stands should be adopted; that religion as a principle can be taught, not as a denominational doctrine, but as a great, broad principle that is believed by nearly all the people of the land. I hope that this article, as reported to this Convention, will be adopted, with the addition of the amendment of Mr. Foote, which I hope will also be adopted.

Mr. Moore — Mr. President, is it in order to present a substitute at this time for this bill?

The President — It is in order to make a motion to recommit, with instructions to report forthwith a substitute for the amendment under consideration.

Mr. Moore — Mr. President, I move to recommit, with instructions to report forthwith the following substitute, which I will send to the desk.

Mr. Woodward — Mr. President, I wish to say a word with reference to this question of education. A few years ago the question of parochial schools was discussed in the city of Rochester by the teachers' institute to which I belonged. I took pains at that time to examine all the reading-books and text-books that were used in our common schools that I could get hold of, and many were sent to me by publishers. I found that at least one-eighth of all those school-books or reading-books contained more or less of religious or moral doctrines, but not one of them taught denominationalism, and there was not one of them that I examined that contained any infidel doctrines. The question came up whether

our common schools were not infidel schools. I took the ground that they were not infidel schools, and I took the matter up and examined into it, and found that at least one-eighth of the matter to be found in our reading-books was of a religious or moral character. None of it was denominational. Frequently, in these books, were passages of Scripture, but not such as to give rise to denominationalism. I also found in the works on chemistry and grammar that there were more or less clauses of Scriptural character teaching that there was a deity. I mention this as a circumstance which I hope will be taken into consideration in the passage of this amendment.

Mr. E. R. Brown — Mr. President, I desire to offer a resolution relating to the order of business of the Convention as follows:

R. 218.—"Resolved, That the Committee on Rules report a modification of rules 35, 36, 37, 38 and 39, so as to permit general orders Nos. 67, 26 and 42 to be read a third time to-day, without being printed and without debate, and to permit all other amendments on the order of third reading to be read the third time to-day without debate."

The President — The question is on Mr. Brown's resolution.

Mr. McClure — Mr. President ——

Mr. Bowers — A point of order, Mr. President.

Mr. McClure — Mr. President, I desire to ask Mr. Brown to what subjects the particular amendments refer. He has only recited the number attached to the amendments.

Mr. Brown — They relate to charities, drainage and civil service, none of which, it appears to me, need further debate, and the other matters that are upon third reading. The gentleman is as well informed about them as I am. It seems to me that this is a very proper resolution, and one that will enable us to put before the people of the State, at once, the great bulk of our work.

The President — The question is on Mr. Brown's resolution. Mr. McDonough and Mr. Cochran will act as tellers.

Mr. Root — Mr. President, I do not think the members of the Convention generally understand what the proposition is.

The President — The question is on the motion of Mr. Brown, instructing the Committee on Rules to modify the existing rules so as to permit the amendments which have passed to a third reading, the amendment on charities, on drainage and on civil service reform, to be read a third time without being printed or reprinted by the Committee on Revision.

The gentlemen named above acted as tellers and announced the vote as 46 to 58. (Applause.)

The President — The resolution is lost.

Mr. McIntyre — Mr. President, I move to recommit to the Committee on Education, with instructions to strike out section 2, and report forthwith.

Mr. McIntyre — Mr. President, I want to speak a few words in relation to the subject of education. I stand by what I said when it was up for debate before, in relation to section 2, that I think it is unwise to constitutionalize the Board of Regents. As to the section in relation to sectarian instruction, I have been opposed to it from the first, and I stand here, now that the charities article has been adopted, to say that I think it is unwise. I think it subjects the Educational Committee to a great deal of adverse criticism, and I think it agitates the subject of religious discussion, and I believe the future will show that it is unwise. I think the discussion we have had here on this subject of education and charities has been in some respects profitable, because it has shown that we were laboring under a mistaken idea of the extent to which public aid was extended, and many of us thought that, perhaps, there were many frauds perpetrated in connection with it. When this Convention first assembled the agitation had been so great that many members thereof were surcharged with the idea that frauds were being perpetrated in the way of education and of charity, but I am glad to say that when the committees went forth to examine into it there was not found a single footmark of anything that was corrupt or wrong. But now that the charities have been placed on a broad and sure foundation, and the doors have been opened wider than ever before, I think we have done enough. Talk about home rule for cities. This subject of charities was a matter for the cities alone to control. The great charitable institutions of the State were supported and carried on by the cities, and you should have left them alone. Now you have constitutionalized it. There was no agitation in our public schools about religious matters. When people get up here and say they will divorce church and State absolutely in education, I say it is an absurdity on its face. The very principles of our government are founded on religion. There is not an educational board in the State which does not ask every applicant, who comes before it to be employed as a teacher, whether he or she is a professor of religion, and then they go on and question them, and before they get through they are apt to ascertain what church they belong to. When you say there

is no such thing as religion in education, I contend that it is not so. Why, it permeates every single department of education and always will; and if the time ever comes when it does not you will find this is no longer a nation. You may talk against it, you may put into the Constitution all the laws you see fit, but it still exists, and it always will exist. Now you have got the charities so remodeled that the passing of this section here does not particularly hurt, only in this respect. The rural districts of the State will open their eyes just so soon as that article is passed, because the issue will be at once, in every school, whether a denominational tenet is taught or not, and religious agitation will at once take place, and all this discussion and talk which we have had at length in this Convention will go out broadcast. Do you think it will do us any good? You strike out all the schools and academies that are under any denominational control and you raise that issue. In our Normal schools the question has already been agitated. I am one of the members of the local board of one of the Normal schools, and I know whereof I speak, and in that school there are a great many Catholics, and they have objected to having a certain amount of religious instruction in that school. Now, just as soon as you pass this article they will say: "We want no religious instruction," and that will be reported to the Superintendent of Public Instruction, and the State will have to say to that school: "You must stop reading the Scriptures; you must stop all forms of religious instruction whatever;" and it will be so all through the State, and a religious agitation will spring up all over. I will put my protest here against it, and then I will vote with the majority; but I want to record the fact that I do not believe in it at all. I do not believe in your charity article the way you have got it. It was better as it was. I think the matter should have been left so that the local authorities in New York city, where substantially all of the charitable institutions are located, could control it. Let the city of New York take care of her charities. She has done noble work in that respect! For one, sir, I must say that I never conceived the great good that was accomplished by the charitable institutions in that city, and I say God-speed to them, and if they can continue the good work they have been doing I would like to have them go on forever! I will tell you, gentlemen, I do not think you really understand this. I think you have been looking too much for political favor, and not at the real interests of the people. It has been said that the people of the State of New York have come here and cried out against it. I deny it.

The President — The gentleman's time has expired.

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

Mr. McIntyre — I do not wish any further time, Mr. President; I am through.

Mr. Cassidy — Mr. President, I wish to offer an amendment, and will preface it with a few remarks. I want to say this, and I know it is the word of a crank; at least I shall assume so, and I presume other members of the Convention will think so; but, sir, I maintain that under the article reported by the Educational Committee the State is going into the business of discriminating between private schools. It was asserted here in the discussion of the charities article that the State would not give one dollar of its money for any private school. That is not true. Section 4 reads as follows:

"Neither the State, nor any subdivision thereof, shall use its property or credit or any public money in aid or maintenance of any school or institution of learning wholly or partly under the control of a religious denomination, or in which a denominational tenet is taught."

Impliedly, that does not shut out the State from using its money for its public schools. Impliedly, that does not shut out the State from using its money for any private schools that are not denominational. The State may use its money, for instance, for a Masonic academy, or for a Redman's academy, only it must not be a denominational academy. Now, I say this is miserable small business for the great State of New York to go into — discriminating between private institutions. If the amendment which I offered a few days ago had prevailed, it was said that the State might have had under it local option in sectarianism. I say that, under this amendment proposed by the Committee on Education and under the educational article as it now exists in the Constitution, there is not a prohibition placed upon any school board, and I hope the day will never come when any prohibition shall be placed upon a school board, and that they shall be obliged to ask a teacher what his or her religion may be. A school board has no right to inquire into the religious character of its public school teachers. The only question which the State has a right to ask is, are the teachers competent to give a certain amount of secular instruction? And so the local option, the rank sectarianism, which was urged as a reason why the amendment which I proposed ought to be defeated, could be urged with even greater force why the amendment offered by the Committee on Education should be defeated. Take, for example, an A. P. A. academy, and an A. P. V. academy, and they each

desire a State grant. The State says to them: "Do you come within the provisions of the amendment?" They say: "Yes, we are not denominational, and we do not teach a denominational tenet." But then a third academy steps up and says: "Yes, they do." Now, the State must determine whether those academies are denominational schools or not. I say it is absurd, and I say such a thing should not be.

I want to read an article which appeared in the New York Sun of September 10, 1894, on this subject:

"This committee, if it would accredit itself to the population of the State aright, would have been far more prudent to take testimony from the various educators, or at least to have taken into its councils the oft-repeated policy of a large body of the people. In doing the same work, our English cousins might well be a model to us. The great school commission of 1886, after due deliberation, enunciated the platform that religious instruction is absolutely necessary in primary institutions.

"After all, the religious force is one of the controlling elements of civilization. A generation that grows up with no greater fear of wrongdoing than dread of the policeman's club will never be a law-abiding generation.

"This Educational Committee puts itself in the category of those of whom St. Paul, in Romans i, 28, says: 'And as they did not like to retain God in their knowledge, God gave them over to a reprobate mind.'"

That is an article from a well-known newspaper, which, I think, is very pat on this subject. Now, in order to obviate some of the abuses, I offer the following amendment, to add section 5 to the article already proposed, which section 5 shall read as follows:

"No local board of education shall employ any school teacher who espouses any religious sect, nor shall any teacher who is employed appear in the garb of a nun, the cassock of a priest, the close-buttoned coat of an Episcopal rector, the white necktie of a Methodist minister, the stern countenance of a Presbyterian, or the lank figure of a Baptist, nor in the severe simplicity of a Shaker, or the drab materials affected by the Society of Friends. To avoid all appearance, and even suspicion, of sectarianism or sanctity on the part of public school teachers, the following uniform is prescribed:

"For male teachers, the zouave dress adopted by Colonel Billy Wilson's noble regiment in the war for the Union; for female teachers, the latest bicycle costume imported from Paris."

Mr. Powell — Mr. President, when this article was originally ——

Mr. Veeder — I rise to a question of privilege.

The President — Mr. Powell will give way while Mr. Veeder states his question of privilege.

Mr. Veeder — I do not like the way in which my religion is characterized by this amendment of Mr. Cassidy's. I think it is an improper amendment. I think it is an offense to religion.

The President — The Chair is of opinion that that is not a matter of privilege of a member, as it applies to an entire congregation.

Mr. Veeder — It is the conduct of this Convention in seriously entertaining an amendment which is so insulting to every religious denomination that I object to.

The President — I think the gentleman has exhausted his question of privilege, and Mr. Powell has the floor.

Mr. Veeder — Make it plausible, Mr. President, and whatever you do I will agree with you.

Mr. Powell — When this article was originally before the Convention, I voted against it because I believed it was so drastic that it would destroy those magnificent charities which have been erected everywhere in the State of New York, and are now doing their beneficent work under sectarian control. I was not aware at the time that the entire sectarian element in this Convention had given its assent to a charitable article which would absolutely destroy all the meaning or significance contained in the educational article. You might take these two articles side by side, Mr. President, and you might arrange a curious stuffed dog out of them, and on one side you might print: "Beware of the ferocious anti-sectarian law," and on the other side you might hang the charitable article and inscribe thereon: "Don't be afraid of the dog. His teeth have been extracted." Now, that is just exactly what these two articles amount to. One comes forth with great force and blazes as an anti-sectarian bluff. I suppose that is to be held out to the people of one class, and they are to be pointed to it as the work of this Convention. On the other hand, the charitable article, which takes out of the educational article the very heart and core, leaving only a meaningless husk, is to be held out to the people on the other side for them to look at. Now, I suppose, in the minds of many gentlemen in this Convention, it is possible to vote for the stuffed dog with two labels, and then go out to the people of the Empire State and call that statesmanship. Mr. President, it may be the highest type of statesmanship to pass one amendment, and then immedi-

ately afterward to pass another amendment which practically nullifies that which has gone before. But I suggest to this Convention that there are just two things which the sensible people of the State of New York want, and only two things: in the first place, they want a constitutional assurance that the moneys raised for public education shall not be diverted to sectarian use; and, in the second place, they want a guarantee of some kind that these charitable institutions shall be put under the supervision of some power which can speak with the voice of authority. That is what the people of the State ask for, and not what the bigots ask for. We are not to listen to bigots in this Convention. This is what the sensible, conservative people of the State of New York ask for by a vast majority to-day, and they come to this Convention — and what do we give them? An insult to religion of every kind. We give them an amendment which provides, as has been suggested by the gentleman from St. Lawrence, that in none of these schools shall we be able to read one word of any sacred book, or one word of religious teaching or moral truth, which is founded upon religious teaching. The people have come to this Convention and asked for bread, and now we are about to give them a stone. And after all, sir, what do these two amendments amount to when you place them side by side? They will be the law exactly as it is to-day, except that they constitutionally open the door for any sectarian school by applying to the Legislature for proper rules to control the State Board of Charities to come in and acquire public funds. If gentlemen have any doubt about that, let them turn to the second page of the charities article, which must now be considered as part of the educational article, for it seems that all sides have agreed upon the two. It is provided in this charities article that all the charitable institutions may receive payments from counties, cities, towns and villages, only that the rules under which inmates are received and discharged are to be formulated by the State Board of Charities, subject to the supervision of the Legislature. Suppose I go to work and organize a charitable school and I charge absolutely nothing for tuition. I apply to the State Board of Charities or to the Legislature for rules governing admission into that school. I apply to the local board for money. It is granted to me, and I may teach any religion and doctrinal tenet, anything that I see fit, and there is not one word in the Constitution of the State to prevent it. I submit, sir, that this great stuffed dog — these two magnificent articles now hitched together — are a most magnificent illustration of how not to do it after you have gotten through with the proposition. But I suppose that the stuffed dog will go

through, for it seems to be slated; but you cannot pull the wool over the eyes of the people of the State. They will read these two articles, not one at a time and separately, but they will read them side by side, and they will sneer at the work of this Convention.

Mr. Holls — Mr. President, it would be well if the opponents of this and of the charities article would consult together a little before they make their speeches, for their arguments do not harmonize. My erratic friend from Schuyler complains that this article goes too far, and my vociferous friend from Kings is sure that it does not go far enough. The one says that it takes everything of a religious nature out of the schools. The other maintains that it opens wide the doors to sectarianism. I think it is a happy omen for this article that it should be open to criticism from the extremists of both sides. But the abuse — which I am sure was unintentional — which the gentleman from Kings has heaped upon this article and upon the charities article is most undeserved, and his statements about them are absolutely false. These two articles put together are in no respect an infringement of religious liberty, and in no respect an attack upon, let me say, sir, with all the emphasis which I can command, religion or morality. Moreover, they are not meaningless, and any church, institution, hierarchy or individual which shall, after their adoption, dare to consider them meaningless will find to its sorrow, if the law officers of the State do their duty, that there is very serious meaning in them. The article on education absolutely prohibits the diversion of public funds for sectarian schools, and the abuse heaped upon it by its opponents shows that it does so effectively; but, sir, I do not believe there is a lawyer in this State who would decide that the article on education had anything to do with charities as such. Hence, in the article on charities we have gone a step further and have provided that although we are not interfering with the providing of care and maintenance for the wards of the State, we do absolutely prohibit the payment of a single dollar to a private institution of charity for the purpose of education. In my opinion, this is a great step forward, and I will follow the gentleman from Kings anywhere in this State before the people and show them what these articles mean, and, instead of meeting us with his sneers, I know the honest liberty-loving people will say that we have done well. All these amendments which have been offered at this time are hostile to the entire scheme, which is comprised in these two articles, and which I believe to be the best work which we can do in this Convention for education, in guarding it against dangers, and, at the same time, putting the charity work of the State upon a firm foundation. Every one of

these amendments should be voted down for that reason. The article as it stands, backed up by the charities article, is a step in advance. And I want to say, in reply to some words which my friend from Franklin uttered in haste, and no doubt with good intentions, last night, that he is mistaken when he says that the charities article is an infringement upon the educational article. It is, on the contrary, a strengthening supplement, and at the same time it justly provides that neither article shall do injustice of any kind. I would be the last man, sir, to abate one iota from the principle of the entire divorce between church and State, for this is, in my opinion, a fundamental condition of the stability of our institutions. But it would be ridiculous to oppose this article, which indicates this principle so completely, simply because the charities article might go further. It is to be a great victory for our principles if this article shall pass unamended. I, therefore, hope these amendments will be voted down and that the article will pass as presented.

Mr. Platzek — Mr. President, I shall not discuss church and State, nor the educational or the charities articles, because it has been substantially agreed here that those two measures shall become laws; but I do hope that that section which recognizes the work of the Board of Regents shall be allowed to stand in the educational article. I think the Regents of the State University ought to be recognized in the Constitution because of their great service in the cause of higher education. I hope this Convention will not put an affront upon the magnificent men now serving the State in the Board of Regents gratuitously and faithfully, and not insult the memory of the great men who have served in that board ever since it was founded by Alexander Hamilton.

Mr. Storm — Mr. President, I came here believing that I would be opposed to any money being appropriated for sectarian purposes, but after learning the result of various investigations that have been made, I relinquish that idea so far as charities are concerned. Now, we are told by some of the lawyers in this Convention that these two amendments provide entirely antagonistic measures, and they are not in satisfactory language. Therein lies the great difficulty. How am I to explain to my people that this is right or that that is right, while this Convention construes the matter in entirely different ways? I am sorry that the amendments are not so framed that every man can understand and explain them.

Mr. Peck — Mr. President, I hope both of these articles will be defeated, and I think we better leave this question as it is. It is

an attempt to use the religious sentiment of the public for political purposes, and I hope they will both be voted down.

Mr. W. Sullivan — Mr. President, I move that the amendment be referred back to the Committee on Education, with instructions to report forthwith as follows ——

The President — Send your amendment to the Secretary's desk. If no other delegate desires to be heard, a vote will now be taken on the various motions to recommit and amend that have been offered, and the first will be that offered by Mr. Bigelow.

Mr. Bigelow — Mr. President, I withdraw that amendment.

The President — Then the first will be that offered by Mr. Sullivan, of Kings, which the Secretary will now read.

The Secretary read the amendment offered by Mr. W. Sullivan, as follows:

Mr. W. Sullivan moves that the amendment under consideration be referred back to the Committee on Education, with instructions to amend and report forthwith as follows:

Strike out all the words of section 4 after the word "denomination" on line 15, and insert in lieu thereof the words "or in which any religious doctrine or tenet, whether denominational or undenominational, is taught, or religious service or exercise, whether distinctively denominational or not, is conducted," so that section 4 as so amended, shall 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 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 religious doctrine or tenet, whether denominational or undenominational, is taught, or religious service or exercise, whether distinctively denominational or not, is conducted."

The President put the question on the motion made by Mr. Sullivan, and it was determined in the negative.

The President — Mr. Cassidy's amendment is next in order, but he will, perhaps, excuse the Convention from hearing his read a second time.

The President then put the question on the amendment offered by Mr. Cassidy, and it was determined in the negative.

The Secretary next read the amendment offered by Mr. Foote, as follows:

To amend section 4 so as to read as follows: "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 not wholly owned or controlled by the State or civil division thereof. No creed, doctrine or tenet of any religious sect or denomination shall be taught in schools or institutions of learning receiving such maintenance or aid."

Mr. McKinstry — Mr. President, on that I call for a count.

The President — Mr. McDonough and Mr. Countryman will please act as tellers.

The President then put the question on the amendment offered by Mr. Foote, and it was determined in the negative — 44 ayes and 54 noes.

The Secretary then read the amendment proposed by Mr. Peck as follows:

Add to section 4 the following: "This section shall not prevent the Legislature from making provision for the secular education of the blind, the deaf and dumb, juvenile delinquents, orphans and other dependent or legally-committed children, inmates of charitable institutions, by the employment of persons duly qualified according to law, as teachers of public schools, to give instructions in such institutions during school hours."

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

The Secretary then read the motion made by Mr. McIntyre, to recommit to the Committee on Education, with instructions to amend said proposed constitutional amendment, as follows, and report forthwith:

"Strike out the second section."

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

The President — Does Mr. Moore desire to have his substitute read? It was quite long.

Mr. Moore — No, sir; I will not insist that it shall be read.

The President then put the question on the substitute offered by Mr. Moore, and it was determined in the negative.

The President — That, I think, disposes of all the motions, and the bill will now be read a third time.

Mr. Lauterbach — Mr. President, before the bill is read a third time, in order that we may not get into a vote on the educational article and have the time expire, I desire to say that there has been a general understanding throughout the whole discussion that the educational article and the charities article should follow each other. Now, the charities article is printed and upon the Secretary's desk. I think there are only one or two other matters that are in that condition. It would determine the vote of many of us on this educational article to know that the charities article is to be considered immediately afterward. Therefore, I move that the Convention remain in session to-day until the amendments reported by the Revision Committee, and actually printed and on the Secretary's desk, including the charity article, shall have been considered.

Mr. I. S. Johnson — Mr. President, I move to amend in this regard, that the voting upon this amendment be postponed until Thursday morning next.

The President — That is an independent motion, and cannot be entertained until Mr. Lauterbach's motion is disposed of.

The President put the question on the motion made by Mr. Lauterbach. A count was called for, and the President appointed Mr. Wiggins and Mr. Parmenter tellers.

The motion prevailed by a vote of 77 ayes to 34 nays.

The President — The motion is carried, and the Secretary will now read the educational article through.

The Secretary then read the same 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.

"Sec. 2. The corporation created in the year one thousand seven 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.

"Sec. 3. The capital of 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.

"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."

The President — This amendment having been read a third time, the vote will now be taken on its final passage.

The Secretary will call the roll, and those in favor of the adoption of the amendment will say aye, and those opposed, no.

The Secretary proceeded to call the roll.

Mr. Barhite — Mr. President, I regret exceedingly that I cannot support the report of the committee upon this article. This is not a political question. It is not a question upon which any party can unite or has any right to unite, and what I may say in regard to this article will also apply equally as well to that article reported by the Committee on Charities. That committee has gone through the length and breadth of the State of New York and has examined our hospitals and orphan asylums, and they bring back the report that these institutions are the pride and the glory of the State of New York, as conducted under our present system. To that report not a single word of protest has been uttered, nor can be uttered. If that is so, why not let the matter stand as it is at the present time? Where does the demand for this come? Is there any demand from the people of the State of New York that the Constitution should be changed upon this subject, except that which is furnished by the hot blood of contending religious factions? We have plenty of precedent here for letting things alone which we do not understand, and here we have a compromise measure. One gentleman says it does not go far enough. Another gentleman says it goes too far, but it is the best that we can expect to get; another gentleman says he will vote for it because he does not think it will do any harm. Now, gentlemen, amendment after amendment and substitute after substitute have been offered until I am con-

vinced that no man knows what this amendment may be, and what its result will be upon the future prosperity of the State of New York. We know that the law as it stands at the present time is right. We know that under that law has grown up a magnificent system of education for our orphans and those unfortunates who may come under the care of the State. I say let the matter stand as it stands at the present time. There can be no compromise upon questions of this kind. It is either right or it is wrong, and to attempt to compromise, to attempt to meet the conflicting views of these gentlemen who want different things upon matters of this kind, is much worse for the reputation of this Convention, is much worse for the prosperity of the people of the State, than it is, if we let the matter stand as it is at the present time. I vote no.

Mr. Cassidy — Mr. President, after a careful examination of all the institutions of this State, the Committee on Charities came to the conclusion that there was no abuse of the public funds, and, practically, the same thing has been conceded by many of the best educators of this State, with reference to the school funds. Now, why, after we have reached that conclusion, should we desire to get up a bug-bear in the shape of the charities amendment and the educational amendment and submit it to the people of this State, is more than I can understand. I see no sense in trying to beat around the bush in this way. If we are satisfied there is no abuse of public money for charities and education, why cannot we have the manhood to say so? I am opposed to this amendment, Mr. President, because I believe this amendment, taken in connection with the charities amendment, is only dog-day froth. In our work here thus far we have added over 110 names — we have constitutionalized over 110 men that were not in the Constitution before. We have added thirty judges; we have added forty representatives; we have added something like thirty-one in the commissions in the charities article that was discussed last night, and now we have nine more names in the Board of Regents, and the only Constitution that was ever proposed for any people that can correspond to the Constitution that we are proposing for the people of the State of New York was that proposed by Madam DeStael, when she proposed that all Frenchmen should be government officials and that government officials should draw a salary of ten thousand francs each. We are fast approaching that day, and I, for one, shall not give my voice and vote to increasing the number of salaried officials in this State, whether it be in this article or in any other. I am not only opposed to it on this ground, but I believe the Christian people of this State, in attempting to strike down the Hebrew

and Catholic denominations, are cutting off their own heads. I am reminded, in this connection, of the farmer who was crossing a field with a scythe, and he saw a toad sitting on a stump, and he attempted to cut down the toad, and in the effort cut off his own miserable head, and when we are trying to strike a blow at the Hebrews and Catholics in this State we are cutting off the head of religion, and it is rolling in the ditch. I vote no. (Applause.)

Mr. Dean — Mr. President, I came to this Convention intending to support a proposition preventing the Legislature from making any sectarian appropriations whatever. After the discussion in this body, I made up my mind that it was proper to allow appropriations to be made to the charitable institutions. I was disposed to support this educational article, but it has been made to carry the State Board of Regents, to which I am opposed — not as a legislative body, but as a constitutional body — and that has been made a precedent for putting three commissions into the charities article. I, therefore, vote no.

Mr. Deterling — Mr. President, according to the provisions of this proposed amendment, I believe it is aimed directly at the Catholics and Hebrews for the purpose of preventing their seeking State aid. Although a Protestant, I am, nevertheless, desirous of being fair and just. I am of the opinion that all denominations should be treated alike, and I, therefore, vote no.

Mr. I. S. Johnson — Mr. President, I desire to explain my vote. In voting against this proposition it is proper that one should state his reasons. I am opposed to this because I believe it is a part of a deal by which two or three matters were to be carried through this Convention and then adjourn. I think it is a further deal that these matters should be gone through with and that there should be a constitutionalizing on the theory that this State is to be governed by commissions and not by public officers. I am opposed to it, and I am opposed to the idea of putting into this Constitution at least four commissions; and when I see that that is a part of the plan I am opposed to it, and for that reason I vote against this article. I vote no.

Mr. Lauterbach — Mr. President, I should, of course, vote against this proposition for the reasons which have been fully stated in debate, if I did not rely, as many do, who are voting in favor of the educational article, upon the distinct, moral understanding at least, that the wrong which has been so clearly delineated when this amendment shall be passed, shall be removed upon the passage of the charities article, and I vote for it upon that understanding.

I think many of the votes are so cast, and I hope that the members who vote upon this proposition will remain and record their votes upon the charities article, because, if this article is passed, there is a moral obligation to pass the charities article. Under these circumstances, and, believing that the general scheme under the two amendments will prevent the possibility of any appropriation for sectarian, parochial or denominational purposes, and, on the other hand, provide the proper maintenance and secular education of dependent children, under those circumstances, and in that view, and in that view only, I vote for this educational article. I would hold the Convention as derelict to a fair sense of obligation, if the one amendment was passed and the other not passed. I vote aye.

Mr. McClure — Mr. President, I did not have the opportunity of expressing my sentiments when this amendment was in Committee of the Whole. If I had, I would have taken prompt occasion to resent some of the reflections and insinuations which were cast during that discussion. The men who were casting them have not yet had the courage to have them printed in the debates of this Convention. But the matter has gone on to such an extent, as the President said in this room yesterday, that the preconceived notions of many, and I think most of them have undergone a radical change. I understand the object of passing the charities article is to take out of this educational amendment a sting. If it should remain and come up by itself, I should resent it by the most indignant protest. I resent the sting which is contained in this educational article, which is an attack upon two great denominations in this State, and the passage of which indicated a narrowness of mind and view unworthy of the majority in this Convention. I take it the honor of this Convention is pledged, and I say if that pledge is not carried out, I shall, so far as my feeble voice is concerned, throughout the length and breadth of this State, brand this Convention as a body of dishonorable men. If the provision on the charities article which is to take out of the educational article the effect of that reflection and sting, shall be passed to third reading and be adopted by this Convention, then the provision as appearing in the Constitution will mean that there is to be secular education in the religious institutions of this State, that that secular education is to be provided by the local authorities of the State, and that it is to be paid for by the State and by the local subdivisions to the institutions and for the secular education that is to be given to the inmates of those institutions. I indorse the sentiments so nobly and so courageously maintained by Mr. McIntyre. I take the stand, if you do not have religious education you cannot have good

citizenship. I take it that secular education shall be paid for in religious institutions. Taking my position, therefore, with Mr. Lauterbach, the chairman of the Charities Committee, that solely upon the understanding that the charities article shall be adopted by this Convention, I vote aye.

Mr. McIntyre — Mr. President, just a word to explain my vote. I, like a man sick unto death, with the physician's prescription before him, with not a ray of hope, but with the possibility before him that some good may come of it, vote aye.

Mr. Platzek — Mr. President, I desire to explain my vote. I shall vote in the affirmative for the reason stated by Mr. Lauterbach in explaining his vote, and now give notice that in the event the charities article is not adopted, I shall move a reconsideration of the vote by which the educational article was adopted. I vote aye.

Mr. Putnam — Mr. President, I voted for the proposed amendment of Mr. Foote, because I thought it more fair, more just and more in harmony with the spirit of the latter half of the nineteenth century, and with the hope that this amendment may be a stepping-stone to higher things and greater liberality on the part of the people. I vote aye.

Mr. Root — Mr. President, I wish to explain my vote. I am not willing to sit in silence while there remains upon the record of this debate an assertion such as that made by Mr. Lauterbach, of New York, and by Mr. McClure, of New York, which is capable of misinterpretation. There is no understanding and no agreement in regard to the charities article. There is, I doubt not, there is, I feel, an honorable obligation on the part of the gentlemen who voted for the charities article as it now stands, who voted to agree with the report of the Committee of the Whole, who voted to send it to a third reading, not to permit their votes to lead these gentlemen into a trap. I should consider, while there is no understanding or agreement or arrangement whatever, I should consider that I was doing an unfair and immoral thing, if, after I had voted to send to a third reading that article, which they consider so important to the protection of interests that are dear to them, I should let them vote for this educational article without coming to them and telling them I would change my position. That moral obligation, I believe, rests upon every one who hears these gentlemen vote, and do vote, without giving notice of an intention to change upon another matter.

Mr. Lauterbach — Your statement is entirely satisfactory, Mr. Root.

Mr. A. B. Steele — Mr. President, I have heard the assertion that some support this article upon some understanding or agreement. I do not know anything about any such understanding or agreement. I am in favor of this article from principle, and I am opposed to the other for the same reason. I shall not vote in favor of the other, and while I am a member of the Committee on Charities and Education, I desire to state that I knew nothing about the contents of the last article until after it was presented to the Convention.

I go further: while I may be opposed to the other article on principle, if the majority of this Convention think I am wrong upon that, whatever the majority of the Convention do I shall stand by it and do all I can for it. Upon this question I vote aye.

Mr. Storm — Mr. President, I am glad that Mr. Root made the explanation that there was no bargaining for our votes. So far as I am concerned that is the first I had heard of it. I do not base my vote upon this amendment upon what may follow. I simply stand here in favor of granting public money for charities only, and not for any educational purposes. I am willing to take the word of the learned gentleman that these two measures do provide that way, but I want to go on record that my vote is free and that there is no mortgage on it. Whatever I may vote now, I shall vote for the next as I see fit. I vote aye.

Mr. T. A. Sullivan — Mr. President, when this amendment was reported from the Committee of the Whole, I voted for it with the understanding that the wards of the State in asylums would be provided for in the matter of education. I think that has been done in the charities bill, therefore, I wish to fulfil the conditions which I promised, and I, therefore, vote aye.

The President — I wish to say before voting, that I know of no understanding in reference to these two amendments, but I think that, under the circumstances that have been stated, if the educational bill should be defeated, it will be entirely proper for Mr. Platzek's motion to take place and reconsider the vote upon this amendment. I also wish to protest against one thing that has been said by Mr. McClure, that he understands that secular education in these private institutions is to be paid for by the State. All I understand that is provided for by the charities article is that there is no constitutional provision against it. I vote aye.

Mr. Campbell — Mr. President, in explaining my vote, which

will be against this section, I desire to say that I think this Convention is making a grave and serious mistake in throwing this firebrand into the political contests this coming fall. Very few know so well as I what magnificent self-restraint was exercised by the Roman Catholic members of this Convention during the discussion of this amendment, but the people of this State cannot so restrain themselves. That is one reason.

Another is, that the article is based upon a pretended fear that church and State might some day be united. I say pretended fear, because I believe no man here has any real fear that any such union would ever be attempted or could be consummated. This pretended fear was attempted to be supported by statements that persistent and enormous raids were made upon the public treasury in the name of charity, but in reality to support one form of religion and to educate and support a priesthood, and that these raids were made in the interest of a so-called foreign hierarchy. But these statements have been found on investigation to be false, and were so pronounced to be by the President of the Convention, and no man dissented from what he then said.

It comes to this, therefore, that we are now enacting a constitutional provision based upon statements of alleged facts and upon fears which are now conceded to be both groundless and false. I cannot, consistently with truth, subscribe to any such provision, and I, therefore, vote no.

Mr. Cochran — Mr. President, having voted in the negative when this amendment was reported by the Committee of the Whole, it is only right that I should explain why I now vote in the affirmative. I voted in the negative at that time because I believed that the article was too narrow and too bigoted to find a place in our Constitution.

I find, however, that all that has now been removed by the charities article, and as I understood that there was an agreement that the charities article should be passed, and as I understand from the votes that have been cast already in favor of that amendment that it will undoubtedly be passed on third reading, I now vote in favor of this amendment, and I vote aye.

Mr. Griswold — Mr. President, there is considerable doubt about the ultimate effect of this amendment as it shall be construed, but I have concluded, on the whole, to vote aye.

Mr. Mereness — Mr. President, I vote aye, but it is not with any understanding as to how I shall vote on the next article.

Mr. Powell — Mr. President, I desire to explain my vote under

the rule. I have, as I believe, consistently endeavored in this Convention to secure constitutional enactment which would protect the public school and the public school funds against the possibility of sectarian invasion, and I have been defeated in that endeavor. I have endeavored to secure constitutional enactment which would permit the Bible to be read in our public schools; I have been defeated in that endeavor. And now, in the hope that there may possibly be in this article some meaning which my mind has been unable to arrive at, taken in conjunction with the charities article, I intend to support it. I simply support it because this Convention has not been able to rise to the dignity of settling this vexed question. I accept it with the understanding that it may possibly do some little good, although I accept it with the fear that it will do a great deal of harm. Then looking both ways at it, the deal between the contending parties I disapprove of. I vote aye.

Mr. Veeder — Mr. President, I desire to explain my vote. I believe that this provision is wholly unnecessary as well as the charities article. I know a little about the subject of charities. I was familiar with it at the time the transfer of the poor children in cities from the alms-houses to the charitable institutions took place, and have kept in my mind the condition of things ever since. These two propositions, both enacted from hatred and from want of knowledge of the subject, I do not feel like indorsing either one of them. They have no place here at all. The Legislature is capable of dealing with this subject. They have ample power under the present Constitution, and there you have delegates in session elected every year fresh from the people. I care nothing about the deals or agreements here upon one bill or the other, and believe it is wholly unnecessary, and the compromise is the result of the backing down of certain gentlemen from the position they took before.

Mr. Smith — Mr. President, is my vote recorded?

The Secretary — No, sir.

Mr. Smith — I will vote no. I cannot see that it is the proper thing.

The President — This Constitutional amendment having received a majority of the votes of all the members elected to this Convention, is adopted, the vote being 108 ayes and 37 noes.

The vote in detail is as follows:

Ayes — Messrs. Abbott, Acker, Ackerly, Allaben, Baker, Banks, Barrow, Becker, Blake, Brown, E. A., Brown, E. R., Cady, Church,

Clark, H. A., Cochran, Cookinham, Cornwell, Countryman, Crosby, Davenport, Davies, Davis, Deady, Dickey, Doty, Durfee, Durnin, Emmet, Faber, Floyd, Foote, Francis, Frank, Andrew, Frank, Augustus, Fraser, Fuller, C. A. Fuller, O. A., Galinger, Gibney, Giegerich, Gilbert, Goeller, Goodelle, Green, A. H., Green, J. I., Griswold, Hamlin, Hawley, Hecker, Hedges, Hill, Hirschberg, Holls, Jenks, Johnson, J., Kellogg, Kerwin, Kimmey, Kinkel, Kurth, Lauterbach, Lester, Lewis, C. H., Lincoln, Lyon, Manley, Mantanye, Marshall, McClure, McIntyre, McLaughlin, C. B., McMillan, Mereness, Morton, Nichols, Nicoll, Nostrand, O'Brien, Ohmeis, Osborn, Parker, Parkhurst, Pashley, Phipps, Platzek, Powell, Pratt, Putnam, Roche, Root, Sandford, Schumaker, Steele, A. B., Steele, W. H., Storm, Sullivan, T. A., Sullivan, W., Tekulsky, Tibbetts, Towns, Vedder, Vogt, Wellington, Whitmyer, Wiggins, Williams, Woodward, President — 108.

Noes — Messrs. Barhite, Barnum, Bigelow, Bowers, Burr, Campbell, Carter, Cassidy, Chipp, Jr., Clark, G. W., Coleman, Dean, Deterling, Farrell, Forbes, Gilleran, Holcomb, Hotchkiss, Hottenroth, Johnson, I. Sam, Lewis, M. E., Marks, McDonough, McKinstry, McLaughlin, J. W., Moore, Parmenter, Peabody, Peck, Rogers, Smith, Speer, Springweiler, Titus, Truax, C. H., Turner, Veeder — 37.

Mr. Foote — Mr. President, I present two reports from the Committee on Revision.

The President — The Secretary will read the reports of the Committee on Revision.

The Secretary read as follows:

Mr. Foote, from the Committee on Revision and Engrossment, to which was referred the proposed constitutional amendment, introduced by the Committee on Cities (introductory No. 394, P. No. 464), reported by the Committee on Cities by the Committee of the Whole, entitled "Proposed constitutional amendment to amend article 8 of the Constitution by the addition of a new section," reports the same as examined and corrected, and also as correcly engrossed.

Mr. Foote, from the Committee on Revision and Engrossment, also presented a special report calling attention to the fact that the amendment to (O., I. 394) general order No. 78, third reading No. 86, offered by Mr. Banks, and adopted in Committee of the Whole as an amendment to the cities article, is properly an amendment to section 11 of article 8 of the present Constitution, as was originally proposed and reported by the Committee on Cities

in proposed amendment No. 60. The committee, therefore, suggested that Mr. Banks's amendment should be adopted as an amendment to section 11 of article 8 (O., Nos. 148-438) in the form proposed by Mr. Banks in general order No. 60.

The President — This report will be called to the attention of the Convention when the cities article comes up for third reading.

Mr. Foote, from the Committee on Revision and Engrossment, to which was referred the proposed constitutional amendment, proposed by Mr. C. H. Truax (introductory No. 256, printed No. 432), reported by the Committee on Constitutional Amendments, and by the Committee of the Whole, entitled, "Proposed constitutional amendment to amend article 14 of the Constitution," reports the same as examined and corrected, and as correctly engrossed.

Mr. Lauterbach — Mr. President, I move that we take up the third reading of the charities article.

The President — That is the next business in order. The Secretary will read the title.

Mr. J. I. Green — Mr. President, I have been requested to present the bill of James A. Taylor and George W. Glendenning, for services in the matter of the contested seats in the Sixth Senatorial District.

The President — Referred to the Committee on Contingent Expenses.

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

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

The President — The Secretary will read the title of the charities amendment.

The Secretary read the title as follows (O., I. No. 392, P. No. 460):

"Proposed constitutional amendment to amend article 5 of the Constitution."

The President — Are there any amendments to be proposed to this constitutional amendment? Does any gentleman desire to be heard upon it? If not, the Secretary will read the amendment for the third time.

The Secretary read the proposed constitutional amendment as follows:

"To article 5 of the Constitution add the following:

"Section —. The Legislature shall provide for a State Board

of Charities, which shall visit and inspect all institutions, whether State, county, municipal, incorporated or not incorporated, which are of a charitable, eleemosynary, correctional or reformatory character, excepting only such institutions as are hereby made subject to the visitation and inspection of either of the commissions hereinafter mentioned, but including all reformatories, except those in which adult males convicted of felony shall be confined; a State Commission in Lunacy, which shall visit and inspect all institutions, either public or private, used for the care and treatment of the insane, not including institutions for epileptics or idiots; a State Commission of Prisons which shall visit and inspect all institutions used for the detention of sane adults charged with, or convicted of, crime, or detained as witnesses or debtors.

"Sec. —. The members of the said board and of the said commissions shall be appointed by the Governor, by and with the advice and consent of the Senate; and any member may be removed from office by the Governor for cause, an opportunity having been given him to be heard in his defense.

"Sec. —. Existing laws relating to institutions referred to in the foregoing sections, and to their supervision and inspection, in so far as such laws are not inconsistent with the provisions of the Constitution, shall remain in force until amended or repealed by the Legislature. The visitation and inspection herein provided for shall not be exclusive of other visitation and inspection now authorized by law. Nothing in this Constitution contained shall prevent the Legislature from making such provision for the education and support of the blind, the deaf and dumb, and juvenile delinquents, as to it may seem proper, or prevent any county, city, town or village from providing for the care, support, maintenance and secular education of inmates of orphan asylums, homes for dependent children or correctional institutions, whether under public or private control. Payments by counties, cities, towns and villages to charitable, eleemosynary, correctional and reformatory institutions, wholly or partly under private control, for care, support and maintenance, may be authorized, but shall not be required by the Legislature. No such payments shall be made for any inmate of such institutions who is not received and retained therein pursuant to rules established by the State Board of Charities. Such rules shall be subject to the control of the Legislature by general laws.

"Sec. —. Commissioners of the State Board of Charities and Commissioners of the State Commission of Lunacy now holding office shall be continued in office for the term for which they were

appointed, respectively, unless the Legislature shall otherwise provide. The Legislature may confer upon the commissions and upon the board created by the foregoing sections any additional powers that are not inconsistent with other provisions of the Constitution."

Mr. Storm — Mr. President, I am authorized by both sides, so far as I can get at it, to say that neither side desire to explain their vote. The matter is all fresh in our minds, so I do not think there need be any explanation of the votes.

The President — The Chair desires to call attention to a defect in the amendment as printed, that none of the sections are numbered.

Mr. Lauterbach — It comes from the Revision Committee, and I suppose will go back to them, and the proper sections will be inserted.

The President — This bill now having been read the third time, the question will be upon its final passage. The Secretary will call the roll, and those who favor its passage will say aye, and those opposed, no.

The Secretary proceeded to call the roll.

Mr. Barhite — Mr. President, I do not believe that either of these articles are necessary, but as the education article has been passed by this Convention, I believe that it will be a serious thing for the State of New York if this article, which is supposed to relieve the other, should fail. I will, therefore, vote aye on this.

Mr. Cookinham — Mr. President, unless my position will be misunderstood, I desire to say that I voted against this amendment in Committee of the Whole, because I do not believe in creating three commissions, and I vote against it now. I vote no.

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

The President — Mr. Dean is not required to state his reasons. (Laughter.)

Mr. Dean — I desire to do so. I am simply a plain politician. I have entered into many deals, but these highly moral deals are out of my line. I vote no.

Mr. Augustus Frank — Mr. President, in casting my vote, as I intend to vote in the affirmative, I wish it distinctly understood that no arrangement has been made, so far as I am concerned, and nothing binding upon my part to vote for one or the other of these propositions. I do not want it understood that anything has been said or done that we must vote one way or the other on the passage of these two amendments. I vote aye.

Mr. I. S. Johnson — Mr. President, I desire to state, in voting against this amendment, that I am not opposed to the last section. I am decidedly in favor of it, but when it is loaded down with three commissions, I am unable to vote for it, and I, therefore, vote no.

Mr. Powell — Mr. President, I desire to say that I am in no way responsible for this charities article. That I did not see it before it was laid in its printed form upon the desks of the members, and in saying that, I do not desire to cast any reflection upon the chairman of the committee. My failure to see it was because I was absent from the Convention at the time it was adopted by the committee. I am sorry that I cannot accept the challenge extended to me by the distinguished gentleman from Westchester, but I do extend to him an invitation to come down to Brooklyn and explain to his friends there just what is meant by this article. I vote aye.

Mr. Roche — Mr. President, my judgment is that neither the educational article nor the charities article should be incorporated in this Constitution. There was no occasion for the immense amount of time that has been consumed in the consideration of them. The educational article was simply the outcome of a narrow and bigoted feeling that should not be recognized to the extent of putting it in the Constitution of the State of New York, but now that it has been adopted, and it has been apparent that it would be adopted, I believe its odious features may be minimized by this charities article, and that it should be supplemented by this article. I vote aye.

Mr. Titus — Mr. President, I desire to explain my vote. On the last measure that was up I voted no, because I was opposed to changing the present system, but I say to the President and delegates here that there never was an appeal made to me in my life in the way of charity but that I contributed my mite. I desire to vote aye.

Mr. Veeder — Mr. President, because of the action of the Convention on the last proposed constitutional amendment, it becomes necessary for me to vote aye on this one.

The President — This amendment having received the votes of a majority of all the members elected to this Convention, is adopted, by a vote of 114 ayes and 16 noes.

The vote in detail is as follows:

Ayes — Messrs. Abbott, Acker, Allaben, Arnold, Banks, Barhite, Barrow, Becker, Bigelow, Blake, Brown, E. A., Brown, E. R., Cady, Campbell, Church, Cochran, Countryman, Crosby, Daven-

port, Davies, Deady, Deterling, Deyo, Dickey, Durnin, Emmet, Faber, Farrell, Floyd, Foote, Francis, Frank, Augustus, Fraser, Fuller, C. A., Fuller, O. A., Galinger, Gibney, Giegerich, Goodelle, Green, A. H., Green, J. I., Griswold, Hamlin, Hawley, Hecker, Hedges, Hill, Hirschberg, Holls, Hottenroth, Jenks, Johnson, J., Kerwin, Kimmey, Kinkel, Kurth, Lauterbach, Lester, Lewis, C. H., Lewis, M. E., Lincoln, Lyon, Manley, Marks, Marshall, McClure, McDonough, McIntyre, McKinstry, McLaughlin, C. B., McLaughlin, J. W., McMillan, Meyenborg, Norton, Nichols, Nicoll, Nostrand, O'Brien, Ohmeis, Osborn, Parker, Parkhurst, Pashley, Peabody, Peck, Phipps, Platzek, Porter, Powell, Pratt, Putnam, Roche, Rogers, Root, Sandford, Smith, Springweiler, Storm, Sullivan, T. A., Sullivan, W., Tekulsky, Titus, Towns, Truax, C. H., Vedder, Veeder, Vogt, Wellington, Whitmyer, Wiggins, Williams, Woodward, President — 114.

Noes — Messrs. Baker, Barnum, Bowers, Bush, Carter, Chipp, Jr., Clark, G. W., Cookinham, Cornwell, Dean, Forbes, Gilleran, Johnson, I. Sam, Mereness, Steele, A. B., Steele, W. H.— 16.

Mr. Root offered the following resolution:

R. 219.—"Resolved, That the Committee on Revision and Engrossment be instructed to accurately enroll and engross or print the present State Constitution with all amendments thereto heretofore adopted, properly inserted, and report the same to this Convention on Thursday next."

Mr. Root — It is of the greatest importance that this resolution should be passed, so that the work we have completed can be deliberately and carefully examined, and we can insert in the matter all the amendments which we adopt after we get back. If this is not done, after we come back here and pass amendments through Committee of the Whole and read them the third time, we would then have to wait five days in order that the Revision Committee should do this work which they can do during this recess.

Mr. I. S. Johnson — Mr. President, I offer the following resolution.

Mr. A. H. Green — Mr. President, I move that the Convention do now adjourn.

The President — Will Mr. Green withdraw that a moment? The Secretary will read Mr. Johnson's resolution.

The Secretary read Mr. Johnson's resolution, as follows:

R. 220.—"Resolved, That when this Convention assembles on Thursday next, it proceed with the business of general order for

one week, unless all amendments on general orders be sooner acted upon."

The President — The Chair holds that that is an independent motion.

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

Mr. Cookinham — Mr. President, I move that we do now adjourn.

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

The President — The question upon Mr. Johnson's resolution will now be put.

Mr. I. S. Johnson — Mr. President, we came here for the purpose of acting upon the various measures which were presented to this Convention. There have been acted upon in committees very many propositions, some of them taking almost the entire session of this Convention to consider. They have been agreed upon by the committees and have been reported to this body, and now it is proposed, evidently from the action of this Convention, or by the leaders of this Convention, that we shall adjourn until next Thursday, and then come here and bury everything else. We have waited until the time comes that our sessions cease, and of that time we have spent thirty-three days away from this Convention, and if this is the way this Convention is to act, if we are here simply for the purpose of carrying out the propositions of a few men, and if we are to bury everything else, let us say so manfully, but before we do it, let it be distinctly understood that I wash my hands of any such proceedings. I have been here almost constantly from the time this Convention assembled until the present time. I believed it to be my duty. I have been excused for but a single instance. I am ready to stay here for a week or two weeks in order to perform my duty, which I swore I would do when I took my oath of office. It was not to act upon two or three propositions. My duty does not stop there. It was to do my duty and my whole duty. I think that we should know before we adjourn whether it is the intention to do this duty, or whether it is the intention to sneak home and leave the duties we swore we would do undone.

Mr. Veeder — Mr. President, I submit this proposition is wholly unnecessary. I do not understand by what right the gentleman stands up here to impugn the motives of the members of this Convention. It is pure buncombe. If he knows about the majority,

all well and good, but as far as the minority are concerned, we will stay here and perform our duty. This resolution should not come in at this time. I submit that it is wholly improper. I, therefore, move to lay it on the table.

The President put the question on Mr. Veeder's motion to lay Mr. Johnson's resolution on the table, and it was determined in the affirmative.

Mr. Griswold — Mr. President, I ask the Convention to excuse me for next Thursday and Friday. I have an important court engagement.

The President — The rules forbid my putting the motion unless it is on account of sickness.

The President — The business of the Convention having been completed, under the former order of the Convention, we now stand adjourned until Thursday morning, September twentieth, at ten o'clock A. M.

Whereupon, the Convention, at 12.50 A. M., adjourned.

Thursday Morning, September 20, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber, in the Capitol, Albany, N. Y., September 20, 1894, at ten o'clock A. M.

President Choate called the Convention to order.

The Rev. A. Kennedy Duff offered prayer.

Mr. O'Brien moved that the reading of the minutes of the last session be dispensed with.

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

Mr. Cookinham — Mr. President, would it not be wise to call the roll to ascertain whether we have a quorum present or not?

The President — At the suggestion of Mr. Cookinham, the roll will be called.

The Secretary called the roll, and announced that ninety-six members were present.

Mr. Moore —Mr. President, I desire to make an excuse for Mr. Lester, who was ill at the last session, and I think he is ill at home now.

The President put the question on excusing Mr. Lester from

attendance at the last day's session and to-day, and he was so excused.

Mr. Hedges — Mr. President, Mr. McArthur was taken ill last night and is ill to-day. He asks that he may be excused from attendance at to-day's sessions.

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

Mr. Dean — Mr. President, I offer the following resolution:

The Secretary read the resolution of Mr. Dean, as follows:

R. 221.—"Whereas, The Republican party of the State of New York, speaking through its committee on resolutions (of which the Hon. Elihu Root, a distinguished member of this body, was a part), has said that:

"We favor the abolition of all useless State commissions and the consolidation of others, wherever this can be effected, in the interests of economy and the improvement of the public service.

"Whereas, This Convention, by a decisive vote, has refused to give its approval to the proposed constitutional amendment having for its object the abolishing of needless commissions, and has, by an equally emphatic vote, decided to place in the Constitution four of these commissions, going out of its way to create one of them, thus taking it out of the power of the Legislature to carry out the pledges of the party in this respect; therefore, be it

"Resolved, That it is the duty of this Convention to place itself in line with the majority of the Republicans of this State by a reconsideration of the votes by which the State Board of Regents and the Commission in Lunacy, the State Board of Charities and the Commission of State Prisons is proposed to be made a part of the Constitution; and be it further

"Resolved, That it is the duty of this Convention, the State convention having ignored its proposed apportionment, and having pledged the Legislature to 'a just apportionment,' to bow to the will of the majority, as thus expressed, and to abandon its project in respect to this proposed amendment."

Mr. Dean — Mr. President ——

The President — The order of business being general orders, this resolution cannot now be received, except by a vote of the Convention.

The President put the question on receiving the resolution at this time, and it was determined in the negative by a rising vote — ayes, 37; noes, 53.

Mr. Storm — Mr. President, I move that we now go into Committee of the Whole on general order No. 48, and I would include in that ——

The President — One moment. The business is general orders; general order No. 12, reported by the Committee on Future Amendments.

Mr. Veeder — Mr. President, is there not some mistake about that? Does not the resolution of Mr. Cookinham give precedence to 36, then 42, then 57, and so on?

The President — I get my information from the Secretary, who says that No. 12 is the first in order. The business is unfinished business in general orders.

Mr. Marshall — Mr. President, I move that the Convention now go into Committee of the Whole on general order No. 12.

The President — That does not require any motion.

Mr. Veeder — May I inquire if there is any other unfinished general order?

The President — I am told not. This is the only unfinished general order, and Mr. Jenks, I think, is in the Chair. The Chair will state that Mr. Sandford writes that he is still seriously ill, and asks to be excused until he is able to return.

The President put the question on excusing Mr. Sandford, as requested, and he was so excused.

The Convention resolved itself into Committee of the Whole on (O., I. No. 368, P. No. 436), general order No. 12, and Mr. Jenks took the chair.

The Chairman — The Convention is in Committee of the Whole on general order No. 12, an unfinished general order. The Chair will inform the committee that there are several amendments now pending before the Committee of the Whole.

Mr. Marshall — Mr. Chairman, I think the amendment of Mr. Ackerly, to substitute three delegates in each district for four, was accepted by me.

The Chairman — The Chair ruled at the last session that you could not accept the amendment; that it would have to be a separate matter.

Mr. Marshall — Then I call for a vote upon Mr. Ackerly's amendment.

Mr. C. B. McLaughlin — Mr. Chairman, I rise to a question of

information. Has the time expired which was assigned for the consideration of this amendment?

The Chairman — The Chair would inform the gentleman that there is no limit of time fixed upon this matter, as the Chair is informed from the Secretary's desk.

Mr. McLaughlin — So much time has intervened since this matter was up for consideration the other day, Mr. Chairman, that it seems to me we ought to have some knowledge as to what these amendments are.

The Chairman — The Chair will inform the gentleman from Essex that the Chair will order the various amendments to be read in their order, providing the committee decides to go to a vote upon the various amendments.

Mr. McLaughlin — Will the Chair permit discussion of these amendments after they have been read?

The Chairman — The Chair will so hold. If there be no objection, the Secretary will read the first amendment, being the amendment of Mr. Ackerly.

The Secretary read the amendments pending, as follows:

By Mr. Ackerly — To strike out the word "four," and insert the word "three," in page 3, line 5.

By Mr. Cochran — To add at the end of line 11, page 5, the words "not to exceed five months."

By Mr. McClure — To insert in line 3, page 4, "by a vote of a majority of the delegates of the political party by which such member was elected," in lieu of "a vote by a majority of all the delegates."

By Mr. Holcomb — To insert in line 20, on page 3, after the word "delegates" the words "elected to the Convention."

By Mr. Marshall — By adding to section 3, "any amendment proposed by a Constitutional Convention relating to the same object as an amendment proposed by the Legislature coincidentally submitted to the people for approval at the general election held in the year 1894, or at any subsequent election, shall, if approved, be declared to supersede the amendment so proposed by the Legislature."

The Chairman — The various amendments submitted having been read through, the Chair will now direct the Secretary to read the amendment offered by Mr. Ackerly, and then the discussion is free upon that amendment.

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

To strike out "four" and insert "three," in page 3, line 5, so that it shall read: "The electors of every Senate district of the State, as then organized, shall elect three delegates at the next ensuing general election," etc.

Mr. McMillan— Mr. Chairman, I would ask, through the Chair, that Mr. Marshall, who has this proposed amendment in charge, if agreeable to him, would give us an explanation. It is so long since this matter was discussed by Mr. Marshall that it has entirely passed out of my mind as to its detail, and I think that the committee would be gratified to hear from Mr. Marshall upon the same lines pursued by him when it was under consideration before.

Mr. Marshall — Mr. Chairman, I will very cheerfully state what the nature of this amendment is. The first section has already been disposed of in Committee of the Whole so as to strike out the portion in italics, which relates to the vote necessary for an amendment submitted through the medium of a Legislature; so that, so far as an amendment originating in the Legislature is concerned, there has been no change made in the Constitution. The next section is the one relating to a Constitutional Convention. As to that, the committee determined that it was necessary, or at least prudent, that there should be a change in the Constitution so as to make the provisions of the Constitution self-executing. Various amendments were introduced upon the subject, one by Mr. Veeder, and, I think, one by Mr. C. H. Truax, and several others; I think in all some nine different amendments were submitted to the Committee on Future Amendments, which had for their purpose the enactment of provisions which would make it possible the moment the people had voted that there should be a Constitutional Convention to revise the Constitution and amend the same, to elect their representatives to the Constitutional Convention at the time designated; and, therefore, the method pursued was that the electors of each Senate district should elect a certain number of delegates, and that there should also be elected by the people at large fifteen delegates-at-large. Now, the difficulty heretofore has been, as was indicated by the experience in the State in 1886, that the people at that time voted to hold a Constitutional Convention, but because the Governor and the Legislature could not agree as to the method in which such representatives were to be elected, no Constitutional Convention was held; no provision was made for the election of delegates to the Constitutional Convention until seven years after the time when the people had declared it to be their intention that a Consti-

tutional Convention should be held. After having made provision, therefore, for the election of delegates to a Constitutional Convention, we thought it would be also prudent to make provision as to the compensation of delegates, approximating the provisions to those relating to the election of State Senators and Members of the Assembly; and we have made provisions which are designed to avoid the difficulties that we have had in this Convention; first, in respect to the subject of printing, and, secondly, in respect to the question as to the vote necessary to adopt a constitutional amendment in Convention, and, third, in respect to the powers of the Convention to act as the judges of the election and qualification of its own members. We have also made provisions for the filling of vacancies in case they should occur, as they have occurred in respect to the present Convention. The vacancies that have occurred during the present year it was found could only be filled through the medium of a very expensive election, and such elections have not been held, and consequently this Convention has not had the full quota of membership designed by the act of 1893. We provide for the filling of vacancies in district delegations by the surviving members, or the remaining members of the delegation from the district. We provide for the filling of vacancies among the delegates-at-large by the vote of the remaining delegates-at-large; so that the same political party will always be represented to which the delegate belonged who may have resigned. Then we have added what we considered to be a most important amendment, namely, that when a constitutional amendment originating in a Constitutional Convention has been adopted by the Convention, it shall be necessary to have that amendment or the revised Constitution submitted to the people, so that they shall pass upon the question as to whether or not it shall become a part of the fundamental law. Under the present condition there is no provision requiring the submission of the work of the Convention to the people; and a Convention might very well take the position that the work of the Convention is final, and that the Constitution adopted in Constitutional Convention must be acceped by the people. Now, it is not the design of this Convention, I suppose, to take the position that our work shall be final; but at some time or another a body of men might be assembled in the State in Constitutional Convention, that would take the position that their work should be final, and most serious consequences might ensue. I, therefore, think it is the part of prudence that in this Constitution a provision be inserted that the work of future Constitutional Conventions to be held in the State shall be ratified by the people or disapproved by them, and that the action of the

people shall be final, rather than the action of a Constitutional Convention. No good lawyer can read the present Constitution and arrive at any other conclusion than that the work of the Constitutional Convention is final if they saw fit to make it so; but I do not believe that there is a man in this body who desires to leave in the Constitution a provision of that character, even though it may have been drawn by so eminent a gentleman as Judge Marvin, to whom my friend, Mr. Dean, referred the other day, and even though the provision of the Constitution may be fifty years old, and, therefore, partake of the sacred character to which my friend, Mr. Nicoll, referred in his remarks the other evening. I do not know of anything else, Mr. Chairman, that is necessary to add to the explanation.

Mr. McMillan — Mr. Chairman, I have been so much gratified with the explanation given by Mr. Marshall, who had this proposed amendment in charge, that I am constrained to ask him for a further explanation upon a portion of section 1, bearing in mind that when that was explained before, it was past the hour of midnight. I would like to have Mr. Marshall explain why he provides for four separate methods of submitting.

Mr. Marshall — Mr. Chairman, I desire to state to the gentleman from Erie that the portion to which he refers was stricken out in Committee of the Whole the other evening, and we have disposed of that provision entirely.

Mr. McMillan — The explanation is satisfactory, Mr. Chairman.

Mr. Marshall — And we have a subsequent amendment which provides that a majority of those voting on the amendment shall control.

Mr. Countryman — Mr. Chairman, I would like to ask what this clause means in the second section: "A majority of the Convention shall constitute a quorum for the transaction of business, and no amendment to the Constitution shall be submitted for approval to the electors as hereinafter provided, unless by the assent of a majority of all of the delegates, the yeas and nays being entered on the journal to be kept," whether that would not imply that the Convention may, in its discretion, refuse to submit any amendment to the people?

Mr. Marshall — Mr. Chairman, I desire to answer the gentleman from Albany, by saying that the provision which he has read provides for the proceedings of the Convention; that a majority of the Convention shall constitute a quorum, and that no amendment shall be passed in Convention except by the assent of a majority of the

delegates, just as our rule provides. Then comes the final clause, on page 4: "Upon the approval of such Constitution or constitutional amendments in the manner provided in the last preceding section, such Constitution or constitutional amendment shall go into effect on the first day of January next after its approval," making it absolutely necessary that the constitutional amendment originating in Convention shall first receive a majority of the votes of the delegates, and secondly, that their action shall be ratified and approved by the people in the manner specified.

Mr. Dean — Mr. Chairman, it is not necessary, because a peanut politician in the State of New York, acting as its chief executive, has at one time in his life vetoed a bill providing for a Constitutional Convention at the proper time, and because it has been the football of many politicians for the past five or six years; it is not necessary for us to assume that the executives of the future are to be of that stamp. It seems to me that one error on the part of the State is not sufficient warrant for making a change in the Constitution and usurping the legislative power of the State, which we have declared shall be vested in a Senate and Assembly. The Constitution as it is affords ample opportunity, and the assumption that any Convention elected by the people of the State of New York, after due deliberation, is going to attempt to promulgate a Constitution on their own account, is simply preposterous. It is not possible to select a Convention in the State of New York which has the courage to do it; certainly no one would attempt to assume that authority as a precedent, as the judiciary of the State would stand in the way of any such construction. There is no doubt of it at all. It is simply an assumption, a presumption that the future is going to develop anarchy in the State of New York, and I cannot see that there is any sense in this proposed amendment.

Mr. Bowers — Mr. Chairman, it seems to me that the present provision of the Constitution, article 13, is all we need. It is true that we have had difficulty at times with mandatory provisions of this nature in the Legislature not acting with the promptness with which it ought to act. But section 2 is very plain, that at the general election to be held in the year 1866, and in each twentieth year thereafter, and also at such times as the Legislature may by law provide, the question as to whether there shall be a Convention to amend the Constitution shall be decided. Now, there is a distinct mandatory provision of the law which should be complied with, and it is exceedingly difficult to perceive how you are going to be any better off by the propositions which are advanced here to-day in

the present proposed general order. I do not know how we are going to improve the situation by using somewhat stronger language. I suppose that before you get to the end of the question the Legislature will have power, if it sees fit, to meet the expressed will of the Constitution. If it be true that the present act provides that these matters shall be submitted every twenty years to the electors, it seems to me on reading the old section that it is quite sufficient to cover the matter. Now, if the Legislature does not obey the new provision, how are you going to make them do it, any more than you can at present? What is gained by going into a quantity of detail as to the manner in which the delegates shall be elected? Why should we not leave that to the Legislature, as we have in the past? The whole object of the amendment, as far as I can understand it, is to make it self-acting, and you cannot make anything self-acting until you take hold of the purse-strings. If the Legislature does not make an appropriation to pay the expenses of the elections provided for by this Constitution, I do not see how the people are going to get to the polls to vote. It seems to me that it is not worth while under the circumstances to amend the proposed constitutional amendment at all; that we had better leave it as it is, and then we had better let the amendment die a natural death, leaving the old Constitution as it is. The fact is, it is a pretty good Constitution as a whole, and this Convention is likely to find out that the majority of the people of the State so believe.

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

Mr. McClure—Mr. Chairman, I hope the gentleman will not press his motion at present. We were to discuss the amendments as they were read, and I desire to say a word upon the amendment offered by me.

The Chairman—Does Mr. Cassidy withdraw his motion?

Mr. Cassidy—Yes, I withdraw it, Mr. Chairman.

The Chairman put the question on the adoption of Mr. Ackerly's amendment, and it was determined in the affirmative, by a rising vote.

The Chairman—The next business is the consideration of the second amendment offered by Mr. Cochran, which the Secretary will read.

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

To add at the end of line 11, page 3, the words "not to exceed

five months," so that the whole sentence will read: "The delegates so elected shall convene at the Capitol on the first Tuesday of April next ensuing after their election, and shall continue their session until the business of such Convention shall have been completed, not to exceed five months."

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

The Chairman — The Secretary will read the amendment offered by Mr. McClure.

The Secretary read the amendment as follows: On page 4, line 3, insert ——

Mr. McClure — Mr. Chairman, I find that I indicated that amendment, having before me one of the numerous copies of this bill, and the line should be changed. It should read: insert in line 4, page 4, the language so as to provide that vacancies shall be filled by the members of the party to which the delegate belonged whose death or resignation caused the vacancy, rather than by the whole Convention.

Mr. Marshall — That is so provided, Mr. Chairman.

Mr. McClure — Then my amendment is of no value.

The Secretary — Does Mr. McClure withdraw his amendment?

Mr. McClure — I withdraw my amendment, Mr. Chairman.

The Chairman — The Secretary will read Mr. Holcomb's amendment.

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

Insert in line 18, page 3, after the word "delegates," the words "elected to the Convention," so that it shall read, "unless by the assent of a majority of all the delegates elected to the Convention," and so forth.

Mr. Holcomb — Mr. Chairman, Mr. Marshall consents that those words be inserted; simply so that there shall be no question as to what that vote shall be.

Mr. Marshall — I have no objection to it.

The Chairman — The Chair holds that notwithstanding the consent of Mr. Marshall, it is necessary to take a vote upon it.

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

The Secretary read the amendment offered by Mr. Marshall, as follows:

To add a section, to be numbered as section 3, which shall read as follows: "Any amendment proposed by a Constitutional Convention relating to the same subject as an amendment proposed by the Legislature coincidentally submitted to the people for approval at the general election held in the year 1894, or at any subsequent election, shall, if approved, be declared to supersede the amendment so proposed by the Legislature."

Mr. Marshall — Mr. Chairman, I desire to state briefly, in explanation of this amendment, that it is found to be necessary, in view of the fact that there are certain amendments which have been proposed by the Legislature to be submitted to the people at this coming election, and in the work of this Convention we have made provision for the same subject-matter. Now, the question will arise, which of the two proposed amendments, if both should be adopted, would prevail, that submitted by the Legislature or that submitted by the Convention, or whether there will be a conflict between the two, and how that conflict shall be solved. It is, therefore, thought proper that the work of this Convention should be deemed to supersede that of the Legislature, and at the same time lay down a rule governing similar contingencies if they should hereafter arise.

Mr. Gilbert — Mr. Chairman, I desire to ask the introducer of this proposition what he would do in this case: supposing the people should vote down the Constitution we submit, but should vote favorably upon that submitted by the Legislature?

Mr. Marshall — Then those propositions that were adopted would, of course, become part of the Constitution. We have made provision for that.

Mr. Gilbert — I think that is correct, Mr. Chairman.

Mr. Durfee — Mr. Chairman, the difficulty that has been adverted to by Mr. Marshall has been under consideration by the Committee on Revision, and they have drafted, and will submit with their report, a section intended to meet that difficulty so far as relates to the present year.

Mr. Marshall— This covers not only the present year, but future years.

Mr. Durfee — If it is desirable to make provision for similar situations that may arise hereafter, I see no objection to the section proposed by the amendment offered by Mr. Marshall.

Mr. Hawley — Mr. Chairman, I think the amendment proposed by Mr. Marshall is far the better way to solve this problem. The

Committee on Revision did formulate a section to meet the question which will arise at the coming election, but we did it in the small hours of the morning, when no documents were accessible to us; and I am advised that the amendment which we have proposed to the Convention, and which appears in the document now upon the tables of the members, does not cover the whole question. I understand that there is an amendment to be submitted in regard to the increase of the number of county judges in the county of Kings. If I am right about that, then the amendment which we proposed does not cover that question, but only covers the question as to the submission of an amendment for an increase in the number of justices of the Supreme Court. Mr. Marshall's proposition covers the whole question, and I think it is far the better way to solve the problem.

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

Mr. Marshall — Mr. Chairman, I move that the committee now rise, report this amendment to the Convention favorably, and recommend its adoption.

Mr. Goodelle — Mr. Chairman, I desire to call attention to one thing. I understand that under the amendment, as passed, there are three delegates from each district. On page 4 it is provided that if a vacancy shall occur by death, or otherwise, it shall be filled by a majority of the remaining delegates of the district. There will be but two men, and how will you get a majority from that?

Mr. Marshall — That can be taken care of in the Revision Committee.

Mr. Goodelle — I do not see, Mr. Chairman, how the Revision Committee has power to do that.

Mr. Marshall — We might say "by a vote of the remaining delegates," leaving out the words "of a majority." It would be covered by striking out from line 2, page 4, the words "of a majority," and inserting the provision so that it will read: "such vacancy shall be filled by the remaining delegates representing the district," and to meet Mr. Goodelle's suggestion, I move as a further amendment that the words "of a majority," in line 2, page 4, be stricken out.

Mr. Hottenroth — Mr. Chairman, I desire to ask why section 2 provides that an election of delegates should take place in 1916?

Mr. Marshall — Does the gentleman mean the next general election? Why, because it will be about twenty years from the time this new Constitution goes into operation.

Mr. Hottenroth — I do not see any object in that.

Mr. Marshall — It is after a State enumeration.

Mr. Hottenroth — Why delay again? We have had sufficient delay this time.

Mr. Marshall — The next State enumeration provided for by the apportionment article will take place in 1905. The one following that will be in 1915. Therefore, this election should not take place until after there has been a new apportionment and State enumeration.

The Chairman — The question is upon Mr. Marshall's motion, which the Secretary will read.

The Secretary read Mr. Marshall's motion, as follows:

Mr. Marshall moves to amend by striking out "of a majority," in line 2, page 4, so that it shall read: "such vacancy shall be filled by a vote of the remaining delegates," etc.

The Chairman put the question on the motion of Mr. Marshall, as read by the Secretary, and it was determined in the affirmative.

Mr. Marshall — Mr. Chairman, I now move that the committee rise, report this article favorably to the Convention and recommend its passage.

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

Mr. Jenks — Mr. President, the Committee of the Whole have had under consideration proposed constitutional amendment (printed No. 436), entitled, to amend article 13, relating to future amendments; 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 to the report of the Committee of the Whole, and it was determined in the affirmative.

The President — This amendment goes upon the order of third reading by way of the Committee on Revision.

Mr. Foote, from the Committee on Revision, presented the following report:

"*To the Convention:*

"Pursuant to the resolution (No. 219), adopted September fifteenth, your Committee on Revision and Engrossment presents herewith in print, as Convention Document No. 71, a draft of a

revised Constitution, embodying the present Constitution, except such parts as are obsolete, with all amendments, adopted by the Convention which are accessible to us, inserted in their proper place.

"The committee were unable to obtain an authentic copy of the charities article adopted by the Convention on Saturday, the 15th instant, at the close of its last session, and hence were not able to insert that article.

"We submit herewith two schedules, one showing the sections of the revised Constitution as prepared by us, with a reference opposite each section to the sources from which it is derived, whether from the present Constitution, or from the work of this Convention; another showing the sections of the present Constitution and the disposition of each section in the revised Constitution, or if any section or part of a section has been omitted by the committee as obsolete, attention is called to the fact by the statement, 'amended on revision,' or 'omitted as obsolete,' or otherwise. All sections which the committee found it necessary to change in order to present a revised Constitution are referred to as 'amended on revision.'

"The committee have transferred a few sections from the articles in which they are found in the present Constitution in order to bring into the same article, as far as possible, sections relating to the same subject, or which, in the opinion of the committee, should be included in the same article.

"In order to facilitate its work, the committee found it convenient to number the sections of the draft of the revised Constitution consecutively from the first to the last section, preserving, however, the present division of the Constitution into articles. The committee have not determined, however, whether to recommend that this plan of numbering the sections be adopted by the Convention, but for convenience of reference and examination the committee have reported the revised Constitution, with the sections consecutively numbered.

"In order to prevent the possibility of the increase in the number of justices of the Supreme Court in the First and Second Judicial Districts provided for in article 6, being held to be additional to the increase provided for in the proposed constitutional amendments which have been agreed to by the Legislature, and which are to be submitted to the people at the same election with the revised Constitution, the committee have prepared section 145, and recommend its adoption by the Convention.

"The last sentence of section 97, as printed in the revised Constitution, should be stricken out, as no canal debt now exists.

"Dated ALBANY, *September* 19, 1894.

"(Signed) NATHANIEL FOOTE,
"*Chairman.*"

The President — This report seems to require no present action, but the revision is printed and in the hands of members for future consideration. The next business on general orders is No. 57.

Mr. Augustus Frank — I move that we now go into Committee of the Whole on O. 69-434, general order No. 57, to amend section 7 of article 8 of the Constitution, relative to the liability of stockholders of banking corporations.

The President — The Chair is of the opinion that it being already ordered does not require a motion.

The Convention resolved itself into Committee of the Whole, and Mr. Banks took the chair.

The Chairman — The Convention is in Committee of the Whole on general order No. 57, which the Secretary will read.

The Secretary read the proposed amendment as follows:

"Section 7 of article 8 of the Constitution is hereby amended so as to read as follows:

"Sec. 7. The stockholders of every corporation and joint-stock association for banking purposes, shall be individually responsible to the amount of their respective share or shares of stock in any such corporation or association, for all its debts and liabilities of every kind."

Mr. Augustus Frank — Mr. Chairman, the proposed amendment simply changes the Constitution in section 7, article 8, so as to take from it the words "issuing bank notes of any kind, or paper credits to circulate as money after the 1st day of January, 1850," leaving the remainder of it as proposed in the general order No. 57. Under the present laws of the United States, the only banks issuing currency are the national banks. None is issued by State banks, and the clause in the present Constitution making stockholders of banks individually liable might seem to apply only to banks issuing currency. It is entirely useless, at this time, and not only entirely useless, but is used by State banks who fail, after their failure, to show that the stockholders should not be individually liable under the present Constitution as it now stands. They try to show it only applies to banks issuing currency.

This amendment was introduced by Mr. Marshall, who will explain it more fully. I do not think any member of the Convention will vote otherwise than for it.

Mr. Marshall — Mr. Chairman, the present constitutional provision on this subject is, that the stockholders in every corporation and joint-stock association for banking purposes, issuing bank notes or any kind of paper credits to circulate as money after the 1st day of January, 1850, shall be individually responsible to the amount of their respective share or shares of stock any such corporation or association, for all its debts and liabilities of every kind. This amendment, in the first place, is desired to strike out the words which relate to the particular period of time when such liability shall go into effect, and as to the particular classes of indebtedness, as far as time of contraction is concerned, which are to be governed by the terms of provision. I observe that the Revision Committee has stricken out these dates, and have, therefore, conformed with the amendment which is proposed in all respects, except that they leave in their proposed revision the words "issuing bank notes or any kind of paper credits to circulate as money." Now, under the National Banking Act there is a liability of stockholders to the amount of the respective shares of stock, and which is in precisely the same form as that adopted in the proposed amendment now under consideration in Committee of the Whole; and, if we adopt this proposed amendment, our State banks would be on exactly the same footing of liability and the depositors in the said banks would have the same degree of security afforded to them as in the case of a national bank. There is no reason why a State bank and the depositors in a State bank should be on a different footing from a national bank. There is every reason why the same liability should be imposed upon stockholders and the same measure of protection should be afforded to depositors of a State bank as exists in case of a national bank.

Now, the words in the present Constitution, "issuing bank notes or any kind of paper credits to circulate as money," are absolutely meaningless at the present time, and have been meaningless in this State for the last thirty years, since the adoption of the national banking law, which imposed a ten per cent tax upon the circulation of the State banks. The result of that has been that all circulation has been withdrawn; and there is not, therefore, in this State a single bank which comes within the purview of this constitutional language, and this provision of the Constitution, therefore, is absolutely a dead letter, unless we strike out those words of limitation and make the liability of stockholders in every State

bank exactly the same as the liability of stockholders in a national bank. By making such a change we are protecting those who do business with the banks, and are at the same time, it seems to me, raising the standard of the State banks to a footing of exact equality to that of national banks.

Mr. Moore — Mr. Chairman, may I ask the gentleman a question?

Mr. Marshall — Certainly.

Mr. Moore — Will the gentleman give us the section of the old Constitution again?

Mr. Marshall — It is section 7, article 8.

Now, Mr. Chairman, there is at the present time upon the statute books of this State, and since the last two years in the general banking law a provision which creates a liability in substantially the form as it is presented in this proposed amendment, striking out the words " issuing bank notes or any kind of paper credit to circulate as money," but in several cases which have arisen since the adoption of the banking act, in which actions have been brought by the receivers of State banks against the stockholders of such banks, the defense has been interposed that the State banking law regulating the liability of the stockholders of a State bank, which imposes a liability upon the stockholders of a bank which does not issue paper money to circulate as such; that as to such a bank the act of the Legislature is unconstitutional, the argument being that here is an express provision of the Constitution specifying the particular cases in which stockholders shall be liable, and, therefore, by applying the well-known legal maxim that the expression of one is the negation of everything else, it is claimed that there can be no constitutional law passed in this State whereby the stockholders of the State bank may be made liable.

That is a situation which should not be further countenanced; and we, having it in our power at this time to continue the intention of the framers of the Constitution of 1848 in force, and carrying it out to its logical conclusion of making the stockholders of every such bank liable for the debts of the bank to the amount of the stock held by each of the stockholders, and at the same time making the same rule applicable to the State bank as applies to the national bank, it seems to me that there can be no good reason shown why this amendment should not pass.

Mr. McClure — Mr. Chairman, may I ask the gentleman a question? Are not the stockholders in State banks now liable for the full amount of their stock until the stock is all paid up?

Mr. Marshall — That is not the question, Mr. Chairman.

Mr. McClure — But is not that the fact?

Mr. Marshall — Yes.

Mr. McClure — Then you propose to make them additionally liable again, and again liable to the full extent of their stock?

Mr. Marshall — Yes.

Mr. McClure — And that is to keep pace with the law which relates to national banks?

Mr. Marshall — Precisely.

Mr. McClure — Have not the national banks already an advantage in the issue of paper in this State?

Mr. Marshall — I do not know; that has nothing to do with this matter. It has no bearing upon this question.

Mr. McClure — I would ask whether or not that is the fact, if the gentleman can answer it?

Mr. Marshall — I do not know whether it is any advantage to issue paper of a national bank, because the fact is there are very few national banks in this State that have not entirely abandoned their currency and have given up their circulation.

Mr. McClure — You mean State banks?

Mr. Marshall — I mean national banks. I do not think that ten per cent of the banks that have the right to issue currency under the national banking law are issuing currency at the present day, because it does not pay.

Mr. Cookinham — Mr. Chairman, I would like to ask the gentleman this question, whether this is not an additional imposition upon the stockholders of the State banks, by this liability which the gentleman proposes to put into the Constitution, which does not exist as to stockholders of national banks?

Mr. Marshall — It is not. It is precisely the same liability which exists in the case of national banks, in precisely the same language.

Mr. McClure — Will the gentleman answer this question: why should we impose this burden upon the stockholders of State banks any more than upon the stockholders of any other corporations of the State?

Mr. Marshall — Because, Mr. Chairman, it seems to me that a State bank is on an entirely different footing from an ordinary corporation. A bank holds itself out to the public as worthy of credit. It says to the depositor, put your money in our charge, let us do business with it, let us enrich ourselves with your money,

and we will see to it that you are protected. When the State says to a bank: "Yes, you can have these great privileges, but at the same time you must protect these depositors," the State is doing no more than its duty. The situation is entirely different from that which prevails in the case of an ordinary corporation.

Mr. McClure — Will the gentleman answer another question? How much difference is there in the holding out to the public of a confidence to be inspired in the matter of a State bank than there is in that of a fire insurance, or a life insurance, or any other corporation that asks the people to put in their money? Why should the stockholders of State banks be doubly held liable any more than the stockholders of any other corporation?

Mr. Marshall — I think I have answered that question, and the declaration in the Constitution of 1846, that such a liability should exist in the case of a bank that issues money, no matter how small the amount may be, is a sufficient answer to the question of the gentleman from New York.

Mr. Hamlin — Mr. Chairman, may I ask the gentleman a question? I believe in the proposition laid down here, but I would like to inquire whether there is anything in this proposition that would conflict with the United States Constitution, making a person now holding stock doubly liable to what he is at present, by means of this amendment?

Mr. Marshall — No. That precise question has been decided by the Court of Appeals in this State, in the matter of Oliver Lee's Bank, in the Twenty-first New York, and by the Supreme Court of the United States, in Sherman v. Scott (2 Black, U. S. Reports), where the question arose under this constitutional provision of 1846. At the time when this constitutional provision took effect there were in existence in this State various banks organized under the Safety Fund Act, and, among others, Oliver Lee & Company's Bank. There was in the charter of that bank a provision that at no time should there be any liability imposed upon the stockholders beyond the amount which they had already invested in their stock. Then came this constitutional provision of 1846, which I have read, and the question arose whether the liability imposed by this constitutional provision could affect a bank organized as was Oliver Lee & Company's Bank. The Court of Appeals held that those words were retroactive and applied to all banks, and the Supreme Court of the United States held the same thing, declaring that there was nothing in the provision of the Constitu-

tion or in the act passed under that Constitution, which in any way impaired the obligation of the contract.

Mr. Hamlin — I will accept the gentleman's statement in regard to that, that that may be so; but, should there not be some provision as to existing stockholders before this Constitution goes into effect?

Mr. Marshall — I think not. I think they should be all treated alike.

Mr. Augustus Frank — Mr. Chairman, the present Constitution is like this, except as it speaks of State banks that issue currency. There are no such banks now, so that it simply makes all plain, in place of leaving it as at present. In the case of the Madison Bank of New York city, the parties attacked the constitutionality of the act and defended on the ground they were not personally liable, because the present Constitution applied only to banks issuing currency. The present law of the State, enacted by the Legislature, makes the stockholders personally liable. This simply takes out from the present Constitution that part of it which applies to banks issuing currency, and, as there are none such, it simply leaves it, as it ought to be left, if we should adopt this amendment.

Mr. McClure — Mr. Chairman, the suggestion made by Mr. Frank, it seems to me, ought to dispose of this amendment. If there are no banks to be affected by this change, why make the change? Mr. Frank states that there are none issuing paper. I do not see, sir, that this is a matter that ought to receive the sanction of this Constitutional Convention. I take it that it is a discrimination against the stockholders of State banks and in favor of the stockholders of other corporations. I think the effect of it will not be such as the gentleman moving this suggests, and I may be allowed to add that this seems to be suggested in this Constitutional Convention to meet a particular case. One case was suggested, that of the stockholders of the Madison Avenue Bank in the city of New York. Now, it will be a mistake when we ever make constitutional provisions to meet particular and specific cases. It seems to me that there will be a discrimination here against the stockholders of the State banks which will work an injury to the parties interested in such banks. It will be found, Mr. Chairman, if this is adopted, that the people who hold stock in these banks, when they fail, will not be responsible to any amount. When you put upon stockholders a double liability, as this proposes, the average man of sense will not hold stock there, and, if a man does hold stock from improper motives, or to benefit himself at the

expense of depositors, he will take care that at the time the bank fails and the liability is to be made good, he is not responsible, or that his stock is held by some one upon the books of the corporation who is not responsible.

Mr. Marshall — Is it not true that Mr. McClure was the receiver of the National Bank of Deposit in the city of New York which failed, and that he has collected from the stockholders of that bank an amount of money sufficient, with other assets that came into his hands, to pay the depositors of that bank a hundred cents on the dollar?

Mr. McClure — No, sir. I am surprised that Mr. Marshall's residence in the city of New York and his connection, as counsel, with the defunct National Bank of Deposit, did not give him better information about the affairs that were so publicly known as were those of the Bank of Deposit. I would not have referred to it, if I had not been asked the question, but the Bank of Deposit paid one hundred cents and interest out of the assets of the bank, and paid into the hands of the stockholders over $150,000 of assets within a year. No amount was collected from the stockholders. The assets of the bank themselves paid the debts, every cent, principal and interest. It was a national bank, and, if the stockholders had been depended upon to pay it, from my information as to their responsibility at the time the bank failed, I do not think very much money would have been secured.

Mr. Marshall — They would have been liable, would they not, and under the statute, precisely as in this provision?

Mr. McClure — They would have been liable under the law, but just as in that case, Mr. Chairman, the largest stockholder, holding a very large proportion of the stock of the bank, would not have been able to respond to any call made upon him. It only emphasizes the argument that I make, that one or two persons, if you have this additional liability upon them, will not be responsible, for no man will hold stock in a bank of that kind, with a double responsibility upon him, if he is, outside of his holdings in the bank, responsible and subject to account. I think, sir, it is a discrimination, and, besides that, it is a mistake. If you are going to apply this responsibility to stockholders, apply it to all corporations who will hold out their hands to the public and invite the public to put its money into their coffers upon the strength, the responsibility and the public position of the men who are its stockholders. But this is simply attacking our State banks, and I do not think it ought to hold a place in the Constitution of this State.

Mr. Hotchkiss — Mr. Chairman, I would have nothing to say upon this proposed amendment, if, by speaking, I could be supposed to regard the occupation in which we are now engaged as one of any seriousness. I do not suppose that any one of us imagines for a single moment that any amendment of this character will ever reach a third reading in this body; but it seems to me that we might save some time, which will be valuable to some of us, if we address ourselves to this question in the light of its history, in the light of the Constitution as it exists to-day. If you turn to section No. 111 of the report of the Committee on Revision, which is the most convenient form in which to find the Constitution and the amendments, you will see that the section which is now under discussion was framed in its present words in 1846, and was directed to banks issuing money. It was quite rational and quite proper that it should be so framed, and that there should be such a prohibition. But it does not stop there, and I would suggest that Mr. Marshall give his attention to this point. The object of making stockholders of these banks individually responsible was not to protect the depositors in the banks, but to protect those who held the scrip or the paper money of the banks, and for that reason, in a subsequent section, the Constitution provided that in case of the insolvency of any bank or bank association, the bill holders thereof should be preferred creditors.

Now, when you put the two sections together they are comprehensive, they are rational. When you undertake to amend this first section by striking out the terms which limit its effect only to banks issuing money, you not only rob the two sections of their proper force and effect, but you discriminate against our State banks and in favor of other banks. It seems to me that if any amendment is going to be adopted at this time, it should be one which strikes out the whole provision, for personal responsibility upon the amount of their stock subscription and also the provision affecting the preference of bill holders in insolvent banks. It is only by taking one of two courses that you can pursue any rational method, or pursue a method which will not be discriminative against the banking capital of the State of New York.

Mr. Augustus Frank — Mr. Chairman, I think this can be made clear by repeating what has already been said, that this proposed amendment does not in any way change the responsibility of stockholders of State banks. They are holden now under the statute of 1892. That may be repealed at any time; and it is proposed to amend the Constitution and put it where it cannot be changed. At that time it applied to banks issuing currency, as nearly all

did at that time. Now, the argument is made by the gentleman from New York (Mr. McClure) that banks should be put on the same footing as manufacturing establishments. That, it seems to me, is entirely fallacious. It would be unwise. You could not get people to engage in manufacturing, if such provisions were applied to them. Under the banking system the banks are willing to do it. It places the State banks, as far as this liability is concerned, precisely on the same ground as the national banks. They issue currency, as he has stated, but the currency of the United States is amply provided for, so that from the foundation of the banking system, thirty years ago, not a single dollar has been lost to an individual. National banks that issue currency have to put up government bonds, and those are held for the currency. This amendment is simply to the liability of the stockholders for the money that is deposited with them. It changes nothing with a single bank in this State. Under the statute now they are held, and this makes stockholders more careful; it is better; it provides for the depositors and they have additional security, as they ought to have.

Mr. J. Johnson — Mr. Chairman, with the large money centers in this important State, it seems to me that there should be all that is possible to give stability, certainty and security in all financial matters. That thought impressed the Constitutional Convention of 1846. A measure was adopted by the people and has been a part of the fundamental law of this State for forty-eight years. Now, sir, we find that banking has changed. All State banks were, in 1846, practically banks of issue, and the provision in the Constitution practically covered all the banks and practically gave this assurance of stability and security to every man that deposited a dollar in a bank authorized by the State of New York. But the mutations of the banking business have made this section, State banks being no longer banks of issue, obsolete. I think it is wise, it is necessary; it is for the dignity of the State as to financial matters, that the change of this section to adapt it to the change in financial matters for the last forty-eight years, should be adopted; and it would be lamentable if it should be rejected by this Convention.

Mr. Moore — Mr. Chairman, I would like to ask Mr. Frank, who is practically the mover of this amendment, whether or not the law of 1892 does not except private banks from the operation of that act which were then in existence?

Mr. Frank — Mr. Chairman, in reply to the gentleman, I would say that the whole question of private, national and State banks

is too difficult to go into in the short time we have. This proposed constitutional amendment applies to State banks only. I would say to him that private banks are held for the last dollar — all the property the owners have. This provides for only double the amount. Private bankers are held for all that they are worth. If the capital is but a hundred thousand dollars and the man is worth a million, he is holden for every dollar of the indebtedness of the bank.

Mr. Moore — There is no supervision, though, is there, under the act?

Mr. Frank — Oh, yes; certain private banks are subject to supervision — others not.

Mr. Moore — Mr. Chairman, if amendments are in order, I beg leave to hand up the following amendment.

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

Add at the end "and all private banks now in existence, and all individuals doing a banking business shall be subject to examination by the Banking Department, and under its supervision."

Mr. Hamlin — Mr. Chairman, in view of the explanation that has been made by Mr. Marshall, that this liability which is to be created by this amendment already exists by statute, I think that this is a commendable amendment. The effect of it is to strengthen the State banks, and I think every State banker would desire to be upon the same ground as the national banker. As far as the discrimination is concerned in regard to bills, it is practically of no importance. There is very little margin at the present time, in issuing bills, to a national bank. Owing to the high premium upon government bonds and the low rate of interest, it is practically of no value to national banks; so that, practically, to-day national and State banks stand upon the same footing as to each other, with the exception that this provision that national bank stockholders are liable to double the amount of their stock, while State banks are liable only to the amount that they have in; and the result of this is, is I have stated, simply to put them all upon the same foundation and to strengthen the State banks to the benefit of the banking system of this State. Therefore, I think it is a good amendment, and one that should be adopted by this Convention.

Mr. Marshall — I do not think that Mr. Moore's amendment should prevail, for two reasons. In the first place, a private banker

is liable for all the debts of his bank, no matter how large they may be, to the extent of his entire fortune, and, therefore, there is no necessity for making any provision in this respect as to private or individual banks. So far as State inspection and examination are concerned, that question is not at all germane to the subject under consideration in this amendment. There is no provision in the Constitution which requires the examination or inspection of a State bank, or of any State banking institution, and it would, therefore, be a most curious thing if we should insert in the Constitution a provision for the inspection of private or individual banks. That is a matter regulated entirely by the Legislature in its provisions, with respect to the Banking Department, and has no place at all in the Constitution.

Mr. I. S. Johnson — If I understand the object of this amendment (Mr. Moore's) correctly, it simply carries out the certain thought or object of the amendment of the committee. That amendment is for the purpose of protecting the depositors and the public. Now, it is a fact that under the present banking laws a large number of banks are in a situation in which the public or the depositors are not protected. When that act was before the Legislature evidently some one saw fit to attempt to take care of himself, and he did it successfully. While it provides that there shall be inspection and examination by the Superintendent of Banks of all banking institutions, including those conducted by individuals, for some reason or other it was seen fit to say that all banks, or any individuals doing a banking business and receiving deposits then existing, should be exempted from the provisions of the act; and the object of Mr. Moore's amendment, as I understand it, is simply that while we are at it we shall finish up the job and do something to protect the public, not only against those banks that were existing at the time of the amendment of the banking laws, but also those that came into existence after that time. Whether this has been done hastily and should be further perfected, I do not know; but the principle of it is right. In my own county I think about half the persons doing a banking business are not subjected to visitation by the Superintendent of Banks. There is nothing by which the public can know whether these banks are solvent or not. The Superintendent of Banks, if he comes to the county, cannot go into one of those banks and make an investigation, because it happened to be organized before 1890 or 1892. I think that this matter should be taken into consideration, and I think it is perfectly germane, in order to carry out the

object sought. The object is a good one, and I am in favor of it. I would take that, if I could not get anything more, but I would insist, if I had the power, upon saying that we should go back and reach all individuals that are doing a banking business. Let us, while we are at it, protect the public in every respect possible, and hence I hope that the amendment offered by Mr. Moore will be adopted.

Mr. Moore — Mr. Chairman, I introduced this amendment for the very purpose of strengthening the position of the proposed constitutional amendment in relation to banks. Mr. Frank says that the laws of 1892 may be repealed, and, therefore, this amendment ought to pass. Upon the same ground, then, my amendment should pass, because I want to put something in it that the Legislature cannot repeal. This is not a blow at any class of moneyed institutions. Its object is simply to make them more worthy of the confidence of the people. The gentleman from Onondaga (Mr. Marshall) says that the reason why my amendment should not be adopted is because a private banker, if he is worth a million dollars, is responsible for the whole amount of the debt of his bank. That is just the point, Mr. Chairman. Is he worth a million dollars? We want some one who will protect the interests of the people, the people who deposit with that single individual, as well as something which protects the large number of people who deposit on the faith of stockholders. Now, if the amendment is defective because it does not include banks enough, I am perfectly willing to have Mr. Marshall or any other man include other banks. We have all seen too many times that the people in a community have put their confidence in one single man, or in two men; have deposited money with them. They had believed these men to be honest, that they could do for them what they (the people) could not do for themselves. Mr. Chairman, we have seen too many communities ruined in this way, without any legal redress, except to sue the persons who took the money that was on deposit and used it in speculation or in some other way. It seems to me, Mr. Chairman, that one of the very best things which this Convention can do at this time is to adopt an amendment of this kind and make it part of the organic law of the land, a law which the Legislature cannot repeal, a law that will give protection to the people who deposit their moneys with private bankers or private banks. This amendment is not introduced simply for the purpose of introducing it; and it is just as much germane to the subject as this amendment was germane to the amendment which it proposes to amend. I ask, Mr. Chairman, that the Con-

vention will take these two amendments into careful consideration, relating, as they do, to the moneyed interests of the people in this great State, who now have not the protection of the Banking Departments of the State.

Mr. A. H. Green — Now, this, Mr. Chairman, is a very general amendment. I would like to know if a man chooses to open a bank, put out his sign as a banker in Wall street or in Chatham street, whether the Superintendent of Banks is to go into his office and examine his affairs?

Mr. Moore — That is just it; yes, sir; that is just what I want.

Mr. Green — Very well, let us see. Suppose that Mr. Moore chooses to discount my note. Do you want the Superintendent of Banks to overhaul his affairs? What do you mean by bankers? Why, there are lots of them in Chatham street, lots of them in Wall street; they do a private business, and the Superintendent of Banks has no more business in there than he has in the grocery store of any individual. It is a private affair. Now, where the privilege of issuing currency is granted to a bank, that is another thing. It is very proper where the State grants an important privilege, a franchise to conduct a bank and issue currency, that some State officer should intervene and see that its affairs are kept in proper condition. But just here comes a question. I find that with all the Superintendents of Banks and all the officers of national banks, the first thing we know, a bank closes its doors and what develops is that its affairs are rotten. The horse is gone and the stable door closed. Now, what are you going to do about it? Still, because of the infelicity and insufficiency of examinations, perhaps that is no reason why the office of superintendent should be abolished; but that has been the experience of late. I see no objection to this amendment whatever. It is in the interest of protection for the people; it is in the interest of protection for depositors, and in my opinion it should be put into the Constitution. My friend, Mr. McClure, suggests that it should be carried on into all other corporations.

Mr. McClure — No, Mr. Chairman, I beg the gentleman's pardon. I did not say all other corporations. I said corporations that invited the people's money, like insurance and other companies of that kind.

Mr. Green — Well, then, trust companies and all that sort of thing it should be extended to. There is no doubt about that; but it has been the policy of this State for years that manufacturing corporations should be favored, and that stockholders should not

be made individually responsible. I do not see any objection to this amendment, and I regard it as a wholesome, fair provision, one that ought to be adopted as being in the interests of the people; but as to examining the affairs of every private banker who may have his name upon a sign and call himself such — that does not give him any privileges, and should not subject him to this inspection. I suppose what you mean by a private bank will have to be defined a little more accurately in order to make it proper to have applied to it any such constitutional provision.

Mr. I. S. Johnson — Mr. Chairman, I desire to offer an amendment to Mr. Moore's amendment so that after the words "doing a banking business," shall be inserted the words "and receiving deposits," so that it will do away with all institutions, except those receiving deposits. That is the object. I suppose.

Mr. Moore — Mr. Chairman, I will accept that.

Mr. McClure — Will the gentleman from Clinton allow a question? His amendment is very general. It relates to all kinds of banks. I would like to ask what effect it will have upon some of the banks at Saratoga?

Mr. Moore — I am not familiar with the financial condition of the banks at Saratoga so that I can answer the question.

Mr. Bowers — Mr. Chairman, I wish, before the amendments are voted upon, to say a word on this proposed amendment, which, I think, is calculated to very greatly injure the financial interests of the State. I think it has been ill conceived and is not being considered with reference to the financial interests of the State in the manner in which I hoped such a measure would have been considered. Now, the relation of a depositor to his bank is simply the relation of debtor and creditor, and has always been so considered. There is no more reason for treating the depositor of a bank with special consideration than there is for so treating a man who buys a life insurance policy, puts all his earnings into the life insurance company during his lifetime, and then dies and leaves nothing for his widow and children. Nor is there any more reason for protecting the depositor in a bank than there is for protecting a man that takes out a policy in a fire insurance company. Nor is there any more reason for it than there is for making the stockholders of all express companies or the stockholders of all common carriers liable to an amount double the value of their stock; and there is less reason than there would be for making liable the directors of all savings banks where, through their carelessness, their associates are allowed to get away with the funds and rob

the depositors. Now, do not let us misunderstand this situation. There never yet has been a statute passed, where it has received proper consideration, which made stockholders liable beyond their stock for the mere purpose of protecting depositors; and the language of the old Constitution was carefully guarded.

Mr. Marshall — The National Bank Act was carefully considered.

Mr. Bowers — I am coming to that in a moment. The language of the last Constitution is perfectly correct and proper upon this subject. Where a bank emits paper which is treated as a medium of exchange, as you would deal with gold or silver, the people must have some protection, and they must know that the bill they take, no matter whence it emanates, represents what it purports to represent on its face. When dealing with such a question there is some justification for putting all possible protection around banking affairs. That was the reason, as was well stated this morning by Mr. Hotchkiss, for the provisions of 1846, which were made in that regard, and those which were put into the Constitution, were the whole substance of the article, and should not be carelessly dropped aside now by amendments introduced to put us on a par with the national banks.

Mr. Marshall — May I ask the gentleman a question? Is it not a fact that under the act of 1837, known as the Safety Fund Act, there was provision made for the security of the bill holders of every State bank, by the deposit with certain State authorities of mortgages and other securities which were designed to take care of the bill holders of the banks?

Mr. Bowers — Certainly, what I have been saying ——

Mr. Marshall — And, therefore, this provision of the Constitution of 1846 was an additional provision.

Mr. Bowers — To protect the bill holders and not to protect depositors. That is precisely the difference which exists to-day; that was the whole object of the act, and that was the whole object of the Safety Fund Act. Now, going along with the present condition of this question, and referring back to the point at which I was interrupted, I alleged and again allege that the object of the Constitution, and of all other laws, where the question has been maturely considered, is to protect the holders of bills that are emitted by banking institutions, and not to protect the depositors. There is no more reason for protecting the depositors, nor half as much, as in many other classes of cases to which I have alluded. Look at the situation of the State banks and you will find another strong argument against the passage of this amendment.

The national banks have the right to issue paper. The State banks have the right to issue paper, but they are taxed out of existence, and they cannot issue it, as every one knows; so that you have to-day, as I understand it, a situation in which the State banks can only issue paper by paying a tax of ten per cent. I may be wrong in figures, but that is my recollection. It kills them. The State banks no longer issue paper; that is given up entirely to the national banks. Now, then, if they have the right to issue paper and make the profit that comes from it, it is perfectly right that the United States government should require a deposit of securities and should put a strict personal responsibility upon stockholders beyond their stock, so that when a bill is accepted here issued in Oregon or Texas, it may be known that by the general provisions of the banking law of the United States that piece of paper is just as good as if it were issued in Albany or New York. But the National Bank Act has not put the requirement as to deposits. Nor has it put the liability on stockholders solely for the purpose of protecting the depositors. The main object of it is to protect all the creditors and make these bills good.

Mr. Augustus Frank — The bills are secured by national bonds. In that way the bill holders are protected.

Mr. Bowers — Then it is to make the government good for its guarantee.

Mr. Marshall — Not a bit.

Mr. Bowers — Very well, you can argue it as you like. That is my understanding of the intent of these statutes and the object of the law — to make these bills goods. You may say to the contrary, but that is, undoubtedly, the object of the statutes; and the government has so arranged that these bills to-day are just as good if issued in Oregon, as I have said, as if issued here.

Now, come to the condition of the State banks again. They are in this situation. They are rivaled by the trust companies of the State, which receive deposits and pay interest upon deposits, properly so; but, nevertheless, it does cause injury to the banks. They are cut off from issuing paper; they are trammeled in every direction, and you propose now to put the same responsibiilty upon them as if they did issue paper, but without giving them the right to do it. More than that, how about the stockholders in these banks? Assume that the statement is correct, that by the Constitution we can impose this liability upon stockholders. Is it a fair thing to do? Have they not been buying this stock for the past thirty or forty years in the belief that there was no liability,

unless they could issue paper? Is it proper to say to the people of this State who have invested their savings in the different banks of the State, that they shall have their stock depreciated by the addition of this liability? Is it fair to destroy the value of millions of dollars of capital invested in the stock of these banks? Is there any justification whatever for this amendment, except to further damage the State banks, striving, as best they may, to continue their business in this State against the legislation coming from Washington in favor of the national banks, and against the competition which they have from all quarters? Yet, in face of all this, we are told that it will improve the condition of the State banks. Well, they stand pretty well. They don't need the additional credit which will be given to them. Worse than all this, in nine cases out of ten when such a trouble comes it comes in the night, without a moment's warning. The directors get rid of their stock. It is the poor unfortunate people who have invested their savings, and are not closely in alliance with the management of the banks, who are called upon to respond when there comes disaster and failure, and to make good the losses. I do not see how it is possible for this amendment to pass in this Convention, or how you can expect the people to ratify it. I do not believe the people want to turn down the State banks any farther. Do not let us proceed here to say that the Legislature cannot change the statute which you say is put upon the statute book in this regard. It may be that that statute may turn out to be unconstitutional. We need not bother ourselves about making Constitutions. Let us leave to the Legislature the power to act. Had you here provided that the Legislature could enact laws upon the subject, we should have been dealing with a different question; but you propose here to fix the liability for all time and thereby destroy these investments in the stock of State banks, and do great injury to the entire banking system of the State. I hope this amendment will fail.

Mr. McClure — Mr. Chairman, I did not refer to what was dinned into my ears a number of times, that this provision which is now sought to be incorporated in the Constitution is already a matter of statute law. But, Mr. Chairman and gentlemen, you all know that in 1892 there were a lot of statutes, comprehensive, very full, passed with reference to almost every general subject in the State of New York; and those statutes, many of them, are not yet even comprehended by the people in their full force and effect. Very many of them are the subject of litigation in the courts, and the question as to their value, and the question as to their advis-

ability, is yet an open one. This statute of 1892 providing, as is desired now by the promoters of this amendment, may be repealed. It may be repealed as being found to be inoperative. Now, as a matter of fact, Mr. Chairman, this provision does not result to the benefit of the people in the case of national banks. In a case that I am very familiar with, it was discovered that very many, and nearly all, of the apparently responsible stockholders, whose names had been held out to the people, had parted with their stock shortly prior to the insolvency which came upon the bank, and at the time of the insolvency the stock was actually held by irresponsible people. I have been told of one case in this State — not in the city of New York — where it was supposed that every stockholder in the bank was individually responsible for the amount of the bank's entire capital, and yet when the catastrophe arrived it was found that every one of those stockholders had parted with his stock, and that it was held by his children and other members of the family, who had no individual responsibility and no property beside that stock.

Mr. Schumaker — They had to answer for it just the same.

Mr. McClure — They did not have to answer for it, because it was individual property that they had parted with before there was an insolvency that could be proved in a court of law. Every lawyer on this floor knows the difficulty of proving the moment at which an institution becomes insolvent, with its large assets overlapping and increasing above its liabilities; and the stockholder in such a case, at any rate, makes a vigorous fight, and the money of the bank is expended in counsel fees and in other ways in attempting to make the stockholders pay up. Now, let this matter remain where it belongs — in the Legislature. We do not need to make ourselves a second division of the Legislature, and put into the Constitution provisions that we fear may be taken out by the Legislature, or to take out things that are matters of legislative enactment. Let us allow the act of 1892, so comprehensive and full, to have its effect gradually upon the people. If the people find that it is not to their advantage, they will repeal it; and, if they find that it is to their advantage, they will allow it to stand. I hope this amendment will not prevail.

Mr. Augustus Frank — Mr. Chairman, I do not care to discuss this matter further. If it is not best for the people of this State, let it take the course suggested by the gentleman from New York (Mr. McClure). The matter came before the Banking Committee, made up of several bankers of this State, scattered from New York

to the western part of the State, and after careful consideration it was reported unanimously. Some of them were national bank men, some of private banks, and some State banks, and they unanimously reported this after careful consideration. It comes before the Constitutional Convention to-day. From the argument made by the gentleman from New York (Mr. Bowers), it would seem that he hardly understands — I would not say he does not understand it — but certainly not clearly, the whole matter. He makes his argument, and closes by saying that the people of this State can never adopt the Constitution if you put this in. It is, in fact, in the present Constitution; it has been there for forty years; it is in the statutes of this State at the present time; it has been since 1892, and all we ask is that it should be made plainer in the present Constitution, and the part should be taken out that is entirely superfluous. It is right and proper, and just, and there is no reason why it should not pass. The whole argument that national banks are held for their individual liability to twice the amount, because they are held for the currency, has nothing to do with the question at all. The individual depositor in the national banks holds the stockholders for twice the amount. The bills have nothing to do with it; the bills are simply secured in every respect by United States bonds worth from 100 to 125, and they only issue ninety per cent of currency. As I said a few moments ago, no man has ever lost a dollar by them. But set that aside, in addition to that they get their pay; the stockholders are holden for the full amount. That is all we ask. It is better for the people; it is better for the State banks, and right and proper that it should be passed. I ask that the vote be taken on the amendment and then on the main question.

Mr. Goeller — Mr. Chairman, had I been a member of the Convention of 1846, I should have voted against the provision that was then incorporated into the Constitution in reference to banks. I am extremely opposed to what is already in the Constitution and to any change or amendment sought to be engrafted upon the provision as it stands, and any provision sought to be introduced into the new Constitution that we are about to frame. I regard this amendment here as one of the hardest provisions or laws that can be framed against any business enterprise or institution. You virtually require stockholders, by maintaining a provision of this kind, to become detectives, to daily give their presence and attendance in supervising the transactions going on in banking institutions. I do not think it is right that so much feeling and solicitude should be shown by a law-making body, with respect to a particular

species of rich men, or capitalists, or traders. They go out into the world and take their chances in commerce. They deposit in banks created by stockholders who have willingly contributed of their money in payment of shares to found an institution of that kind for preserving the moneys of depositors. Now, Mr. Chairman, I entirely adopt the remarks that were made by Mr. Bowers in their full length and scope, and for that reason will close my remarks now, exhorting the delegates to this Convention to vote down the amendment that is proposed.

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

Mr. Marshall — Mr. Chairman, I move that the committee rise, report this amendment favorably, and recommend its passage.

The Chairman put the question on the adoption of the motion of Mr. Marshall, and it was determined in the affirmative by a rising vote — 58 to 20.

President Choate resumed the chair.

Chairman Jenks — Mr. President, the Committee of the Whole have had under consideration proposed constitutional amendment (introductory No. 69, printed No. 434), entitled, "To amend section 7 of article 8 of the Constitution, relative to the liability of stockholders of banking corporations," have gone through with the same, have made no amendment thereto, and have 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.

A count being called for, Messrs. Manley and Rogers were appointed tellers, and announced the vote as 63 ayes and 28 noes.

The President — The report is agreed to and the amendment goes on the order of third reading by way of the Committee on Revision.

Mr. Cookinham — Mr. President, I move that we go into the order of third reading. There are now upon that order some of the most important amendments that the Convention will be called to pass upon; among them canals, cities, the one that has just been ordered to a third reading, civil service, and the drainage of agricultural lands. It seems to me that these important amendments demand our immediate attention.

The President — This motion of Mr. Cookinham requires a vote of the Convention to divert from general orders to third reading.

Mr. Storm — Mr. President, I most decidedly object. My amendment is next on the list of general orders, and I have been waiting patiently for a long time, and I do not think it is fair to be crowded out at this time. I had intended to move that we limit the time of debate on the next general order to one hour. I trust that the Convention will give me the next hour for the discussion of that amendment.

Mr. Burr — Mr. President, I also agree with Mr. Storm that we ought to be treated fairly in this matter. My amendment was up some twelve numbers further than it is now, and was moved down, in what manner I know not. The anti-gambling amendment is immediately ahead and the anti-trust amendment immediately follows. We can dispose of them in a short time, and I trust we will have an opportunity, even at this late day, of having this question disposed of.

Mr. McMillan — Mr. President, I sincerely trust the motion of Mr. Cookinham will be carried.

The President — Does any other gentleman desire to be heard upon Mr. Cookinham's motion?

Mr. McClure — Mr. President, I rise to obtain some information. Mr. Cookinham says the canal matter is in condition to have its third reading. I notice from the press this morning that a new suggestion has been received by the friends of the canal system, and I am advised that they are in session somewhere.

The President — Can Mr. Cookinham furnish Mr. McClure with any information on the subject?

Mr. McClure — None of these gentlemen are present.

Mr. Cookinham — I believe the Canal Committee has a new proposition that will be satisfactory to many of the canal people.

Mr. McClure — Then I would like to have Mr. Cady explain.

Mr. Cady — What is the question?

The President — The question is, what is the situation on the canal amendment?

Mr. Cady — Mr. President, the canal amendment is on the order of third reading, but I think I am at liberty to say that a form of an amendment to that amendment as it appears on the order of third reading has just now been substantially agreed upon by all who are interested in the matter of canals. So I am inclined to think that the matter submitted in the form of an amendment here will receive the sanction of those gentlemen and of the Convention.

Mr. Storm — Mr. President, I think it is rather straining a point to get this matter in. They are scarcely ready, and I see no reason why the next amendment in order should not be taken up in general orders. I ask it in all fairness, and I trust that Mr. Cookinham's motion will not prevail.

Mr. McLaughlin— Mr. President, I hope we will go into third reading. I think we have some important subjects here on that order that ought to be disposed of.

The President put the question on the motion of Mr. Cookinham.

A count being called for, Messrs. Manley and Rogers were appointed tellers.

The gentlemen named acted as tellers, and announced the result — ayes, 58; noes, 28.

The President — The motion of Mr. Cookinham prevails.

Mr. Manley — Mr. President, I move that the privileges of the floor be extended to the Hon. Richard C. McCormick, of the First District.

The President put the question, and the privileges of the floor were extended to the gentleman named.

Mr. Foote, from the Committee on Revision and Engrossment, to which was referred the proposed constitutional amendment, introduced by Mr. H. A. Clark (introductory No. 206, printed No. 393), reported by the Select Committee on Civil Service and by the Committee of the Whole, entitled "Proposed constitutional amendment to amend the Constitution, relative to civil service of the State and cities," reports the same as examined and as correctly engrossed.

Mr. Foote, from the Committee on Revision and Engrossment, to which was referred the proposed constitutional amendment, introduced by Mr. Parker (introductory No. 327, P. No. 417), reported from the Committee on Preamble and Bill of Rights, and by the Committee of the Whole, entitled "Proposed constitutional amendment to amend section 7 of article 1 of the Constitution, so as to include therein the right to construct and maintain necessary drains and ditches for agricultural purposes across the lands of others," reports the same as examined and corrected and as correctly engrossed.

The President — These will require no action and they will go, of course, upon the order of third reading.

The next business in order is the consideration of third reading No. 23, relating to canals. The Secretary will read the title.

The Secretary read the title as follows: "Proposed constitutional amendment to amend section 6 of article 7, relating to canals."

The President — The subject is up for consideration. Will Vice-President Steele be good enough to take the Chair.

Second Vice-President Steele took the chair.

Mr. Tekulsky — Mr. President, I move you, sir, that the debate on this amendment be limited ——

Mr. Cady — Mr. President, it does not seem to me than any time limit can be fixed, because we are in third reading, and under the general rule which gives an hour for the consideration of the matter. I desire to say in respect to this proposition, that the only change in existing provisions of the Constitution, suggested by it is one which removes the prohibition of lease or sale now applied to all the canals of the State, from that portion of the canal system situated in the city of Buffalo, known as the Main and Hamburg street canal, and it will make the provision of the Constitution, if it be adopted, such as to enable the Legislature to deal with the Main and Hamburg street canal in such manner as it may see fit. This change in the Constitution has been very strenuously urged upon the canal committee by the delegates from Erie county. The reasons which they give for exempting the Main and Hamburg street canal from the constitutional prohibition of lease or sale is that that portion of the canal is practically unused, has been abandoned, so far as commercial uses are concerned, for a number of years, and that it has become so charged with sewage, vile and fetid matter as to be a menace to the health of the citizens of Buffalo as well as to other parts of the State. There are gentlemen on the floor of this Convention from Erie county who can give a more definite and detailed description of the condition of that waterway than I can, because they are familiar with it from observation, and I am not; but if the information which has been given to me concerning its condition be correct, and I have no possible reason to doubt it, then this amendment ought to prevail, so that the Legislature may be left free to take such steps in relation to that portion of the property of the State as it may deem wise and desirable, and if no reasons are urged against this amendment, I trust that it may prevail.

Mr. Alvord — Mr. President, I desire to say, in connection with this proposition in reference to the Hamburg and Erie canal, that I had the honor and pleasure of being a member of the Canal Board about thirty years ago. By personal observation as well as by the speech of people in that regard, I found it to be a portion of the canal which had been almost entirely neglected for canal purposes,

and it was a source of great evil to the health and prosperity of the city of Buffalo. It should have been eliminated from the canal system thirty years ago, and should be now. It is not used for any purpose whatever in canal navigation. It is of no benefit to the canal system of the State, but, on the contrary, it is a great nuisance to the people of Buffalo and everybody having connection with the canals at that port. I hope and trust, sir, that power may be given somewhere so that that portion of the canal will not come within the prohibition of the Constitution and may be abandoned, as it should have been years and years ago.

Mr. Becker — Mr. President, I desire to add a word in accordance with the suggestion made by Mr. Cady in reference to this matter. The Hamburg canal, as it now exists, bears about the same relation to the canal system of the State as the vermiform appendix does to the human system, and is almost as dangerous. It is about a half mile long and was designed to reach up from the main system to some slips in the city of Buffalo. The docks were built in such a manner that for over a quarter of a century it had been unused. It has a bridge across it which is not even a swing bridge, and which prevents anything but small row boats from going up. I do not think a canal boat could go up in there. It is filled with filth. The city of Buffalo has spent thousands and thousands of dollars for the purpose of keeping a water-wheel going to create a current so as to draw the water in at one end and empty it at the other, and thus, in a slight way, purify it. When the trunk sewer was built in Buffalo, at a cost of hundreds of thousands of dollars to the city, it was hoped that that would remedy the evil, but the hopes of the engineers who built that work have not been realized.

I wish to add further by saying that from a certificate which is in possession of Delegate Putnam, from the Board of Health of Buffalo, it can be seen that the ground which constitutes the Hamburg canal was bought and paid for under eminent domain proceedings by the city of Buffalo by the taxpayers of that city. It never cost the State one dollar. It was deeded by the city of Buffalo to the State. It was actually paid for by the citizens of Buffalo by taxes raised here. We have gone to the Department of Public Works and tried to get some relief, but that department has told us that the provision of the Constitution prohibiting the sale or lease of any part of the canals prevented us from getting any relief. It is unused and money cannot be spent in dredging it. We cannot go to the Legislature and get an appropriation to clean it out because it is unused.

I want to add one other word in answer to the suggestion that I

have heard privately here, that this canal would be sold to the Central Railroad. The Central Railroad parallels it on the one side, and the Lehigh Valley Railroad on the other side, and when you come to sell it there will be competition. There is no danger of the city of Buffalo selling it to any railroad company without obtaining value received. It is utterly useless now, and breeds miasma and pestilence to the city. The delegates from Buffalo are unanimous, and the common council and the citizens of Buffalo are unanimous in asking that the organic law have a provision in it so that this condition of things can be changed.

Mr. T. A. Sullivan — Mr. President, I desire to substantiate all that the other gentlemen have said in regard to the Hamburg canal being a nuisance. At the present time its existence is sentimental only, providing we had a Victor Hugo in the city of Buffalo.

Mr. Bigelow — Mr. President, I would like to ask the chairman of this committee if he would accept a verbal amendment which I would recommend, and that is, strike out the word "forever" in the sixth line? It will read then: "They shall remain the property of the State and under its management." I think that will be equally effective. "Forever" is a long time even for the imperial State of New York. I think if the gentleman will accept that, that it will be an improvement in the expression.

Mr. Putnam — Mr. President, I ask the gentleman from New York to allow his amendment to be read from the desk.

The President *pro tempore* — The gentleman from New York (Mr. Bigelow) simply asks the chairman of the Committee on Canals if he will accept a verbal amendment, striking out the word "forever" in the sixth line.

Mr. Cady — Mr. President, in answer to the suggestion of the distinguished delegate from New York, I will say that that word "forever" now exists in section 6 of article 7, which limits the sale of the canals of the State, and the Canal Committee have simply followed the language which has prevailed in the Constitution for many years. I hardly feel at liberty to assent to the suggestion made by him.

The President *pro tempore* — Does the gentleman from New York make that as a motion?

Mr. Bigelow — No, sir.

The President *pro tempore* — Does any gentleman desire further to discuss this measure?

Mr. Veeder — Mr. President, I would like to inquire in relation to the language of the last paragraph: "All funds that may be derived from any lease, sale or other disposition of any canal shall be applied to the improvement, superintendence or repairs of the remaining portion of the canals." In the first part of this article you provide that they shall not be sold or leased. Now, how are you to obtain any funds in the sale or lease of the canals which are prohibited? Moreover, this paragraph provides that if there should be any sale of this part of the canal in the city of Buffalo, it can be applied to one of three purposes, to improvements, superintendence or repairs, either one of the three purposes. It may be retained for salaries or it may be applied for improvements or repairs. That is the only way it can be disposed of, because you have already provided that no part of the canal shall be sold. I ask the majority if we are to have any provision hereafter providing for the improvement of the canals? I think that is a great deal of importance, for really if this part of the canal is a nuisance, the board of health has some power to close it up. However, you have to constitutionalize everything.

Mr. Hawley — Mr. President, the very amendment under consideration provides for the sale or makes possible a sale of this canal. So that it is quite proper to provide for a disposition of the funds which shall arise from the sale. The final sentence provides that all funds that may be derived from any lease, sale or other disposition of any canal shall be applied to the improvement, superintendence or repairs of the remaining portion of the canal. There are various points in the State where surface waters of the canals are leased. The present provision in the Constitution of 1846, which prohibits the sale of any canal whatever, provides that all funds which may be derived from any sale, lease or other disposition of any canal, shall be applied in payment of the canal debt. The canal debt has no further existence. There is no canal debt, and so it is entirely proper that the proceeds of the sale of this canal which is here made possible, and all the leases of this surface water and of any lands adjacent to the canals, which are not necessary for the use of the State, should go to the superintendence, improvement or repair of the remaining part of the system of canals, and it seems to me that the sentence is beyond criticism in that regard.

Mr. Roche — Mr. President, I desire to offer an amendment. I move to recommit the proposed amendment to the Committee on Canals, with instructions to amend as proposed in my amendment.

The President *pro tempore* — The Secretary will read.

The Secretary read Mr. Roche's proposed amendment as follows:

Strike out all after the word "over" in line 7, down to and including the word "street" on line 1 of page 2.

Mr. Roche — Mr. President, I am opposed to the mutilation of the canals. I am opposed to the surrender of any portion of them to any corporation, or to any municipality, or to any individual. I do not believe in beginning in Buffalo and continuing in any other portion of the State. I think the canals should be kept intact. Now, it may be that this piece of canal in the city of Buffalo is a nuisance. I should judge from what I have heard that there is a quarrel between the municipal authorities of Buffalo and the State authorities as to who should bear the expense of cleaning it out and keeping it cleaned. If that is the case, then the State is engaged in pretty small business, or the city of Buffalo is engaged in pretty small business. Now, the intent of my amendment is that some power should abate the nuisance by cleaning out such substances or liquids as are offensive and not by selling the canal.

Now, I am informed that the real cause of the bad smell or nuisance that came from that part of the canal was the manufacturing of grape sugar or the manufacture of some other article along that part of the canal and the discharging of refuse from those factories into the canal; that within a year or so that manufacturing establishment has been burned down, so that the chief cause of the complaint has been removed. Now, if that be so, I think we should consider that matter and hesitate some time about making this precedent. We have incorporated into the Constitution, very wisely, a prohibition against the lease or sale of any portion of the canals which are now specially mentioned in the Constitution, and I think it unwise that we should begin with any mile or half mile of the canal on the ground that it has become worn out or defective, or that obnoxious substances have been discharged into it, or that in any other manner it is detrimental to the health of the people. We do not know how far that will lead. It seems to me that the local authorities and the State authorities who have charge of the canal should unite, and if this piece of canal (which I understand is used to some extent, or is liable to be used) is in an unhealthy condition, they should take some means of removing the nuisance. It seems

to me that those means do not go as far as the abandonment of a mile of canal in the city of Buffalo.

Mr. McMillan — Mr. President, everything that the gentleman has said is predicated upon some information which he says has reached him. Not one single statement made by him is in accordance with the fact. There has not been a boat up this canal in years. It is absolutely impossible to pass a boat up it. It is absolutely impossible to clear it out for the reason that commerce does not use it. All the property along the canal has been used for other purposes, and there is no freight received or consigned that can be discharged at any point. The people of the city of Buffalo have tried for years through its health department to have this nuisance abated. The matter has been referred to every attorney-general, and on each occasion he has reported that there was so much doubt as to the police power of the Legislature and the local authorities in reference to the matter, that there should be some constitutional provision. The city of Buffalo has experimented in this matter and has gone to great expense by putting in a water-wheel for the purpose of pumping water and creating a current. I desire to call the attention of the gentlemen to the fact that the level of this canal is on a level with Lake Erie, and it is impossible to clear it out. When he refers to the great sugar works, the Convention will clearly understand that all the sewage on the south side of this canal flows into it, and when the canal was constructed it was necessary to open several sewers into it, and they have continued to discharge into this open sewer, and to-day it is nothing but a seething mass of corruption.

Now, this canal has been a serious menace to the health of the city of Buffalo. Last year it contaminated the drinking water of that city and there were 100 deaths from typhoid fever in a few months, and when any gentleman stands on this floor and attempts to characterize this provision in any way except as a proposition for the protection of the health of the people of Buffalo, he does not know what he is talking about. It is simply a proposition to allow the Legislature to get rid of something that is absolutely useless for the purpose for which it was designed, and to abolish a menace to the health of the city of Buffalo and other portions of the State.

Mr. Hottenroth — Mr. President, when this matter came up before the Committee on Canals, we had several people appear before the committee representing the city of Buffalo in behalf of the health of the people. Now, it was demonstrated that this

canal was not in condition to be used for the purpose for which it was intended. I think that has been demonstrated. I do not think the State has taken care of its canals. Now, under the conditions as they were said to exist there, I was prepared to vote for this amendment. I believed then, as I believe now, that the public health of the people of the State of New York, or of any portion of the State, was superior to any commercial advantage. But I did not feel satisfied in my mind until I saw this portion of the canal. I did see it, and I am frank to say that I do not think that this canal is a menace in the condition that it is at the present time. It is true that about a year ago there was a foot or more of scum, or glucose, the result of the operation of the sugar factories. Those sugar factories no longer exist.

Now, another matter. There was a statute on the statute books that prevented any city or any subdivision of the State from emptying their sewage into any portion of the canal system of the State, and if this is the evil I think that the violation should be taken in hand by those who are in authority in the State and in the city of Buffalo. It is a question of maintaining the canals, and not a question of preserving the public health, because if it was a question of preserving the public health, we do not attack that question in the right way. If that was so, we should see that the authorities of the city of Buffalo correct the abuse. Let us suppose that any other portion of the canal—the portion here in Albany —that is contaminated by sewage, would you say that you would dispose of that portion of it? I think not. I think this is an entering wedge. I changed my opinion as soon as I saw it. I think, as a matter of public health, by the statutory provisions that exist to-day, if you carry them out, this nuisance could be done away with. I say, let us keep our canals intact.

Mr. Putnam — Mr. President, it cannot be said that I am not in favor of canal improvement. I voted for the amendment proposed by Mr. Roche. Mr. President, I think that this certainly would be in line with canal improvement — that is, this portion of the proposed amendment which provides that the Legislature may lease or make other disposition of that portion of the Erie canal known as the Main and Hamburg street canal in the city of Buffalo. I affirm every word that was stated by Mr. McMillan. The canal men of the city of Buffalo, the citizens of the city of Buffalo, the press of the city of Buffalo, and all who are at all interested in the welfare of the city are in favor of disposing of this portion of the canal. It is a menace, and was a menace to the health of the city years before these great works were erected. It has

for years, ever since I can remember, been detrimental to the purity of the atmosphere in that section. My brother, years ago, had a factory on the bank of that canal, on the corner of Washington and Scott streets. I, as a small boy, was almost afraid to go down there because of the stench, and that stench has continued from year to year. I appeal to the gentlemen on the floor of this Convention to give to the canal people in Buffalo that which they ask in reference to this Hamburg canal, which is practically useless to the people of the State.

Mr. A. H. Green — Mr. President, there seems to be some division of sentiment in the committee on this subject as to the desirability of disposing of this canal. Now, the arguments that have been presented here are not entirely satisfactory to me, and the intensity with which they are put before the Convention leads me to believe that there is something behind it all. I have heard it intimated that there was some intended purchaser of this canal. We have to look out here for jobs. While the gentlemen from Buffalo seem to think it is a very desirable thing to dispose of this nuisance, they have not answered the proposition, why the city of Buffalo does not take care of this nuisance itself. Then, we do not know what the mayor of the city of Buffalo thinks. We have not his opinion here. The city authorities of Buffalo may have their opinions, and as we are coming right on to the constitutional amendment which proposes to leave everything to the mayors of the cities, I would like to know what the mayor of Buffalo thinks about this. Then, if this thing is a nuisance, it has been clearly stated that this nuisance has been created by the people of the city of Buffalo, and I do not think that we should put in the Constitution any provision providing for an expenditure to protect the health of the people of that city. They ought to take care of that themselves. Unless I hear something more about it, I do not propose to vote for this amendment. I would like to know what the point of this thing is.

Mr. Woodward — Mr. President, I have passed across this canal for the last forty years, and I have never seen it when it was not a nuisance to the city of Buffalo. I have passed it most frequently during the last ten or fifteen years, and it was a nuisance, and has been a nuisance. For that reason I am in favor of disposing of it. I sometimes may have occasion to go down to the lower part of Main street in Buffalo, and in that case I have to cross this canal where it is a nuisance. No man should be obliged to cross it in order to do business. I have had to go down to the wharves there

to do business, and have crossed the bridge there. I have looked off that bridge, and I have never seen clean water or a boat passing through it.

Mr. McKinstry — Mr. President, I simply want to say something in behalf of that section of the State adjoining Erie county. Buffalo is the metropolis of western New York. We all go there and have seen this Hamburg canal. There is no division of sentiment in our part of the State that it should be abolished. The contamination of the waters of the Erie canal, from the sewage that flows into this Hamburg canal, is likely to be a source of disease. If an epidemic like cholera gets into this country, it could be spread all over that region. That canal is no essential part of the canal system of the State, and should not be kept in existence to the danger of that great city and of the whole western part of the State.

Mr. Putnam — Mr. President, I just want to say in answer to the question of Mr. Green, of New York. He said he would like to know who was behind it? I say the entire people of the city of Buffalo are behind it. The entire press of the city of Buffalo are behind it. The canal men of the city of Buffalo are behind it. We ask and we pray that we shall be given some measure of relief.

Mr. Moore — Mr. President, I would like to ask Mr. McMillan a question on this point. The distance of this canal in the city of Buffalo is about three-quarters of a mile?

Mr. McMillan — That is as I understand it.

Mr. Moore — And is the canal situated in one of the most populous districts of the city?

Mr. McMillan — It is not. It is not a residence portion, although many people live there.

Mr. Moore — About what is the value of this stretch of land?

Mr. McMillan — I am not in the land business.

Mr. I. S. Johnson — Mr. President, living near the city of Buffalo and going to it often, almost once a week, I desire to say that I fully agree with the remarks of Mr. McKinstry, and I do not believe there is anything back of it. I believe that the people of that section of the State are in favor of getting rid of that nuisance, and I do not think it is a good position to take that we will not grant this request because there is something back of it. If any one is able to state that there is something back of it and corrupt, then it is time to consider it; but simply upon the suggestion that there may be something back of it, I do not think we ought to hesitate about giving this right to the city of Buffalo, and to the country

about it. It not only endangers the health of the people of that city, but it endangers the health, all along for miles and miles, of the people living upon the canals of the State. Its waters are intermingling with the waters of the Erie canal, and the health of the public all along its banks is being affected, and every year affected. The cry is always coming up that there is danger of pestilence in the land, and if there is any way of getting rid of that danger we ought to do it here.

Mr. McMillan — Mr. President, I desire to answer briefly the question asked by Mr. Green, of New York. He asked why it was that the people of the city of Buffalo were violating the statute by discharging sewage into this canal? When the State built this canal it did it, making provision for the sewers that were in existence, and these sewers continue to discharge into this canal. He asks why the city of Buffalo does not abate this nuisance. The reason is, that the city of Buffalo has no more right to interfere with the canals there than it has a right to interfere with them in any other portion of the State.

The President *pro tempore* — The hour of one o'clock having arrived the Convention will take a recess until three o'clock.

AFTERNOON SESSION.

Thursday Afternoon, September 20, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber at the Capitol, at Albany, N. Y., Thursday afternoon, September 20, 1894.

Second Vice-President Steele called the Convention to order at three o'clock.

Mr. McDonough — Mr. President, I am informed that my colleague, Mr. Kerwin, is ill, and desires to be excused until such time as he can come to the Convention.

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

Mr. Nichols — Mr. President, I am in receipt of a telegram from Mr. Doty, stating that he is ill and he desires to be excused from attending this session.

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

Mr. Barhite — Mr. President, I ask to have entered upon the

Journal the fact that the last debates that appear upon our files are under date of August twenty-ninth.

The President *pro tempore* — The Secretary informs the Chair that that is entered as a matter of course every day.

Mr. McMillan — Mr. President, I ask that the roll be called to ascertain whether or not a quorum is present.

The Secretary called the roll.

The President *pro tempore* — A quorum is present, 108 members having answered their names.

Mr. Countryman — Mr. President, I desire to ask that Mr. Kimmey be excused from attendance. He is confined to his room and not able to be present.

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

Mr. Holcomb — Mr. President, I would like to ask leave of absence for Mr. Giegerich. He telegraphed me that on account of the storm last night he was not able to get here for this morning's session.

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

Mr. Veeder — Mr. President, I am informed that my colleague, Mr. Meyenborg, is sick, and I desire to have him excused.

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

The President *pro tempore* — The business now before the Convention is the debate upon the proposed constitutional amendment in regard to the canals. Does any member of the Convention wish to enter into any further discussion of the question?

Mr. Roche — Mr. President, is there but one amendment pending?

The President *pro tempore* — But one amendment pending.

Mr. Roche — Mr. President, I desire simply to say a word. I was very glad to have my views concurred in, as they were fully by Mr. Hottenroth, who is a member of the Canal Committee, and who has not the interest in this matter that the gentlemen naturally feel who come from Buffalo. During the present summer Mr. Hottenroth visited that portion of the canal which it is proposed now to sell, and he confirmed my statements, and I must accept them, the views of Mr. McMillan to the contrary notwithstanding.

I wish further to state that within an hour a gentleman, who is connected with the State Department of Public Works, told me that within four weeks he had passed over that canal; that he found the waters fairly pure, as good as they are in the canal generally; that the canal contained quite a number of boats that were undergoing repairs, and also quite a number of tug boats. I was also informed, within a week, by a gentleman who is also very much interested in the canals, and who passed over that canal within two weeks, that the waters were fairly good; that the canal should not be sold or disposed of, but should remain a part of the canal system of the State; that the great desire to get rid of it came from some corporations who were anxious to get that portion of the canal filled up and to use it for switching or railroad purposes.

In this connection, I desire to say, that I noticed to-day upon the floor, when this Convention adjourned, a gentleman whom I had not seen here before, who, it is well known, is the attorney of one of these corporations; who it is well known is frequently seen around the halls of legislation year after year, and who is not a member of this Convention. He may not have been here for any purpose connected with this amendment, but, as I have said before, I have not seen him previously in this chamber while this Convention has been in session. His presence here now may be simply a coincidence and nothing more. People can draw their own conclusions whether it is in regard to this amendment now under discussion or not.

In regard to the statement that the canal men were entirely willing to have this canal disposed of, I want to say this: I have no personal knowledge in regard to the state of affairs that exists in the city of Buffalo, but I desire to say that I oppose this amendment and its passage at the request of canal men who are opposed to the sale of this mile of canal or any other portion of the canals of the State. I, therefore, hope, Mr. President, that the amendment will not be adopted.

Mr. Putnam — Mr. President, I would like to know if the gentleman will permit a question. I should like to know if the gentleman can inform the Convention what benefit that portion of the Erie canal known as the Main and Hamburg canal in the city of Buffalo is to the system of canals in this State, and what benefit it has been for the past ten years.

Mr. Roche — Mr. President, I wish to say that I have no personal knowledge, as I said a little while ago, as to whether there is benefit or injury arising from that portion of the canal; but I

understand from men who are fully informed in regard to that piece of canal, and in regard to the canals of the State, that they desire that it should be retained as a part of our canal system, and they are opposed to its sale or other disposal of it. They regard is as of importance. I accept their views, rather than the views of those who, having one interest or another, want to get rid of that portion of the canal. I understand from one gentleman that it answers an important purpose in connection with the Erie canal at that point; that it subserves the same purpose that the basin does here at Albany for the canal; and although that basin is at times a stench in the nostrils of the people, and although the question has arisen whether it should not be abated altogether, yet I believe no serious proposition would be entertained for its destruction. I believe no greater necessity exists for getting rid of that part of the canal in Buffalo than exists for getting rid of the basin in Albany. Changes may take place so that, some day, they both will become important and valuable pieces of the canal system of this State, so important, indeed, that general regret would prevail that they were ever parted with.

Mr. Cassidy — Mr. President, I would like to ask the gentleman if he has been along the Hamburg canal and knows anything about its condition?

Mr. Roche — I have not been along the Hamburg canal.

Mr. Cassidy — Mr. President, I want to say that while in Buffalo this summer with the Charities Committee, I went the length of the Hamburg canal, and it seems to me that it is a menace to the health of the people. It is the depository of most of the sewage in that part of the city, and while I am in favor of liberal legislation and constitutional amendment in behalf of the canals, in the interests of public health, and in the interest of everything that conduces to the welfare of humanity and the State, I think the State should be allowed to dispose of this cesspool. It has been abandoned, and the probabilities are that it will never be revived and be of any service to the canal system of the State. It is demagogy and folly to stand here and urge that that part of the canal system should be retained. It ought to be disposed of, and it seems to me that we ought not to waste any more time on the subject.

Mr. McMillan — Mr. President, I am not surprised at the zeal of the gentleman from Rensselaer, who stated that he is talking about something that he knows nothing about. I fear that he is afraid that the individual who was here before adjournment is present. It might be well that the sergeant-at-arms be instructed

to look into the corridors to see if the aforesaid gentleman is around in order to protect the gentleman from Rensselaer.

Mr. Roche — He doesn't need any protection.

Mr. McMillan — So far as this part of the canal is concerned, there is not a single spot on it, from Main street to its terminus, where a boat can be loaded or discharged, and there has not been a boat seen on it for two years. It is not possible for a boat to go from one end of it to the other that draws two feet of water, and how it is that gentlemen will stand here and say that that which has been a menace to the health and life of the people of Buffalo should be retained, when it is of no use to the canal and has not been for an indefinite period, is beyond comprehension.

The President *pro tempore* — The time has elapsed for debate, unless the Convention desires to extend the time further.

Mr. Becker — I ask unanimous consent to make a statement.

Several members objected.

The President *pro tempore* — Objection is made from various parts of the House. The question now is on Mr. Roche's proposition to strike out all after the word "ever" on page 1, line 7, down to and including the word "street" on page 2, line 1.

Mr. Roche's amendment was lost.

The President *pro tempore* — The Secretary will read the proposed constitutional amendment through.

The Secretary read the proposed amendment through as follows (O., I. No. 387, P. No. 431):

Section 6 of article 7 of the Constitution of the State of New York is hereby amended so as to read as follows:

Sec. 2. The Legislature shall not sell, lease or otherwise dispose of the Erie canal, the Oswego canal, the Champlain canal, the Cayuga and Seneca canal, or the Black River canal, but they shall remain the property of the State and under its management forever. The prohibition of lease, sale or other disposition herein contained, shall not apply to the canal known as the Main and Hamburg street canal, situated in the city of Buffalo, and which extends easterly from the westerly line of Main street to the westerly line of Hamburg street. All funds that may be derived from any lease, sale or other disposition of any canal shall be applied to the improvements, superintendence or repairs of the remaining portion of the canals.

The President *pro tempore* — The Secretary will call the roll on

the final passage of this amendment. Those in favor will say aye, and those opposed, no.

The Secretary proceeded to call the roll.

Mr. Becker — Mr. President, I desire to explain my vote. I regret very much that any gentlemen whom I know are as conscientious and well-meaning as Mr. Roche and Mr. Hottenroth should be misled in this manner. There are times, no doubt, as Mr. Hottenroth says, when under certain conditions there may be a volume of not entirely impure water in it. These conditions arise, as I have stated in regard to another matter, when we have a westerly wind which pushes the volume of water up there. Under those conditions the water will go in there, but, as a matter of fact, the whole bottom of that canal is filled up to a depth of over three feet with slime and filth. The city of Buffalo has spent thousands and thousands of dollars to improve the sanitary condition of this canal. This canal, I assert absolutely, is utterly useless for any purpose. When the city authorities go to the State authorities and ask for help, when the Board of Health goes there, they are told they cannot do anything because it is a canal. It is nothing but a private canal which the city built with the money of our people on the theory that it would be of some use as a part of the canal. It is of no use. It should be filled up. I sincerely hope that this amendment will pass. I vote aye.

Mr. Blake — Mr. President, when this matter came before the Committee on Canals, I voted for the amendment for the reasons that were then stated by the gentlemen who represented the Buffalo interests, and they seemed to be but one voice. I voted for it at that time and I have heard nothing since or seen nothing to change my mind. I vote aye.

Mr. Griswold — Mr. President, it seems it has been the policy of the State heretofore to declare by its Constitution that the canal, or this part of it, should not be sold. It is something like the proposition for the sale of the salt springs. Now, the question whether these properties are to be sold and disposed of seems to depend upon intricate questions of facts. It is not a proposition like others that are before this Convention, mere questions of law or public policy, in which there are no facts involved, but here is a proposition to sell an important property of the State which is a question depending upon certain facts that very few delegates here know anything about. We have statements made where we may be suspicious that there may be some object, some interest in the party making the statement. It seems to me that

if there appears that extent of belief or desire that these valuable properties of the State should be sold or authorized to be sold, it was the duty of those parties to ask here in the Convention that a special committee be appointed to investigate, with power to send for persons and papers, that we might know what we are voting for, and what are the interests of the State. Therefore, not knowing whether it is a proper thing to sell this property, I vote no.

Mr. Hottenroth — Mr. President, in the section of this State which includes the Fifteenth Senatorial District we have had recently two nuisances. One was, and I believe is, known all over the State called Riker's Island, and the other is the Mott Haven canal. Now, if there is anybody that can stand here and say they are opposed to anything that is a menace to the public health, I think I can stand here and take that position; but in this Hamburg canal we have an instance how matters are bent sometimes to serve people's interests. Now, it was believed that that part of the canal was a nuisance and ought to be abolished, and what was shown was, not that it should be abolished, but that it should be cleaned out. I make this prediction that unless you improve the canals of the State they will all be abandoned pretty soon to the satisfaction of the gentlemen who are urging this proposition on the floor to-day. Now, this canal serves the purposes of a link between the Erie canal and the Erie basin. On one side we have the Central railroad. On the other side we have several factories, and a short distance away from them we have another railroad. The canal is between two railroads. As to what the intentions of these people are I do not know. I simply look at it from the point of view of one who is interested in the property of the State. It matters not to me whether the New York Central would purchase this property or whether the other railroad would. The point is, should we authorize the Legislature to sell the property of the State without a proper presentation of facts? Another thing. It was stated to me that my visit was made at a time when the wind was not blowing that way. Now, I hope the wind from this Convention won't be blown that way. I believe that this will be used as an entering wedge for the destruction of the canal system of this State.

The President *pro tempore* — The gentleman's time is up. How does he vote?

Mr. Hottenroth — I vote no.

Mr. McDonough — Mr. President, I offered a proposed amendment to the Constitution to turn these canals over to the general

government, with a view of having them improved by the general government and made fit for the navigation of larger vessels from the lakes to tidewater, and this Convention voted it down, under the belief that was advanced then, that the State of New York should not part with its ownership of this canal. The so-called canal defenders, the men who have at heart the welfare of the canals, came to this Convention and asked for aid in improving the canals, and it was voted down and refused. Now, as I learn from the debate here, certain railroads want a part of these canals, and we seem to be voting with alacrity what we refused to ask the United States on the part of the State. It is to be abolished on the plea of its being a nuisance. The Albany basin was declared a nuisance a few years ago. The New York Central railroad wanted it for a switching ground, but it was found to be a part of the canal, and so we had it dredged out and the nuisance abated. The State could dredge out this canal at Buffalo just as we dredged out the Albany basin here, and get rid of the nuisance and retain its property. I vote no.

Mr. McIntyre — Mr. President, it seems to me that in this Convention we ought to take it for granted that the statements of reputable men from Buffalo that have been made here are true. Now, they say that this canal is nothing more or less than an open sewer; that it is on a level with the waters of the lake, and that the waters of the lake blow in at certain seasons of the year, but most of the time it is a filthy pool. What strikes me as ridiculous is that the sewage should be allowed to go into an open canal. It seems to me that the State Board of Health should have had it condemned long ago. I do not care, for one, if it was used now as a canal, if it was used as an open sewer I would say fill it up and dispose of it. There is positive proof that it has not been used for years. I do not care whether a railroad wants it or not. It is useless to the State, and it is a public nuisance and should be filled up. I say that we are spending our time here over a foolish question. I vote aye.

Mr. Nichols — Mr. President, when this proposition for the disposition of the Hamburg canal was up for discussion in the Committee on Canals, there were two considerations, and two considerations alone, which led to the conclusion of the committee, resulting in the proposition here submitted. They were simply the questions of the health of the citizens of Buffalo, and the fact that, apparent, and beyond dispute, the Hamburg canal was no more an essential part of the canal system of the State

of New York. There was no suspicion or suggestion before the committee that there was a job behind the proposed sale. There was no thought in the minds of the committee, or any of them, that when this proposition came into the Committee of the Whole any gentleman would be found to say or suggest that the purpose of making this sale by the Legislature was to give the railroad corporations of the State the control of the property of the State or power to use it. I do not know, sir, what induces gentlemen to arise on the floor of this Convention and infer that there is something behind this in the nature of a scheme to take from the State its property, when there is no evidence whatever, and gentlemen do not pretend to say they have any evidence whatever, that such is a fact. I believe the reasons are ample to justify us in passing this amendment, simply conferring upon the Legislature power to sell this canal, if upon a fair and just investigation it shall be found desirable to do so. I vote aye.

The President *pro tempore* — This proposed constitutional amendment, having received the votes of the majority of all the delegates elected to this Convention, is duly passed.

The vote in detail is as follows:

Ayes — Messrs. Abbott, Acker, Ackerly, Arnold, Baker, Banks, Barnum, Barrow, Becker, Bigelow, Blake, Brown, E. R., Cady, Carter, Cassidy, Church, Clark, G. W., Clark, H. A., Cochran, Coleman, Cookinham, Cornwell, Dean, Deterling, Deyo, Dickey, Durfee, Emmet, Faber, Floyd, Foote, Francis, Frank, Andrew, Frank, Augustus, Fraser, Fuller, C. A., Fuller, O. A., Galinger, Gibney, Goodelle, Hamlin, Hawley, Hecker, Hedges, Hill, Holls, Hotchkiss, Jenks, Johnson, I. Sam, Johnson, J., Kellogg, Kinkel, Kurth, Lauterbach, Lester, Lewis, C. H., Lincoln, Manley, Marshall, Maybee, McIntyre, McKinstry, McMillan, Mereness, Moore, Morton, Nichols, Nostrand, O'Brien, Parker, Parkhurst, Parmenter, Pashley, Peck, Platzek, Pool, Porter, Powell, Pratt, Putnam, Redman, Root, Spencer, Springweiler, Steele, A. B., Steele, W. H., Storm, Sullivan, T. A., Sullivan, W., Tekulsky, Tibbetts, Truax, C. S., Turner, Vogt, Wellington, Whitmyer, Wiggins, Woodward, President — 98.

Noes — Messrs. Barhite, Bowers, Burr, Davenport, Deady, Durnin, Farrell, Gilleran, Goeller, Green, A. H., Griswold, Holcomb, Hottenroth, Jacobs, Mantanye, McClure, McCurdy, McDonough, McLaughlin, C. B., McLaughlin, J. W., Nicoll, Ohmeis, Roche, Rogers, Schumaker, Towns, Truax, C. H., Tucker, Veeder — 29.

The President *pro tempore* — The business now before the Convention is general order No. 58, third reading, No. 24. The Secretary will read the title.

The Secretary read the title as follows (O., I. No. 252, P. 437):

"Proposed constitutional amendment to amend sections 1, 2, 4 and 5 of article 7, of the Constitution, in relation to the canal debt and the maintenance of the canals."

Mr. Cady — Mr. President, I will say, first, in respect of this proposed amendment, that it contains a grant of power to the Legislature to impose tolls in its discretion upon Canadian products passing through the canals of this State. That proposition was strongly urged, as I have before stated, upon the floor, by certain delegates from the lake counties of this State. I am informed that they have experienced some change of opinion in respect to it, and that very considerable doubt as to its wisdom and propriety have arisen in the minds of many persons intimately connected with the commercial interests of the State, and I am informed that in due season, during the consideration of this proposed constitutional amendment, an amendment will be proposed striking this clause from the bill.

Now, Mr. President, I desire to move as follows.

The President *pro tempore* — The Secretary will read.

The Secretary read as follows:

Mr. Cady moves that the proposed amendment be recommitted to the Committee on Canals, with instructions to report the same forthwith amended as follows: On page 2 at end of line 2, insert the following: "The canals of the State may be improved in such manner as the Legislature shall provide by law. A debt may be authorized for that purpose in the mode prescribed by section 3 of this article, or the cost of such improvement may be defrayed by an appropriation from the State treasury or by equitable annual tax."

Mr. Veeder — Mr. President, I have a further amendment.

The President *pro tempore* — Mr. Cady has the floor.

Mr. Cady — I will yield while the gentleman's amendment is being read.

Mr. Veeder — I offer an amendment to be added at the end of the amendment offered by Mr. Cady.

The President *pro tempore* — The Secretary will read the amendment presented by Mr. Veeder.

The Secretary read the amendment as follows:

"Provided, however, that the bonds that may be issued under the provisions of this article may run for a period of thirty years."

Mr. Cady — Now, Mr. President, I desire to say that I believe that there is a substantial unanimity of opinion in this Convention that there be provided by us, to go forth to the people in our completed work, some reasonable method of improvement for the canals of this State; some provision which will at once secure their improvement and at the same time protect the interests of the taxpayers of the State. The difficulty that has arisen in the consideration of this subject is that so many gentlemen upon the floor, and so many individuals and commercial bodies outside the walls of this Convention, have formulated plans of canal improvement to suit their own purposes and to represent their own individual ideas, that great danger has existed up to this time that the whole project of canal improvement would fall to the ground with the general destruction and defeat of a number of ill-considered provisions. But I am inclined to think that the experience that the proposed amendments met with in Committee of the Whole, when this proposed constitutional amendment was before that committee, has led to the return of wisdom and moderation on the part of those who are interested in the matter, and that this provision which I have now submitted in the form of this proposed amendment fairly represents the best judgment of all who have thought upon the matter; the best judgment of those who desire to see that matters are improved or shall be improved, and the judgment of those who desire to see that the interests of the people are sedulously and wisely guarded.

Now, you will observe the different provisions. It appears at the outset that the canals of the State shall be improved in such manner as the Legislature shall provide by law. We introduce into the Constitution distinctly and firmly the element of canal improvement, which does not exist now, All that is provided there now is that the Legislature may provide by equitable annual tax for maintenance, superintendence and repairs.

I think we shall be scarcely met in the consideration of this provision with the argument that there should be no improvement of the canal system of this State. The Erie canal is no Rhine, nor Rubicon, nor silvery stream, nor channel way, but the truth remains that no historic waterway or river of the world has been more identified with the sovereignty of a great imperial State and with its material prosperity than this plain, prosaic ditch that stretches across the great plain of the State

of New York, and it is to us the most important part of navigable waterway between Liverpool and Fondulac. Step by step, with the progress of commerce upon that waterway, have grown the wealth, prosperity and primacy of the State of New York. It has carried since 1837 more than ten billions worth of property; more than all the actual value, real and personal, of the property of the State of New York to-day. Our equalized valuation to-day is between four and five billions, and yet I say this Erie canal has carried since 1837 more than twice that amount in freight to and from the commercial ports of the State of New York. So I think that we believe here, and that the people will say later on, that the canals should be improved; and this plan provides for it, not by the creation of a debt, not by a plan of improvements saying that the canals must be so wide and so deep, which, in the end, might prove to be unwise, not by the expenditure of any definite amount of money, but by saying that the canals may be improved as the Legislature shall provide by law, leaving the Legislature free to devise the plan upon due investigation. Then it provides that, for the purpose of defraying the expenses of improvement, a debt may be authorized for that purpose in the mode prescribed by section 8 of this article, or the cost of such improvement may be defrayed by the appropriation of funds from the State treasury or by equitable annual tax.

That provides for all three conceivable methods by which this State can pay for anything. It may be paid for by the creation of a debt; it may be paid for by the appropriation of surplus and unused funds from the State treasury; or it may be paid for by equitable annual tax. Now, it is to be paid for in either of the latter methods, either by annual tax or by appropriation of unused funds from the State treasury. The Legislature has full and complete authority over it and can do the work without reference to the people, but if the work should be so extensive as to call for the creation of a debt, if it should be deemed unwise to pay for it by the creation of an annual tax, or if there should not be sufficient funds to pay for it in the State treasury, then it provides that the people themselves shall be consulted with reference to that. The question must be submitted to the people under the provisions of the Constitution, which have endured ever since 1846 in relation to the creation of State debts, and if the people say the debt shall be created, well and good. Their fiat will have great force in reference to their own estate, and that must be satisfactory to them and to all of them.

Now, you will observe, Mr. President and gentlemen, that I speak of the creation of a debt in accordance with the provisions of section 8 of the seventh article of the Constitution. I do that for this reason. The present provisions are found in section 12, but you will observe, upon reference to this proposed amendment, that it abrogates four obsolete sections of that article 7, sections 1, 2, 4 and 5, which are obsolete because they relate to the old canal debt which has been all paid. They are stricken out by the provisions of this article, so that section 12 will be brought, if this bill passes, back to number eight in that article, and, therefore, I refer to it as section 8 of article 7.

I have reason to believe, as I have said before, that ardent friends of the canals, men who are deeply interested in them, desire much, desire more than this Convention is willing, in my judgment, to give them, who desire more than, in my judgment, the people of this State by and by, when they come to pass upon this amendment, will be willing to give them. Let these canal people, "friends of the canals," as they term themselves, and friends of the canals as they are, be reasonably satisfied with the provisions of this amendment. It does not give them all they wish, but, I think, upon due reflection and consideration, they will come to the conclusion that it gives them something substantial by the introduction of canal improvement where it does not now exist, and by the providing of a rational system, or method of improvement, and the defraying of its cost. I believe the subject to be a very important one, the most important one in an economic sense that has been before this Convention; not involving the sentimentality of the suffrage question; nor the picturesqueness of the Niagara question, nor the strong collision of political views which attended the stormy passage of the apportionment article through this Convention. Men of all political factions, of contending political views, from all parts of the State ought to meet for once upon common ground, because one and all of the citiezns of this great State, Democrats or Republicans, whether on the southern tier, of the St. Lawrence river, from Buffalo, or New York, or Kings, at heart now and all the time we are citizens of the Empire State and devoted to her great interests, and as much to the interests of one part of the State as to the interests of another. It does not do to say that the canals are building up two great cities, one in the west and the other in the east, and so the rural parts of the State are not concerned in them. That does not meet the proposition, because what avails for the benefit of Buffalo avails for the benefit of New York, and avails for the benefit of every other community in this great commonwealth,

and I trust now we meet on common grounds and we shall unite on the acceptance of this provision. (Applause.)

Mr. Nichols — Mr. President, I desire to move as an amendment to the proposition just submitted by the Chairman of the Canal Committee, Mr. Cady ——

The President *pro tempore* — The Chair will state that one amendment has already been offered to this proposition.

Mr. Nichols — Not to this proposition?

The President *pro tempore* — Mr. Cady offered an amendment, and Mr. Veeder offered an amendment to that amendment.

Mr. Baker — Mr. President, I have an amendment which I desire to offer to that portion of the amendment which treats of tolls.

The President *pro tempore* — The amendment is to a different part of the proposed amendment?

Mr. Baker — Yes, it is.

The President *pro tempore* — Mr. Baker's amendment will be read.

The Secretary read the following:

Mr. Baker moves that the proposed amendment be recommitted to the Committee on Canals, with instructions to report forthwith, amended as follows: Strike out on page 1 all after the word "canals," in line 5, down to and including the word "State," in line 7.

Mr. Baker — Mr. President, perhaps I might as well make a few remarks I desire to make now as at any other time. This was a pet scheme of mine before the committee. I believed it was based upon good grounds. I was sustained by my own immediate constituents, and the Canal Committee, I believe, agreed with me unanimously that the power having passed the United States to compel Canada to deal justly with us, the State of New York, I thought we could take the club in our own hands and say to Canada that if she discriminated by imposing tolls upon American products, we could impose tolls upon Canadian products. But I have been deluged with telegrams and letters until really I have lost confidence in my own judgment. I am willing to give up the child that I fathered; therefore, I have offered this amendment. Mr. President, there was a good deal that affected my mind yesterday, thinking of the utter desolation that has happened to the friends on the other side, and the prospects of the immediate dissolution of the Democratic party and the death of my pet project quite overwhelmed me. I trust that no gentleman who listened to my eloquent, if not able, remarks, and who voted with me on my amendment, will have any hesitancy now in voting to kill the child.

Mr. Dean — Mr. President, I shall probably support this proposed amendment of the Canal Committee, not because it meets my approbation, but because it is the best that can be looked for from a Convention which is so thoroughly conservative as this body has demonstrated itself to be. The canal system of the State represents a great economic principle, the principle that it belongs to the State to furnish and maintain this highway. It is a great avenue of intercommunication, and I was in hope that this Convention, when it assembled, would have the courage to stand up squarely and take the position that its highways, being the property of the State, should be left under the control of the legislative authority of the State — that we should not, in this matter of improving the canals, go to the Swiss referendum or the approval of the people. I do not believe in the approval of the people upon any question of legislation. I believe that the judgment of a legislative body of representative citizens, acting upon their individual responsibility to constituencies, is better than to have the people pass abstractly upon these questions. The time is passed in the State of New York when there is any danger of any extension of the canal system. The limitation of debt was the work of the Constitutional Convention of 1846, at a time when the State of New York, the State of Pennsylvania and the State of Maryland, and very many other States were running wild over the question of extending their canal system. That time is passed. Our canal system is well defined, and there is no possible danger of any extravagance on the part of the Legislature. The greatest danger now is in limiting the matter as is proposed in this amendment, and that the Legislature will not make as large appropriations as will be necessary, and that the work of one year will be wasted by the negligence to make appropriations for the following year. That has been demonstrated in the building of this Capitol. For almost thirty years we have been at work building the Capitol of the State of New York. It was originally designed to cost about four millions of dollars. The report of the Comptroller shows that it has already cost over twenty millions of dollars, and it is still incomplete. Had it been possible for the Legislature to make a contract, in the first instance, for the construction of this Capitol, it would have been completed within the appropriation and thus saved at least fifteen millions of dollars to the people of this State. We now propose to go on and adopt the same policy with reference to the improvement of canals, and the hue and cry of extravagance will result ultimately in these small appropriations for the improvement of the canal system.

Mr. Nichols — Mr. President, in anticipation of the amendment which I shall beg leave to submit to the proposition made by the chairman of the Committee on Canals, I desire to say just a word. There are in the propositions submitted by Mr. Cady three distinct propositions, and in that respect they modify, or will modify, if adopted, our present Constitution.

The first is, the power to be conferred upon the Legislature to improve the canals of the State. It is asserted, and, I think, with great force, that there now exists in the Legislature of the State the power, without additional amendment or modification, to improve the canals within a certain limited sense. I do not argue, sir, that they have the power to enter upon extensive canal enlargement, but I do believe that within the construction given heretofore of the acts of the Legislature and the policy of the public officers of the State, the Constitution, as it now stands, means, and means nothing more, but that the Legislature may, in its discretion, improve the canals of the State from time to time. It has done it on the Erie canal. It has exercised it with reference to the Champlain canal, and those canals within ten years past have been greatly improved. So, sir, I argue that this power itself now exists under the Constitution, and it is not necessary, in order to restore our canals to their original state of usefulness, even to adopt the first proposition that the gentleman submits. I voted in favor of this proposition when it was presented in part on a former occasion, and I am prepared to vote for it now, with certain modifications. I submit, sir, that if it shall appear in the near or remote future that it be desirable or necessary for the great State of New York to enter upon a still further improvement of the canal system than is possible under our present Constitution, there should be nothing in the way of doing so. There should be no hindrance or obstacle in the path.

But the clause which I particularly object to, and in which particular I desire to amend Mr. Cady's amendment, and which I wish to have stricken out, is in these words: "The cost of such improvements may be defrayed by an appropriation of funds from the State treasury or by an annual tax." They comprise the other two propositions contained in this amendment, in which respect it is desired to modify the present Constitution. In other words, by express terms it is proposed to say that the Legislature may defray the cost of canal improvements by annual appropriation or by an annual tax.

Now, I ask that those words be stricken from his proposition, and for these reasons: if we pass his first proposition and confer

the power upon the Legislature to order improvements, the power will necessarily be coupled with it to defray the expenses of canal improvement in any given year, and coupled with that, of course, is the power to levy a tax for that purpose. If that be done, why add this proposition to the Constitution? Why add just another clause upon which and concerning which we must go to the people in the three or four weeks that are allowed to us for the discussion of these great principles and explain to them. I want this Constitution passed. I want a provision to pass permitting the Legislature, if it is found desirable, to improve the canals extensively in the future. I do not want it to go coupled with a proposition which must be explained, which must be discussed, and will, sir, remain a hindrance and an obstacle in the path of the adoption of the very proposition which we seek here to engraft upon the organic law. Therefore, Mr. Chairman, when you will permit me to do so, I shall take the liberty of submitting an amendment striking out these words concerning which I have entered my protest. I dislike to dissent from the honorable and able chairman of this committee. I appreciate how thoroughly and carefully he has gone over this subject, but I do not see the necessity, and I do see the danger, of incorporating in this proposition something that will absolutely defeat the object that all the canal friends throughout the State desire to secure, of whom I claim, sir, to be one.

I hope, Mr. President, when we come to consider this question we will not regard it as we do almost every amendment that is here proposed, and simply dismiss it without consideration; thereby we shall defeat this proposition and endanger our Constitution, because the people throughout the interior of the State are very sensitive upon this question, and we shall have to give them very good reasons why even the power to improve the canals shall be expressly stipulated in our Constitution. I hope, Mr. Chairman, that my amendment will prevail in this body.

Mr. Veeder— Mr. President, I offered the amendment that I sent up to the desk, believing, as I do, that if this proposition is to prevail, it will be best to extend the period of time for the payment of the bonds. As provided for by the amendment offered by the gentleman, the provisions under section 12 of this article, called in that amendment section 8, could only be made to run for the period of eighteen years. Now, if we issue bonds, if the Legislature decides to issue bonds instead of providing for the payment of such improvement as they may authorize by tax, it will be found that if they issue bonds for the period of thirty years, they can be floated to better advantage than a shorter bond or a bond for a period of eighteen

years. They will be bonds that will be sought after by investment companies, by individuals, as well as savings banks, and will be readily taken, and at a greater premium. As I say, they can be floated at a greater rate of interest, and that is my object in offering this proposition.

Now, sir, in regard to the general proposition as to the improvement of the canals; I hope that in this matter no partisan spirit will prevail. Every citizen of this State must, I think, be aware of the necessity for the improvement of our waterways to such an extent as the demands of commerce and rapid transportation may require. There should be no uncertain policy pursued in this matter. The supremacy of the State, the maintenance of our commercial interests, are dependent to a great degree upon the conduct of the canals of the State, and I am heartily in favor of any proposition that looks to the accomplishment of that object.

Mr. Moore — Mr. President, I certainly hope the amendment introduced by Mr. Nichols will not prevail. It takes the heart out of this whole amendment for the benefit of the canals of the State, which is ultimately for the benefit of the people of the State. There has been a loud call in the State for the improvement of these canals. There is no power now in the Constitution to improve canals. We may simply repair them when necessary, and maintain them at their present standard of efficiency. Now there comes a call for something additional. The people are not satisfied to let them go to ruin. The people are not satisfied to let them be simply the butt end, as you might say, of the commercial system of transportation in this State; and I believe, Mr. President, that the members of this Convention who have advocated the improvement of these canals have met within a few days with a large representative body in this State, with a most unqualified indorsement of their action, and I hope that the loud call which has been heard will be regarded here. The people are not willing to give any body power to impose tolls upon products which may come through these canals into the State. There may be some objection, perhaps, with all of us to these amendments; but, taking them all in all, I believe that the amendment introduced by Mr. Cady is the most practical and will be the most satisfactory to the people of the State. The State is now out of debt. Within a short time the treasury will be overflowing with money from the collateral inheritance tax. There will be also money poured into it from other sources, so that it may be possible, without creating a debt, for the Legislature to defray the expenses of certain portions of the improvement to these canals by the revenue that comes direct from the State treasury without

the creation of a debt; and the amendment provides for just that condition of things, if it shall occur; and if it shall not occur, the amendment provides for what is called section 8 of the Constitution. For the people in my own district, I repeat again that I ask this Convention to heed the call of that district, which borders upon Lake Champlain and the Champlain canal, whose interests are the interests of that canal, whose commercial interests are bound up in the prosperity of the Champlain canal, as well as connected with the other canals of the State. I said the other day about all I care to say upon this subject. It seems to me that no candid, fair-minded man, unless he is governed by motives entirely different from those which govern at least my constituents, can possibly decline to vote for this amendment. I hope it will pass.

Mr. Nichols — Mr. President, will the gentleman permit a question? I would like to inquire of the gentleman if the Champlain canal has not been improved for a distance of twenty-nine miles during the last ten years?

Mr. Moore — Twenty-four miles, I think, sir; and its condition now is ——

Mr. Nichols — I haven't asked that. The gentleman has answered the question yes. Now, may I ask the further question? I understood the gentleman to say in his remarks the other day that there was no power under the present Constitution to improve the canals of the State?

Mr. Moore — Not to improve, but to repair.

Mr. Nichols — I understood the gentleman to say that the Champlain canal has been improved. I desire to ask under what proposition of law were the improvements made upon the Champlain canal to which he refers?

Mr. Moore — It was simply carrying out the original statutory provisions of law in relation to it. There are yet sixty odd miles of the Champlain canal which have not had a dollar's worth upon them.

Mr. Nichols— Is there any reason why, under the Constitution as it stands to-day, those additional miles may not be improved?

Mr. C. B. McLaughlin — Mr. Chairman, if the gentleman will permit, I would be very glad to answer the question suggested by Mr. Nichols, in this way: I do not believe that it is a wise provision on the part of this Convention that we should go before the people of the State with one amendment, and that is to sell a portion of the canals of the State, the Hamburg canal. Now, it is true that a

portion of the Champlain canal has been improved. It has been done. It has been permitted, but the word "improvement" is not used in the present Constitution, and the very fact that a portion of this canal has been improved, and the balance of it remains unimproved, is an additional reason why there should be something inserted in the Constitution permitting the improvement to be carried forward to completion. It cannot be that the people of any section of this State would desire to take the position that this canal should not be improved, or that the canals in other portions of the State should not. I sincerely hope that the amendment offered by Mr. Cady, which, I believe, is accepted by all parties as a fair compromise upon this measure, will be adopted.

Mr. Hottenroth — Mr. President, the only reason I believe that this Convention should act favorably upon this amendment is this: it can do no harm, if it does no good. It has been asserted on this floor that it opens ways for improvement. If we examine the statutes of 1894 we see, from the beginning to the end almost, words in connection with canal improvement: "chapter 572, Black River canal improvement; Cayuga and Seneca canal improvement; chapter 572, Champlain canal improvement of the Glens Falls feeder; chapter 278, Chemung canal improvement of Seneca Lake level; chapter 572, Chenango canal feeder; chapter 570, Erie canal, improvement of," and so forth, through the list.

Now, Mr. Chairman, it seems to me that there can be no doubt that the Legislature has every right that this Constitutional Convention does not deprive it of. There is nothing in the Constitution to-day that prevents canal improvements, and it can only be our conclusion that canal improvements can be inaugurated by the Legislature, even under the existing constitutional provision. The point that was suggested — and this is what the canal people, as they have been called on this floor, desire — is not only improvement, but improvement that means improvement; improvement of a broad, general character. We have had the demonstration here of the Champlain canal, which has been improved under these same provisions of the Constitution, but has been improved to the extent of about one-third of its length. Now, it is perfectly absurd to do work in that manner. It has been demonstrated that the tax levy heretofore made has not been sufficient for the real and actual improvement of the canals as desired. Now, this amendment, it appears clearly, gives us absolutely nothing but that which we have, and I hope that the gentlemen of this Convention will sustain the proposition of the gentleman from New York, Mr. Veeder, and lengthen the time for which bonds may be issued — lengthen

the time of their payment. The position of the canal people is this: they desire to have the improvements made with the least possible friction; that is, with the least possible expense to the State within one given year. That cannot be accomplished in this way: these bonds are issued payable in eighteen, twenty or twenty-five years. They are paid out of a sinking fund which is subsequently created, and which is added to year by year by the tax levy; a certain percentage that is placed for this improvement and for the payment of these bonds. Now, as to the appropriation from the State treasury; heretofore, we have not had our treasury in the condition it is to-day. I believe it will improve in the near future, but we have still, and we will have, the right to improve under the existing constitutional provisions with those appropriations, and with amounts paid out of the State treasury. Therefore, it is claimed that this amendment gives us nothing, but I think we ought to support it merely out of compliment to the chairman of this committee. We receive no more, we simply get what we have, and the only reason that I rise to speak on this subject at all is that the people of the State may not be deluded into assuming that this Convention has given anything toward canal improvement.

Mr. McIntyre — Mr. Chairman, I do not agree with the last speaker exactly, that this proposed amendment means nothing. I think it means a good deal. Now, we have here what will be section 3, where it says at the end that the Legislature shall annually, by equitable taxes, make provision for the superintendence and repairs of the canals. Heretofore the Champlain canal and the others have been repaired with the moneys so raised; that is, they have not made improvements to change them in form, to widen or enlarge them, but simply repaired them, kept them in the condition they are in. Now, when you open this flood-gate, it says the canals of the State may be improved in such manner as the Legislature shall provide by law. The debt will be authorized for that purpose. Then it might very easily go on with the improvement of the canals by changing their entire form as to depth and width, and I say the people of the State of New York, and especially those parts of it that are not anywhere near the canals, do not want any such thing done, and it is a dangerous thing to put into the Constitution; and, gentlemen of the Convention, you want to go very slow with that, because if you have any such thing as that in there it will defeat your Constitution. Leave it as it is, and let them use the money they have a right now to use for repairs, and not go to improving the canals and opening the way for a large debt of eighteen or twenty million dollars. I, for one, would be decidedly opposed to any such

measure. I believe it is better to leave it as it is, and not pass this amendment. It is not harmless on its face. It means just what so many want, to spend a large amount of money here on the canals of the State, when, if they were improved, it would answer every purpose. I think this amendment ought not to prevail.

Mr. Kellogg — Mr. President, I would like to ask if the canals are such great benefit to the State, why it is that between the years 1880 and 1890 there has been a net decrease in the number of farms in the State of New York of 16,116? I would like to ask if the canals are of such benefit to the rural population of the State, why it is that there has been a net decrease in the number of people engaged in agricultural pursuits between the years 1880 and 1890 of 66,735?

Mr. President, there is an unexampled depression throughout the entire agricultural districts of the State. It is almost impossible for the farmers of the State, at this time, especially in the section from which I come, to even pay the interest on their mortgages. It is hardly possible for them to get money enough to buy the necessaries of life. I do not set myself up, sir, as a weather vane on the top of this Capitol to say which way this Constitutional Convention should vote on a question of putting into the Constitution a provision making it possible to expend twenty or thirty millions of dollars upon the canals of the State; I do not set myself up as an authority upon that question, but I wish to stand here, and in words as earnest as it is possible for me to use, to enter a most emphatic protest, not only against the proposition of the gentleman from Steuben, but against the proposition of the able gentleman, the chairman of the Committee on Canals. I give you fair warning, gentlemen, that if you put in your Constitution such a measure as that proposed by the gentleman from Columbia, your whole Constitution is in the greatest danger of going down and being defeated. I would be almost willing to make the prediction that the county of Otsego will roll up two thousand majority against it. The people of the rural districts will not have it. They want nothing of it.

Mr. President, I make the assertion that the Erie canal has decreased the value of farming lands in this State during the last thirty years by thirty-three and one-third per cent. I have nothing more to say. I have entered my earnest protest, and I leave the matter with the Convention.

Mr. Cookinham — Mr. President, I hope the Convention will fully realize the force of the last sentence of this proposed amendment, as presented by Mr. Cady. No one questions Mr. Cady's motives,

but I fear the Convention does not fully appreciate that if the last three lines of his proposed amendment are adopted by this Convention, the Legislature may improve the canals to any extent; they may convert them into ship canals; they may deepen them and widen them and increase the length of the locks, and though it should cost a hundred million dollars, they may lay it upon the people of this State in one year to be collected in taxes. I do not believe the Convention is ready to adopt that amendment, and yet, if I understand the amendment correctly, it rests with the Legislature alone as to whether or not that shall be done. It is entirely optional with the Legislature to say whether a debt shall be incurred, or whether the entire amount shall be collected in one year. If I am wrong about that I desire to be corrected, but I cannot read the amendment in any other way. Therefore, Mr. Chairman and gentlemen, I hope the amendment to the amendment offered by Mr. Nichols will prevail, and that those three lines will be stricken out of this proposed amendment.

Mr. Cady — Mr. President, I think, perhaps, these gentlemen have worked themselves into an undue degree of apprehension as to the force of the last lines of my proposed amendment, just referred to by the delegate from Oneida. Those lines in that provision, that the cost of the improvement may be defrayed by appropriation of funds from the State treasury, or by equitable annual tax, were incorporated in this proposed amendment with the purpose of avoiding, if possible, the creation of a State debt for the purpose of canal improvements, with the object of meeting the views of a very considerable section of this Convention, made up of some of its ablest men; we believe that the true policy of the State in regard to canal improvements ought to be that she shall pay as she goes, and that no debt whatever shall be created. Now, if there shall chance to be at any time in the treasury of the State, as the result of fruits of the succession tax and of the corporation tax, each of which is already assuming gigantic proportions, any considerable sum of unused funds, a surplus over and above the annual expenditures of the State, the Legislature, under this proposed amendment, will have power to apply it to the purposes of canal improvement without the creation of a debt, if it should see fit to do so. And then, if the improvement contemplated should be a moderate one in point of cost, the Legislature might well be able to pay for it by the imposition of such an annual tax as it should see fit to impose.

The Legislature has power, by equitable annual tax, to provide for the superintendence and repairs of the canals; but if you watch the appropriations made for that purpose from year to year, the

provisions made from year to year, you will find them amounting to only about $725,000 to $750,000, which is an exceedingly modest and moderate amount for the purpose to which it is directed. I do not think that gentlemen need be apprehensive of any wild career of extravagance on the part of the Legislature, so long as it is to exercise its extravagance by way of imposing a direct tax. The Legislature is not likely to do that. If it had untrammeled power to create a debt, which might be paid by the people later on, it might be bolder in the way of creating it.

Mr. Choate — Mr. President, will Mr. Cady allow me to ask him a question? Is the reference in this amendment to section 8 of this article? Looking at section 8, it does not seem to provide for any debt at all. Isn't that an error?

Mr. Cady — Mr. President, I will explain to the President, in answer to his question, that by this amendment under consideration, four sections of article 7 are abrogated, sections 1, 2, 4 and 5, so that which is section 12 will, if this be adopted, later on be section 3. I trust, Mr. President, that this amendment will prevail, and I trust that the amendment of Mr. Nichols and the amendment proposed by the delegate from Kings will not prevail. The three counties of the State most directly interested in canals pay sixty-seven per cent of the State taxes to-day. The great burden falls upon them, and the increase of the taxable valuation within their limits lightens the burden of taxation in every other part of the State. I hardly think it essential to go into a more minute discussion of those features of the question. I believe that this amendment is safe, I believe that it is liberal, and I believe that it is reasonable.

The President *pro tempore* — The hour of debate having closed, the question before the Convention is upon the amendment of Mr. Veeder to the amendment proposed by Mr. Cady. The Secretary will read the amendment proposed by Mr. Cady, and then the amendment to that proposed by Mr. Veeder, for the instruction of the Convention.

The Secretary read as follows: Mr. Cady moves that the proposed amendment be recommitted to the Committee on Canals, with instructions to report the same forthwith, amended as follows: on page 2, at the end of line 2, insert the following: "The canals of the State may be improved in such manner as the Legislature shall provide by law. A debt may be authorized for that purpose in the mode prescribed by section 8 of this article, or the cost of such

improvement may be defrayed by the appropriation of funds from the State treasury, or by equitable annual tax."

Mr. Veeder moves to further instruct the said committee to amend as follows: Add to the amendment offered by Mr. Cady the following: " Provided, however, that the bonds that may be issued under the provisions of this article may run for the period of thirty years."

Mr. Veeder — Mr. President, my amendment as read by the Secretary, seems to require it to be thirty years. I desire to have it read " not exceeding thirty years," so that it shall be in the discretion of the Legislature.

The President *pro tempore* put the question on the adoption of Mr. Veeder's amendment, and it was lost by a rising vote — ayes, 48; noes, 61.

Mr. Dickey — Mr. President, may I interrupt to move that the session be extended to six o'clock?

The President *pro tempore* — After the vote is taken.

The Secretary read Mr. Nichols's amendment as follows:

Mr. Nichols moves to further instruct said committee to amend as follows: Strike out all after the word " article," in the fourth line of Mr. Cady's amendment; or, in other words, strike out " or the cost of such improvement may be defrayed by the appropriation of funds from the State treasury, or by equitable annual tax."

The President *pro tempore* put the question on the adoption of Mr. Nichols's amendment, and it was lost by a rising vote — ayes, 30; noes, 66.

Mr. Choate — Mr. President, is it too late to ask unanimous consent to offer another amendment?

The President *pro tempore* — No.

Mr. Choate — I ask unanimous consent to offer an amendment to strike out the words " or by equitable annual taxation."

The President *pro tempore* — Are there any objections to the amendment?

Mr. A. H. Green — I am opposed to the amendment, Mr. President.

The President *pro tempore* — Then the question is upon the original amendment of Mr. Cady, which the Secretary will again read.

The Secretary again read the amendment of Mr. Cady.

The President *pro tempore* put the question on the adoption of Mr. Cady's amendment, and it was decided in the affirmative, by a rising vote — ayes, 81; noes, 24.

The President *pro tempore* — The question now before the Convention is upon the amendment of Mr. Baker, which the Secretary will read.

The Secretary read the amendment, as follows:

Strike out on page 1, all after the word "canals," in line 5, down to and including the word "State," in line 7. The words proposed to be stricken out are "except that the Legislature may, in its discretion, impose or remove tolls on products of the Dominion of Canada passing through any canal of such State."

The President *pro tempore* put the question on the adoption of Mr. Baker's amendment, and it was determined in the affirmative.

The President *pro tempore* — Are there any further amendments to be offered?

Mr. Choate — Mr. President, I desire to amend by striking out the words at the end, "or by equitable annual taxation," so that the moneys spent upon the canals shall be money out of the treasury already appropriated for the purpose.

The President *pro tempore* put the question on the adoption of Mr. Choate's amendment, and it was determined in the negative, by a rising vote — ayes, 44; noes, 66.

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

The Secretary read the amendment, as follows:

To amend section 1, by striking from line 4 all after the words "section 1," and down to and including the words "except that," in line 5, and insert in place thereof the words "tolls may hereafter be imposed by the Legislature on persons and property transported over the canals."

Mr. Dickey — Mr. President, it is nearing five o'clock; I move that the session be extended to six o'clock.

The President *pro tempore* — The motion will be put when the amendments are finished.

Mr. Griswold — Mr. President, the amendment proposed by me is simply this, that the proposed amendment prohibits any charge being put upon the canals ——

Mr. McIntyre — Mr. President, I raise the point of order that the time for debate has already elapsed.

The President *pro tempore* — The gentleman is trying to explain his amendment. No debate will be allowed, as the time for debate has expired.

Mr. Griswold — I shall be very brief. My proposition is that tolls may be imposed by the Legislature, and that the central part of the State will have something to say about that.

Mr. Moore — Mr. President, I rise to a point of order, that the gentleman's motion is an equivalent motion, and cannot be entertained.

The President *pro tempore* — The point of order is well taken, it having been already acted upon by the Convention.

The Chair will ask the consent of the Convention that a report of the Committee on Revision and Engrossment may be presented. The chairman of the committee will send the report to the desk and it will be read by the Secretary.

Mr. Foote, from the Committee on Revision and Engrossment, to which was referred the proposed constitutional amendment, offered by Mr. Marshall (introductory No. 69, printed No. 434), reported by the Committee on Banking and Insurance, and by the Committee of the Whole, entitled, " Proposed constitutional amendment to amend section 7 of article 8 of the Constitution, relative to the liability of the stockholders of banking corporations," reports the same as examined and corrected, and as correctly engrossed.

Mr. Foote, from the same committee, to which was referred the proposed constitutional amendment, introduced by the Committee on Future Amendments (introductory No. 368, printed No. 436), reported by the Committee on Future Amendments, and by the Committee of the Whole, entitled, " Proposed constitutional amendment to amend article 13 of the Constitution, relating to further amendments," reports the same as examined and corrected, and as correctly engrossed.

The President *pro tempore* — The motion before the Convention is that of Mr. Dickey, to extend the session.

Mr. McIntyre — Mr. President, I make the point of order that the time has passed within which such a motion can be entertained.

The President *pro tempore* — The motion was received, but on account of the pending business, the Chair stated to Mr. Dickey that his motion would be acted upon as soon as that business was finished.

Mr. Cady — Mr. President, I move as an amendment to the motion of Mr. Dickey, that the session be extended until a quarter past five.

Mr. McIntyre — Mr. President, I insist upon my point of order,

that the Chair has no power to entertain the motion, the time having expired.

The President *pro tempore* — The Chair will have to declare the gentleman from St. Lawrence out of order.

Mr. McIntyre — Then I appeal from the decision of the Chair.

The President *pro tempore* — That is always the right of every member. The decision of the Chair having been appealed from, the question now before the Convention is, shall the decision of the Chair stand as the judgment of the Convention?

Mr. Davies — Mr. President, I move to lay the appeal upon the table.

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

The President *pro tempore* — The motion of Mr. Dickey is to extends the session until six o'clock. Mr. Cady moves to amend by making it a quarter past five o'clock. The amendment is first in order.

The President *pro tempore* put the question on Mr. Cady's amendment to the motion of Mr. Dickey, and it was determined in the affirmative.

The President *pro tempore* put the question on the motion of Mr. Dickey, as amended, that the session be extended until quarter past five, and it was determined in the affirmative, by a rising vote — 56 ayes and 53 noes.

The President *pro tempore* — Are there any further amendments to be offered? If not, the Secretary will read the proposed constitutional amendment through for the third time (O., I. No. 252, P. Nos. 254-437).

"Sections 1, 2, 4 and 5 of article 7 of the Constitution are hereby abrogated, and section 3 amended so as to read as follows:

"Section 1. No tolls shall hereafter be imposed on persons or property transported on the canals, except that the Legislature may, in its discretion, impose or remove tolls on products of the Dominion of Canada, passing through any canal of this State, but all boats navigating the canals, and the masters and owners thereof, shall be subject to such laws and regulations as have been or may hereafter be enacted concerning the navigation of the canals. The Legislature shall annually, by equitable taxes, make provision for the expenses of the superintendence and repairs of the canals.

"All contracts for work or materials on any canal shall be made with the persons who shall offer to do or provide the same at the lowest price, with adequate security for their performance. No extra compensation shall be made to any contractor; but if from any unforeseen cause the terms of any contract shall prove to be unjust and oppressive, the Canal Board may, upon the application of the contractor, cancel such contract."

The amendment was read and the Secretary proceeded with the call of the roll.

Mr. Dean — Mr. President, I desire to explain my vote. In a deep sense of humility, at the action of the Constitutional Convention on a little petty matter of this kind, I vote aye.

Mr. Dickey — Mr. President, the condition of the taxpayers of this State is such that I think it no time now to authorize the Legislature to contract an unlimited debt for the betterment or the improvement of the canals. The senatorial district which I, in part, represent, voted against free canals, and I think I represent, I am sure I do, their sentiment in voting against this proposed amendment. I vote no.

Mr. Forbes — Mr. President, I desire to be excused from voting, because I do not understand what is before the Convention to be voted upon. Last Tuesday we proposed an amendment to the Constitution, and passed it, that upon the last reading of a bill no amendment should be allowed. We have violated this rule to-day. It was only necessary to postpone the vote until to-morrow, when this matter could have been printed and we could have voted intelligently upon it. I, therefore, ask the indulgence of the Convention, and ask to be excused from voting upon a matter which I do not understand.

The President *pro tempore* — If the gentleman will read the rule succeeding the one to which he has just referred, it will explain the situation.

The President *pro tempore* put the question on the request of Mr. Forbes to be excused from voting, and it was determined in the negative.

Mr. Forbes — Mr. President, I cannot vote, although I am not excused. The Convention can do with me as it likes; but, of course, if I may be allowed to examine the papers and consider them, I may pass upon them. If the Secretary will pass my name for the present, I will consider the matter meanwhile.

Mr. Goodelle — Mr. President, from what I understand of the

feeling in the central part of the State in reference to canals and expenses being made therefor, at this time, it seems to me that this is a most unwise provision to put in our Constitution. The provision first is, that we shall have no tolls, and then you place upon the top of that permission to the Legislature to create an unlimited debt. It is more, in my judgment, than the people in the central part of this State will bear. If there is any one thing that the farmers of central New York are complaining about to-day, it is that the State is supporting a canal free for the benefit of western traffic, and because western produce can be floated through our canals to the seaboard free; that crops are raised so much cheaper in the West than they are in the eastern States, that our farmers are thereby unable to compete in their production and the sales thereof with western producers. It simply comes to this, in my judgment, whether in the estimation of the people of central New York, this State shall support a canal free from the benefit of western producers, and in addition to that give to the Legislature unlimited power to expend money for the improvement thereof. I vote no.

Mr. A. H. Green — Mr. President, I think the canals can be adequately improved by annual taxation or by other proceeds of the treasury. It is very easy to get into debt. The State is out of debt now. It is very easy to get into debt, it is very pleasant to spend money, but it is sometimes hard to pay. I do not believe in again plunging the State into debt, as this proposition would do. I think the canals can be improved to meet all the demands of the business they can do, out of the annual appropriations. I vote no.

Mr. Griswold — Mr. President, I think it will be conceded by all that, so far as being any material pecuniary benefit to that portion of the State from the city of Albany down to the city of New York, upon each side of the Hudson river, and the western tier of counties, the southern tier and the northern, certainly the southern tier of counties, and the eastern, that so far from being any benefit to these counties having free transportation, a canal to be built and kept in running order by taxation, it is, in fact, a positive damage to those counties, because it allows facilities for the entire products of the western States to come in competition with their products, and while those taxpayers might be perfectly willing, providing it was a benefit to other portions of the State, along the line of the canal west, and the city of New York, it is asking a good deal for those people to pay bills to enlarge this canal and keep it in running order when it is a positive pecuniary damage. I, for one, shall be glad to have the improvement made, but when you do it,

and charge no tolls at all, it seems to me you are asking a great deal from those taxpayers, to whom that is a positive damage. I am fearful that in the central and southern parts of the State you will find what they have to say about it when they come to vote upon this amendment. I vote no.

Mr. I. S. Johnson — Mr. President, when the matter was up the other day I called attention to the fact that there could be, as there had been, money appropriated for substantial improvement of the canals, although it may be called something else, to the amount of over a million and a half a year. I believe that is as much as the people of this State are willing to expend every year. There is a feeling throughout this State, and it is very universal, that the money that is used for canal purposes is used in a most corrupt manner. The people of the State are looking and inquiring every day where the great fund goes which is appropriated every year, from a half million to a million dollars, for this colossal building here, and they believe that at least one-half of it is used for corrupt purposes. They inquire where the million or the million and a half goes that is annually appropriated for the canals, and they believe that that is used as a corruption fund, and hence they are opposed to it, and I believe they will not be satisfied to say that you may appropriate any sum you may have a mind to and add it to increase taxation; that they will not be willing for you to say that you shall create a debt which shall be unlimited; and hence, Mr. President, I shall be obliged, however much I might wish to accommodate my friends from Erie and New York, to vote no.

Mr. Nichols — Mr. President, I regret very much that I feel compelled to vote no upon this important proposition. It would have been my pleasure, as it was when this question was before the Convention on a former occasion, to vote in favor of an amendment permitting the Legislature, in its discretion, to improve the canals, regulating the plan to be adopted and the methods of raising money, together with the amount to be expended. This proposition, in my judgment, goes too far in permitting the Legislature to improve, and to defray the expenses by the appropriation of funds from the State treasury, or by an equitable annual tax. But for these words it would give me great pleasure to support this amendment. I believe, however, that such words are superfluous; I believe that they endanger the proposition; I believe that they will antagonize, not only upon this proposition, but upon the entire Constitution to be submitted, almost the entire rural vote of the State of New York. It surprises me, sir, that gentlemen who have the interests

of the canals at stake will permit this proposition, in the face of the warning that comes from the country districts where the Republican vote is polled; that they will permit such a proposition to pass here when there is not behind it the necessity therefor. I ask you, why will you endanger this proposition and the entire Constitution by insisting upon a provision that endangers it all? I vote no.

Mr. Roche — Mr. President, I desire to explain my vote. Mr. Nichols has expressed the opinion that the entire Republican vote in the rural districts will be cast against this proposed Constitution, because of the proposition upon which we are now voting. Almost the entire Republican vote in this Convention was cast last week against every broad and liberal proposition before the Convention looking toward the improvement of the canals. With substantial unanimity the political minority of this body voted in favor of those propositions. If we could have a good, fair and square issue upon the question of canal improvement alone, I would not fear the result, and I think that Mr. Nichols's prophecies would prove to be entirely groundless. The result of the action of the majority last week was a storm of protest from the large cities and commercial bodies of the State, and the raining in upon members of telegrams and letters from their friends, political and business friends, all over the State, in condemnation of the action that was had here. Some fright or some fear has come over the majority as the result of that action. The committee have now brought in this little bantam, but I hardly think there is one good lusty crow in it. I think there is substantially nothing in this amendment, which was reported by the Canal Committee this afternoon. I think Mr. Hottenroth has pretty well expressed it, that there is no harm in it and that there is no good in it. I do not believe that the friends of the canals will be deluded one particle by it, or that for one moment they will believe that they have received anything substantial at the hands of this Convention in the proposition we are now voting upon; but, desirous of supporting everything that will even have the semblance of friendship for the waterways of this State, I vote aye upon this proposition.

Mr. Smith — Mr. President, I wish to explain my vote. I am in favor of the substantial improvement of the canals. I believe that the propositions which were presented to this Convention last week for the improvement of the canals would have been of great benefit to all the people of the State. But the Convention, in its wisdom, or in the absence of wisdom, rejected these propositions, and while I am not satisfied with this small measure of

relief, or what might be called a step toward relief, yet it is better than nothing, and I, therefore, vote aye.

Mr. Woodward — Mr. President, I wish to explain my vote. For years I was in favor of the construction of the canals, and the enlargement of them. As a Whig, I voted for it every time the question was up. It was said that the tolls upon the canals would eventually pay all our taxes, but we have now removed the tolls. I would be in favor of making improvements still upon the canals, but I would have the canal itself pay for those improvements. There should be tolls enough imposed upon the canals to pay for the improvements. The effect of taking off the tolls is that it brings the wheat from all the western States that have land not worth more than ten shillings an acre, or but little more; it brings the wheat here to compete with the wheat and the products that we raise in western New York. It has already diminished the value of farms thereby making the produce bring a less price than it would if the tolls were imposed; just as much less as the tolls that would be imposed upon western wheat would add to our products there. For that reason I am opposed to any improvement of the canals, except what is met by making produce carried on the canals from the western States pay for the expenses. A man that lives ten miles from the canal takes his produce from the railroad. He does not take it from the canal. I vote no.

Mr. Choate — Mr. President, I wish to explain why I cannot vote for this bill, which I would otherwise like very much to do, and that is because of the presence of the last words, "or by equitable annual taxation," so that it is made to read: "The canals of the State may be improved in such manner as the Legislature shall provide by law, and the cost of such improvement may be defrayed by equitable annual taxation." I do not know, and I do not believe, that any member of this Convention knows what is meant by "equitable annual taxation." The trouble in this whole canal business has been in the contracts. Now, under this proposition it may be provided by the Legislature, by a law, that the canals may be improved in one year to the extent of $20,000,000, by contracts which cannot be taken back, and it is to be provided for by equitable annual taxation. That may mean that it shall be a taxation running over ten years, or all confined to one year. I cannot vote for such a measure as that. It seems to me to get us into the old dilemma or hole by which the State was constantly subjected to frauds. I vote no.

Mr. Cochran — Mr. President, if the passage of this amendment

depended at all upon my vote, I would very gladly vote in the affirmative. But, as it does not, I will vote in the negative; and I would only say that I have favored all the amendments that have been proposed heretofore which looked to a liberal appropriation for the improvement of the canals, and which regulated in some way what improvements should be made. This amendment, however, leaves the entire question of appropriation unlimited; places no limit whatever upon the Legislature, places no limit upon the work which shall be done upon the canal; for that reason I vote in the negative.

Mr. Durfee — Mr. President, I desire to explain my vote. Because I believe that my constituents are not in favor of taxing themselves to make improvements of the canals in order still farther to facilitate the transportation of western products to compete with their own, and because I believe that by the proper use of the means already at the disposal of the State the canals may be kept in a condition to answer all demands upon them, and that if they cannot, the expense of improvement should be defrayed by the United States, so that the western farmers who would be chiefly benefited thereby should share the expense, and because of the indefinite character and phraseology of the proposed amendment, which might lead to unlimited expenditure and taxation, which no one could foresee, I vote no.

Mr. Forbes — Mr. President, I hardly think this is a proper time to explain my vote, as I desired to be excused from voting before; but at the present time, if the gentlemen of the Convention will give their attention, I will show them that I was right in desiring to be excused from voting. This is an amendment to sections 1, 2, 4 and 5 of article 7 of the Constitution. Article 7 of the Constitution provides, in section 12, for the creation of a debt. This article that we are voting upon says that a debt may be authorized in the mode prescribed by section 8. Now, what are we voting for? Section 8 of article 7 of the Constitution says that no money shall ever be paid out of the treasury of the State, etc. It does not authorize the creation of a debt. I am told that this is a mistake, but it is in the printed amendment and is being voted for. This shows the evil of hasty legislation. What we have forbidden the Legislature to do we are practicing ourselves.

In regard to the amendment now on third reading; if section 8 is changed to section 12, I will vote aye, because the amendment contains a proper principle, viz., that the State shall pay as it goes. This amendment, as I understand it now, having read and examined

it during the vote, provides that each and every year the State shall pay out either its surplus revenue for these improvements or shall levy such tax therefor as the people will allow. I vote aye.

Mr. Lauterbach — Mr. President, I desire to explain my vote. To vote for a proposition involving subject-matter concerning which I have no knowledge at all, and to hear those in advocacy of canal improvement assert that the bill does not accomplish their purpose, and to hear those who oppose it say that it accomplishes too much, is a very serious dilemma for a man in an ignorant condition. But when I remember that there has been a response which found sentiment in the voice of the Republican platform at its convention yesterday in favor of canal improvement, and when I am informed that a Democratic platform will probably contain a similar plank, and it appears to be a matter of general sentiment that there should be canal improvement, I do hate to leave a Convention with nothing more accomplished than the possibility of selling the Hamburg canal and applying its proceeds to the improvement of the rest of the canals. If we do not vote for this measure, then we shall have accomplished this result: that this great Convention, after discussing the whole subject of canal improvement, will have concluded that we can sell a rather large-sized gutter in the city of Buffalo and apply the proceeds to the improvement of the rest of the canals of the State. If that is all we are to accomplish, I think we ought to be the subject of some derision; and because I believe in the gravity of the Convention, and in the grave and serious import of the subject-matter that we are now discussing, I shall, with some reluctance, vote aye.

Mr. Lincoln — Mr. President, I live in a section of the State that is ordinarily known as anti-canal; but, personally, I have been classed, I think, as a canal man. I have been in favor of moderate expenditures for the purpose of keeping up the canals, and I assured the chairman of the Canal Committee that I would support a proposition embracing the first part of the amendment as it now stands, because I thought it was right and what the people of the State ought to do. A clause has been added here which makes me somewhat doubtful about it; but, upon the whole, I am inclined to vote in the affirmative, and I, therefore, vote aye.

Mr. A. B. Steele — Mr. President, there is no doubt that the people in my locality are in favor of canal improvement, and so am I, but I believe that the last clause in this bill is a dangerous

one. For that reason, while I have been urged to vote for it, for the reason I have assigned, I shall vote no.

Mr. Cochran — Mr. President, I said in explaining my vote that if the result depended at all upon my vote, I would vote in the affirmative. I find, according to my tally, that the result does depend upon my vote, and I, therefore, change my vote from no to aye.

The amendment was adopted by the following vote:

Ayes — Messrs. Ackerly, Arnold, Baker, Barrow, Becker, Blake, Bowers, Brown, E. A., Burr, Cady, Carter, Cassidy, Cochran, Coleman, Countryman, Davenport, Davis, Deady, Dean, Deterling, Deyo, Durnin, Emmet, Faber, Farrell, Fitzgerald, Floyd, Forbes, Francis, Frank, Andrew, Frank, Augustus, Fuller, C. A., Gibney, Giegerich, Gilleran, Goeller, Hecker, Hedges, Hill, Hirschberg, Holcomb, Holls, Hotchkiss, Hottenroth, Jenks, Lauterbach, Lester, Lewis, C. H., Lincoln, Manley, Marshall, McClure, McDonough, McLaughlin, C. B., McLaughlin, J. W., McMillan, Mereness, Moore, Morton, Nicoll, Nostrand, O'Brien, Ohmeis, Parmenter, Pashley, Peck, Platzek, Porter, Powell, Putnam, Roche, Rogers, Root, Smith, Springweiler, Steele, W. H., Storm, Sullivan, T. A., Sullivan, W., Tekulsky, Tibbetts, Truax, C. H., Truax, C. S., Tucker, Turner, Veeder, Vogt, Wellington, Williams — 89.

Noes — Messrs. Abbott, Acker, Banks, Barhite, Barnum, Bigelow, Brown, E. R., Chipp, Jr., Church, Clark, G. W., Clark, H. A., Cookinham, Cornwell, Crosby, Dickey, Durfee, Foote, Fuller, O. A., Gilbert, Goodelle, Green, A. H., Green, J. I., Griswold, Hamlin, Hawley, Jacobs, Johnson, I. Sam, Johnson, J., Kellogg, Kinkel, Kurth, Mantanye, Maybee, McCurdy, Nichols, Parker, Parkhurst, Redman, Spencer, Steele, A. B., Whitmyer, Woodward, President — 44.

The Convention took a recess until 8 P. M.

EVENING SESSION.

Thursday Evening, September 20, 1894.

The Constitutional Convention of the State of New York met pursuant to recess, in the Capitol, Albany, N. Y., Thursday, September 20, at 8 P. M.

Second Vice-President Steele called the Convention to order.

Mr. Cookinham — Mr. President, I ask consent to offer two resolutions.

The President *pro tempore* — The Secretary will read the resolutions.

The Secretary read the resolutions as follows:

R. 222.—"Resolved, That a committee, consisting of ten delegates, be appointed by the President to draft an address to the people of the State explanatory of the proposed constitutional amendments to be submitted to the popular vote, and that the President be *ex-officio* chairman of such committee; also,

R. 223.—"Resolved, That the Convention adjourn *sine die* on Saturday, September 22, at 12 o'clock noon, or as soon thereafter on that day as the constitutional amendments then adopted can be read and the revised Constitution read, adopted as a whole, and signed by the delegates."

Mr. Cookinham — I ask that these resolutions lie on the table.

Mr. Moore — Mr. President, I desire to debate both of these resolutions.

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

The President *pro tempore* — The Secretary will read Mr. Springweiler's resolution.

The Secretary read the resolution of Mr. Springweiler as follows:

R. 224.—"Whereas, the wage-workers of this State have petitioned this Convention, through many thousand citizens, to pass the co-employe liability, anti-conspiracy and anti-trust amendments; therefore, be it,

"Resolved, That the Convention will not adjourn without considering these requests and passing said amendments."

Mr. I. Sam Johnson — Mr. President, a point of order. These resolutions refer to the business of this day and every other day, as the President of this Convention has often ruled, and I think we ought to consider them the moment they are put in here.

Mr. McMillan — Mr. President, I ask for a roll-call to ascertain whether there is a quorum or not.

The Secretary called the roll, and it was announced that ninety-six members were present.

Mr. Tekulsky — Mr. President, I would like to offer the following resolution.

Mr. Spencer — I rise to a point of order. We are, by a vote of the Convention, in the order of third reading of amendments, and, as I understand it, we cannot depart from that order of reading

while there is any work before the Convention, without a vote of the Convention.

The President *pro tempore* — The Chair will state that it has been the custom to allow a few moments for the ordinary business of the Convention at each session.

Mr. Spencer — But, Mr. President, some of these resolutions may call out debate and may consume the whole session.

The President *pro tempore* — The resolutions giving rise to debate go over, and, therefore, they cannot call out discussion.

The Secretary read Mr. Tekulsky's resolution as follows:

R. 225.—"Resolved, That we extend this evening session to eleven o'clock, and after disposing of the printed calendar on third reading of bills Nos. 26, 27, 28 and 29, we return to general order No. 48, which is the first on the calendar, before transacting any other business."

The President *pro tempore* — This resolution is strictly in order at this time.

Mr. Tekulsky — Mr. President, I desire that the Convention shall understand the reasons why I offer this resolution. Last week Mr. Hedges offered a resolution that we adjourn on Saturday until Thursday next, and debate arose at the time in reference to the adjournment. The question was asked, and it was stated by Mr. Hedges, and by Mr. Root, and others, that the motion for adjournment was offered in good faith; that they intended to return here and transact the business that was before the Convention. They not only said they would transact that business, but they laid out a plan of action, naming certain bills which would be acted upon. They have not done that, but the leaders have entered into a contract or some scheme or other to protect the thieves and gamblers of the State of New York; and when they reach that measure, in reference to the gambling act, the gentleman then moves to go into the order of third reading. Now, Mr. President, I don't offer this for buncombe, I offer it in good faith. If the gentleman, or any of the gamblers that he represents, can name me one man in the State of New York that is in the bookmaking business that is not a thief, a blackguard or an ex-convict, I will withdraw my resolution. I say, Mr. President, every bookmaker in the State of New York, no matter where he comes from, is nothing else but an ex-convict, a cracksman, a pickpocket, a thief of the lowest character, and these men come here and desire to shut this out, because the Legislature of a few years ago legalized a certain

kind of gambling, and they are trying to protect them. Protect who? The king of the Louisiana lottery, Mr. Morris, the head of the association, who has come to this State to control legislation so as to embody the lottery law here once more. Why doesn't the gentleman, or some gentleman on this floor representing the gamblers, offer a resolution striking out the word "lottery;" that is what I want to know? They have been circulating around here that this is a quarrel between two sets of gamblers; that I represent one set of gamblers and Mr. Bowers represents the other. (Laughter.) Granted that that is so, Mr. President; then if thieves fall out, honest men get their dues. (Applause and laughter.)

Now, I say, Mr. President, that everything I say here is the absolute truth, and let any man on the floor of this Convention name one bookmaker in the State of New York that is not what I brand him to be a crook, a loafer, a man who never travels in respectable society and never was known to do so. The lowest classes of people are in the business; and then they want to shut it out here in this Convention by some combination. It wouldn't take one hour to give that bill a consideration. Why is it that they shut it off this morning? There must be a reason for it, and I demand that the ayes and noes be taken upon that resolution, and let us put those who are in favor of the gamblers upon record.

Mr. Cookinham — Mr. President, I understand perfectly well that this bill is a fight between two sets of gamblers. I understand, also, that good men generally favor the amendment. I am in favor of the amendment, because I believe that it tends to cripple gambling; but I do not believe that this amendment is more important than all the amendments now on the order of third reading. I do not believe that it is more important to adopt this amendment than it is to adopt the Constitution. I do not believe that the delegates in this Convention will come back here after this week. I have no idea that eighty-eight delegates will appear here after Saturday night next. I do say now, that after the amendments that are on the order of third reading are disposed of, I will vote for this amendment, though I believe it to be advocated by a set of gamblers in the city against the gamblers in the country. But I believe it is in the interest of good government; but not until the amendments now upon the order of third reading are finally adopted, that they may pass to the Revision Committee, that that committee may be prepared to report to this Convention upon Saturday morning a revised and completed Constitution that we may finally adopt it as a whole and sign it; not until that

material is in the hands of the Revision Committee will I vote to consider any other amendment. And I will say more, Mr. President. It has been charged by the gentleman who addressed the Convention that some one desired to advance amendments. I have asked to advance no amendment. There are those now on general orders that I very much desire to have taken up, and, although I have been in a position where I might have advanced them, had I seen fit, I have advanced not one single amendment that I have been specially interested in. The very last one upon the calendar is one that I am interested in, and I have taken especial pains to advance those that I was not interested in, that it might not be charged to me, because I was in such a position, that I had taken advantage of that position to advance an amendment that I desired to see adopted. I hope, Mr. President, that this resolution will be tabled or voted down, and that we may pass the amendments now upon third reading and complete them before we go into general orders again. I move to lay the resolution on the table, and upon that I move the previous question.

Mr. Dickey — Mr. President, I ask the gentleman to withdraw that motion so that the other side may be heard after he has been fully heard.

The President *pro tempore* — The Chair has but one course open to him, and that is to leave the matter to the Convention.

The President *pro tempore* put the question on whether the main question shall now be put, and it was determined in the negative.

Mr. Dickey — Mr. President, if we adjourn this Convention ——

Mr. Dean — Mr. President, I rise to a point of order. The motion to lay on the table is not debatable.

Mr. C. B. McLaughlin — Mr. President, I move to lay the motion on the table.

The President *pro tempore* — The question before the Convention is upon Mr. Cookinham's motion to lay Mr. Tekulsky's resolution upon the table.

Mr. McClure — Mr. President, a point of order. Mr. Cookinham's motion was for the previous question. He intended to move the previous question, and he made the motion to lay on the table and corrected it.

The President *pro tempore* — The question is upon laying the resolution of Mr. Tekulsky upon the table.

The President *pro tempore* put the question upon laying the reso-

lution of Mr. Tekulsky upon the table, and it was determined in the negative by a rising vote.

The President *pro tempore* — The question now recurs to the resolution of Mr. Tekulsky.

Mr. Dickey — Mr. President, I rise to favor the resolution of Mr. Tekulsky. If this Convention should adjourn without taking some action upon this, one of the most important questions, if not the most important, that will be brought before the Convention or has been brought before it, I will hide my head with shame; and I know that the make-up of this Convention is such that it will not permit this and other propositions yet unacted upon to be side-tracked by any such subterfuge or excuse as the gentleman from Oneida has given here. When Mr. Cookinham the other day made a motion as to the order of business, he was asked whether it was the intention to give a hearing to this anti-gambling proposition and other propositions, and he said it was; that there was no intention on his part on upon the part of those who were supporting him to prevent the hearing ——

Mr. Cookinham — Mr. President, will the gentleman allow me to ask him a question? Isn't he mistaken? Wasn't it Mr. Hedges that made that statement?

Mr. Dickey — No, it was you. I know you — and, Mr. President, instead of living up to that promise, he comes here with a motion to lay on the table, and the previous question, and he seeks to shut us off from any hearing of these lottery propositions or this anti-gambling proposition. Such a course is entirely despicable. I don't care who introduces it or who his backers are. This matter of gambling needs our attention. It is a very serious matter. I have before me a hand-bill of a Long Island jockey club which advertises ten races each day, racing by electric light. They are not satisfied with racing in the broad sunlight, but they are going to begin racing in the night. The gambling mania has extended so far that they provide places for women to buy pools and engage in gambling operations; and in the face of all this gambling business, which is ruining multitudes of our young men, our brightest and our best, when this curse is overspreading our State, and blighting many otherwise happy homes, Mr. Cookinham gets up here and says it is of little consequence, that we must go on and pass the civil service reform matter to third reading; that that is important; that we shall make an address to the people commending our work, and then adjourn and go home. Now, I take it that this Convention will do nothing of the kind. There are brave, hon-

est, fair men here, a majority of this Convention, who are willing that every matter that has been reported from a committee shall have a chance to be heard, and be determined, whether it is carried or not. And anybody who is afraid to go upon record on any of these measures, let him take his carpet-bag and go home; there are enough of us here who are willing to stay and vote one way or the other. I hope Mr. Tekulsky's motion, as a start, will be carried, and then when it comes to the other propositions, that of Mr. Springweiler, that he will get support enough so that he and his associates and the thousands of backers of these labor delegates shall not be turned out of this Convention without a decent and respectful hearing.

Mr. Cookinham — Mr. President, I desire to make a correction. When I presented the resolution fixing the order of business, no gentleman asked me a question. I made no reply of any kind whatever, and Mr. Dickey is entirely mistaken. He has me in his mind in the place of some other gentleman. I desire to have this distinctly understood, and I challenge him to examine the record. He will find that he is entirely mistaken. No question was put to me and I made no answer.

Mr. Dickey — Your intention was then, a week ago, to side-track these propositions?

Mr. Cookinham — I simply arose to make that correction. I had no intention of side-tracking any amendment.

Mr. C. B. McLaughlin — Mr. President, my intention is to side-track this measure, and to meet it here or any other place I can; and I am surprised that so good a lawyer as the gentleman from Newburgh should, on this floor or any other place, advocate putting in the Constitution of this State just exactly what the Legislature of the State now or for the last year has had the right to do. We are not here to decide or to legislate between two sets of gamblers, or any other class of people. I would like to ask the gentleman a question: if the Legislature of this State cannot now pass an act to prohibit gambling? They have done it in the past, and why does he stand here and advocate putting it into the Constitution of this State when the Legislature of the State ——

Mr. Tekulsky — Does the gentleman want me to answer that question?

Mr. McLaughlin — Yes, sir.

Mr. Tekulsky — Mr. President, I desire to state that the Legislature has passed an act legalizing gambling, and for five years we

have tried to take it off from the statute books, and it has been impossible.

Mr. McLaughlin — I thank the gentleman for his answer. The legalizing of the gambling to which he refers has been to drive the bucket-shops from every city in the State, and the reason why this proposition is sought to be engrafted into the Constitution is so that gambling, if it is driven out of the city and confined to race tracks, that they won't drive it from there. It is simply in the interest of one class of gamblers against another, and the gentleman from Newburgh (Mr. Dickey), while he stands here to-night advocating that the delegates in this Convention should stay here until the snow flies, if you please, to settle a question which the Legislature now has the right to pass upon, is one of the very men who have stood here all summer and fought every single measure to prolong the sessions, to sit six days in the week and three sessions a day. Now, I, for one, want to finish up the work of this Convention, and I propose, so far as I am able, to go to work and finish the measures we have had, and what the Legislature has now the power to do, to commit to the Legislature. I would like to have Mr. Dickey tell us why he is not willing to commit this matter to the Legislature, instead of keeping here this body of delegates to pass upon a measure which the Legislature has ample power now to do?

Mr. Storm — Mr. President, this is a repetition of what we have had time and again. We have spent half an hour trying this case, if you please, whereas I begged this morning for only half an hour to dispose of the whole amendment. Now, I will try and be brief. It has been stated here that this amendment represents one set of gamblers as against the other. I will state that I am very much interested in this amendment; it is the outcome of one that I presented. What Mr. Tekulsky's aim may be, I know not, My representation is of a respectable set of people. I only asked for half an hour before, and I only ask for half an hour now, to have this amendment disposed of; but it will not be granted. Why not? If you want to kill it, kill it; but let us have it before the Convention, and let it die a natural death, and not be smothered to death.

Mr. I. Sam Johnson — Mr. President, I am in favor of the resolution offered by Mr. Tekulsky; but I would like to have added to it, and I hope there will be before we get through, that not only shall we go into Committee of the Whole upon this proposition, but upon other propositions that are upon the calendar of general orders, and dispose of them. I am not afraid to say that the gentlemen

who are here will come back, and, if they are not cowards, they will come back. We have the power, and it is our duty to exercise it, and, if twelve men will come back here and attempt to do their duty, they will see that the balance of them come back. The power is placed in our hands to see that men come here and do their duty, and do not, as soon as their ten dollars a day ceases, sneak off to their homes and refuse to do their duty at all.

Now, sir, there are many amendments upon this calendar that the committees have spent all the months that we have been here considering, and have finally prepared one from the mass that has been before them, that they think ought to be considered in this body, and now we find that what we have suspected for weeks is true, that there is an intention to pass the pet schemes of a few men, and then strangle all the others. I want to know if it was for this purpose that nine days were allowed for discussing a single proposition, six or seven days of that after a resolution was upon the records of this body asking that a time limit be fixed. I say, Mr. President, that the people sent the delegates here to perform their duty, not as to four or five propositions, but as to the various propositions that should be brought before the House. They have been brought here, we have a right to have them heard, and when these gentlemen have seen fit to make up a program, have they asked the men who introduced the measures whether they would be satisfied, or have they consulted with us as to whether we would be satisfied to have them buried or not? In hardly a single instance. If you want to bury our measures, sir, ask us to the funeral.

Now, sir, there are not only these proposition that have been mentioned, but there are many others; and, for one, I say that I am willing to stay here and consider them, and every one of them, until it gets so late that we cannot submit them to the people. Weeks and weeks ago a resolution was offered in this body by a distinguished gentleman, asking the Judiciary Committee to make a report as to the latest time at which we could properly submit amendments. That matter has been buried somewhere; it has not been considered or reported to this body, and we have no information from them. And now, sir, I insist that we shall come here to-morrow morning; that we shall go into general orders; that we shall consider them, and when we get a sufficient number that we go into third reading and do our duty, and I shall not be content, unless we do it, and I do not believe the delegates here will be content. I know that the people at home will never be satisfied

with any such proposition as you are making. You may ask, sir, to present to the people an address, but I would like to know what kind of an address you will present to them as an excuse for sneaking away from your duty? We have done some things; we have passed the judiciary article, which increases the number of judges by thirty; we have passed an apportionment article, which increases the representatives here by forty; we have possed bills in reference to commissions, and we have said nothing about the amount or the number, or the expense they shall be to us; and now we say with that we will go home and explain it to the people. I do not believe there is any explanation that will satisfy the people if we do this.

Mr. Dean — Mr. President, I am inclined to think that this serio-comic Convention ought to adopt this proposition of Mr. Tekulsky. We have run the gauntlet almost of moral reforms.

Mr. E. R. Brown — Mr. President, I rise to a point of order. It seems to me that the gentleman's language is unparliamentary.

The President *pro tempore* — The Chair has not discovered anything unparliamentary in it.

Mr. Dean — Mr. President, I think that in addition to what Mr. Tekulsky has suggested, in the way of reforming the morals of the State of New York, that some gentleman should get up enterprise enough to introduce the Ten Commandments here, with a penal attachment to each one of the sections. I, therefore, move the previous question on this resolution.

The President *pro tempore* put the question on whether the main question shall now be put, and it was determined in the affirmative by a rising vote — ayes, 58; noes, 44.

Mr. Dickey — Mr. President, I call for the ayes and noes on Mr. Tekulsky's resolution.

The President *pro tempore* — Under the new rule the ayes and noes cannot be taken upon this question.

The Secretary again read Mr. Tekulsky's resolution.

Mr. Powell — Mr. President, I rise to a question of information. Do I understand the Chair to rule that we cannot call for the ayes and noes on this question?

The President *pro tempore* — On this question the ayes and nays cannot be called for, under the late rules reported by the Committee on Rules and adopted by this Convention.

Mr. Powell — I understand that that applied only to the previous question.

The President *pro tempore* — It also related to the rules and order of business as it was adopted by the Convention a few days since.

Mr. Dickey — Mr. President, I call for a rising vote.

Mr. Cochran — Mr. President, as I understood the resolution, it provided that we should consider on the third reading orders Nos. 28 and 29?

Mr. Tekulsky — All that is on the calendar.

Mr. Cochran — Nos. 28 and 29 are not printed yet.

The President *pro tempore* — If the Convention will allow the Chair to make a statement upon this matter, the Chair would be pleased to do so. This resolution is precisely in the order in which the business would have been conducted, if no resolution had been offered. In less time than has been taken to discuss this matter two of the third readings would have been completed. Nos. 27, 28 and 29, not having been received from the printer, could not have been acted upon, and general orders would then have been the order of the Convention. The Convention has occupied three-quarters of an hour in discussing this resolution, which calls for precisely the order that would have been followed without any resolution. The Convention should understand the matter thoroughly and act accordingly.

The President *pro tempore* put the question on Mr. Tekulsky's resolution, and it was determined in the negative by a rising vote — ayes, 50; noes, 60.

The President *pro tempore* — The third reading of bills is in order. The Secretary will read the title of third reading, No. 26.

Mr. I. Sam Johnson — Mr. President, I desire to make a motion in reference to a matter which has been upon third reading, and I suppose, is there yet. I ask to take from the table the resolution of Mr. McMillan, by which the general order, in reference to bribery, was laid upon the table.

The President *pro tempore* — The Chair must decide that the Convention, being in the order of third readings, cannot be further interrupted, the time devoted to resolutions having been passed and ample time having been given — three-quarters of an hour. If Mr. Johnson desires to make a motion, the Chair will submit it to the Convention, as to whether they will entertain his motion or not.

Mr. Johnson — Then I ask unanimous consent that it be taken from the table. I ask to have it ordered to revision, and when it

comes back to the Convention, I wish to propose an amendment, which, I think, will be satisfactory.

Objection was made to the consideration of Mr. Johnson's motion.

The President *pro tempore* — The Secretary will read the title of the general order before the House (O., I. No. 394, P. No. 464).

The Secretary read the title as follows:

"Proposed constitutional amendment, to amend article 8 of the Constitution, by the addition of a new section."

Mr. J. Johnson — That is the article in reference to legislation for cities. It has been fully discussed here, and I deem that it would be a waste of time to at all debate it, at least on my part, this evening. I merely rise to call attention to the fact that the Convention is already familiar with it from previous debates.

Mr. A. H. Green — Mr. President, I would like to be informed as to the meaning of the language in line 16, page 2: "The Legislature shall provide for a public notice and opportunity for a public hearing" before any action is taken thereon. That seems to be quite unintelligible. Does it mean before action of the Legislature thereon? I would like to understand what that means, if anybody can explain it.

I will go on a step further. "Such bill, if it relates to more than one city, shall be transmitted to the mayor of each city to which it relates, and shall not be deemed accepted, unless accepted as herein provided, by every such city." Now, supposing it relates to twelve cities. Six accept and six do not accept; then what becomes of it? If the gentleman can explain that, who is responsible for the thing, I should like to know it.

I should also like to know, on page 3, in regard to the indebtedness. I know it is the practice in the city of New York to pay revenue bonds out of the revenues of that city. There seems here to be implied a power to run temporary revenue bonds for at least five years, and that that shall not be counted as a part of the debt of the city within the ten-per-cent limitation. Why, in five years you might swamp a city by an indebtedness of that kind. Suppose a bill is passed within fourteen days. What becomes of it then? You have to give fifteen days' notice. That may be provided for in some other part of this bill. And I do not see the propriety of the language in the twelfth, thirteenth and fourteenth lines. "In every city of the first class, the mayor, and in every other city, the mayor and the legislative body thereof, concurrently, shall act for such city as to such bill." Now, I do not see why the legislative body in the city of New York

should not be treated with equal courtesy to the legislative body in other cities. We hope to have, though we have not entirely what we should like as a legislative body to-day, to have it by and by, and I think the legislative body of the city should have some voice in determining what is an acceptable amendment to that city. Now, there are these four or five propositions that suggest themselves to my mind that I would like to have explained. There is a confusion about them that I am quite unable to clear up.

Mr. J. Johnson — Mr. President, the question which was put in relation to public notice, page 2, line 16, it seems to me, is answered by the very letter of the proposed amendment. The action which is there referred to is the action of the city, which is provided for immediately preceding; and by all rules of construction it obviously refers to that which precedes. In reference to the consent of the city being given in cities like New York, by the common council, I had supposed it was agreed that in the city of New York particularly, which my friend represents, it would be a great innovation to take that common council at once into the control of the city, which this might do. Therefore, as to the larger cities, where the common council have a very little part in the government, it is provided that the mayor shall approve or disapprove these bills in their way of passage; and it is further provided that at the proper time, when a common council is established and organized to bear such a burden of government, they may be brought in in order to give their advice to the Legislature on these bills. That, sir, is the reason why the distinction is made. It is a matter of advice, practically, from the city to the Legislature; and we wish the advice from the best and most authoritative source in the city.

Mr. Banks offered an amendment which was read by the Secretary in the language following:

Section 11 of article 8 of the Constitution is hereby amended so as to read as follows:

"Section —. No county, city, town or village shall hereafter give any money or property, or loan its money or credit to or in aid of any individual, association or corporation, or become directly or indirectly the owner of stock in or bonds of any association or corporation; nor shall any such county, city, town or village be allowed to incur any indebtedness, except for county, city, town or village purposes. This section shall not prevent such county, city, town or village from making such provision for the aid or support of its poor as may be authorized by law. No county or city shall

be allowed to become indebted for any purpose or in any manner to an amount, which, including existing indebtedness, shall exceed ten per centum of the assessed valuation of the real estate of such county or city subject to taxation, as it appeared by the assessment-rolls of said county or city on the last assessment for State or county taxes prior to the incurring of such indebtedness; and all indebtedness in excess of such limitation, except such as may now exist, shall be absolutely void, except as herein otherwise provided. No county or city whose present indebtedness exceeds ten per centum of the assessed valuation of its real estate, subject to taxation, shall be allowed to become indebted in any further amount until such indebtedness shall be reduced within such limit. This section shall not be construed to prevent the issuing of certificates of indebtedness of revenue bonds issued in anticipation of the collection of taxes for amounts actually contained, or to be contained in the taxes for the year when such certificates or revenue bonds are issued and payable out of such taxes. Nor shall this section be construed to prevent the issue of bonds to provide for the supply of water, but the term of the bonds issued to provide for the supply of water shall not exceed twenty years, and a sinking fund shall be created on the issuing of the said bonds for their redemption, by raising annually a sum which will produce an amount equal to the sum of the principal and interest of said bonds at their maturity. [All certificates of indebtedness or revenue bonds issued in anticipation of the collection of taxes, which are not retired within five years after their date of issue, and bonds issued to provide for the supply of water, and any debt hereafter incurred by any portion or part of a city (if there shall be any such debt), shall be included in ascertaining the power of the city to become otherwise indebted. Whenever hereafter the boundaries of any city shall become the same as those of a county, the power of the county to become indebted shall cease, but the debt of the county at that time existing shall not be included as a part of the city debt. The amount hereafter to be raised by tax for county or city purposes, in any county containing a city of over one hundred thousand inhabitants, or any such city of this State, in addition to providing for the principal and interest of existing debt, shall not, in the aggregate, exceed in any one year two per centum of the assessed valuation of the real and personal estate of such county or city, to be ascertained as prescribed in this section in respect to county or city debt.] "

Mr. Banks — Mr. President, the other evening in presenting this amendment, toward the close of the session, to facilitate the passing

of the amendment, I said to the Secretary that merely the matter in brackets should be read. Unfortunately, it was taken down, and, with the matter in brackets, was placed in such a position that it did not make good sense of the amendment. This amendment passed through our Cities Committee with a perfectly unanimous vote. So now I bring it up in the way in which it should be presented. I know there is no objection to it, and I trust the amendment will be referred back to the Cities Committee, with instructions to report forthwith.

Mr. McClure — Mr. President, on the proposition which the amendment generally contains, I find that there is nothing offered to the people worth their acceptance. This pretended, this alleged, proposition which was to give home rule to cities, amounts, so far as my examination of it is concerned, to nothing. It provides, and we may as well look at it clearly and carefully and not be deceived, and not be parties to the deception of the people, by the pretense that there is anything of moment or of value offered by this amendment whatever — the proposition simply is that by a formal means the mayor of a city shall be apprised of legislation that is pending before the Legislature, and that if the mayor disapproves of it, the legislation shall recite, before it is passed a second time, that it is to be passed without his approval. Now, Mr. President, any one who knows anything about the course of legislation in this State knows that for a number of years past the mayor of the city of New York and the municipal authorities of that city have been represented before the Legislature by one of the assistants of the corporation counsel, and no measure respecting the city of New York has been allowed to proceed out of a committee-room, unless it has been made known to that committee whether or not the mayor of the city of New York or his associates in his administration of the affairs of that city did or did not approve of the measure. It is very well known that an efficient, intelligent, well-informed representative of the corporation counsel's office has, for at least a dozen years past, attended the sessions of the Legislature and made known his views — I will not say the wishes, because the officials of the city dictate to the Legislature what should or should not be done — but the views of those officials have been made known to committees of the Legislature and to the Legislature itself. Formal communications have been addressed to the Legislature, which have been read upon the occasion of the production and passage of bills affecting affairs in the city of New York. Now, it is attempted to be said to the people that because a more formal notice than has heretofore been given is to be given to the mayor

and aldermen of a city, that there is some home rule contained in this proposed amendment. And, then, this amendment proposes, Mr. President, that, after the mayor of a great city, like New York or Brooklyn, shall have said formally to the Legislature that he disapproves of a measure proposed, that the Legislature shall then proceed to pass it by the same vote by which they were allowed to pass it originally. Why, it is a great deal like the veto power in the State of New Jersey. A partisan Legislature passes a partisan measure; it goes to the Governor; the Governor vetoes it; it goes back, and the Legislature, by the same vote that originally passed the measure, passes it over his head, with a sort of contempt. Here we, after the mayor of a great city, like the city of New York or the city of Brooklyn, shall have manifested in the most formal, pressing and convincing way his disapprobation of a measure before the Legislature, permit the Legislature to say, by the same vote as before, that it thinks little or nothing of his suggestions, and permits them to pass the bill. Why, only last winter, Mr. President, a matter of great concern to the city of New York, involving the expenditure of what was the interest on millions of dollars of the money of that city, was before the Legislature of this State. The mayor of the city of New York sent formal communications, and was represented before the committees to which the matter was referred by an astute, able, eloquent member of the corporation counsel's staff, and yet the Legislature, and by the vote which they were empowered to do it, passed the bill. I cannot sit here, Mr. President, and in silence allow it to be assumed before the people by the going out of this proposed amendment that there is anything in the measure that is worthy of merit at all. I think it is a piece of absurdity to say to this Convention, and a like piece of absurdity for this Convention to say to the people of the State, that this great body, sitting here in Convention assembled, one hundred and seventy members strong, cannot do any more practical work in the cause of home rule for cities, cannot do anything more for the protection of the rights and interests of cities than to put into the form of a formal constitutional amendment what I, with great respect to the chairman of the Committee on Cities, must say, to my mind, is mere trash. To have it recited in a formal act of the Legislature that a bill is passed by a majority vote, gentlemen; by a majority vote, notwithstanding that it bears upon its face a recital of the fact that it is opposed by the officials of the city to which it refers and which it affects. Now, that is all the home rule there is in it. It may be a species of home rule, Mr. President, that appeals to the applause and the favor of a parti-

san State Convention, but to men who are not actuated by a partisan spirit, to men who are sitting here, with some sense of the obligations they owe to the people, to men who are expected to go back and explain what they have done, and the force and effect of it; I say that to men actuated by such a spirit there is nothing in this amendment that is worthy of the time spent in its passage. The idea of putting into a formal Constitution such trash as this, which might very well be a legislative act, a rule to be put aside at pleasure, but to put it as the basis of all of the law of the State, it seems to me that there is nothing in it. I protest in the name of the minority, I protest in behalf of a great city which I, in part, represent, against it being asserted here that there is any measure of home rule to any city in this amendment, and I hope it will be voted down.

The measure submitted by Mr. Banks is, as I understand it now, a part of the Constitution of the State, and the greater part of it is now the law of the State, and embodied in its Constitution, as it is at present in effect, and I hope the amendment, which is reported here from the Cities Committee, and which means nothing, and, which pretends a great deal, like some other things that have passed through this Convention — mean nothing so far as the people are concerned, and their interests, and are mere pretenses, mere names, mere titles, like this measure which was called home rule or something for cities — I hope that such amendments, and particularly this one, will not be adopted by the Convention.

Mr. Spencer — Mr. President, for the last three months this Convention is supposed to have been in travail with home rule, and I suppose that the natal hour has come. The situation, with this proposition before us, reminds me of an episode in the life of Queen Mary of England, as related at great length by Prescott in his life of her consort, King Philip II, of Spain. He tells us that after the marriage of those sovereigns, the court physicians excited great anticipations of the birth of an heir who should inherit the numerous thrones occupied by those monarchs. But when the natal day came, the court physicians were compelled to confess that the suspicious omens, which they had accepted, were nothing more than the ridiculous symptoms of a case of dropsy. And it seems, sir, to me, that this proposition, which I suppose is destined to be born by this Convention within the hour, is composed only of stale wind and foul water. (Laughter.)

I had the pleasure of attending the Republican convention held this week at Saratoga, and I listened to the resolutions there adopted and to many of the speeches there made, and I found that

they all agreed in extolling home rule and claiming the merit of favoring home rule for municipalities. I hope, sir, that no one will have the hardihood to claim that the proposition now before the Convention, coming from the Committee on Cities, contains anything like home rule. Encouraged by the sentiments expressed by that great and magnificent convention, I venture again to introduce the proposition which I asked the Convention at a previous session to pass; and I move, sir, that this proposition be sent back to the Committee on Cities, with instructions forthwith to strike out all of the provisions from the first line to the seventh line thereof, on page 3, and substitute the following which I send to the desk to have read. I do not care, sir, to discuss this question of home rule. It has been ably discussed, much more ably than I could, by gentlemen upon this floor, and the proposition which I submit is not a new one. I think many of the members here are familiar with it. It is substantially the same proposition that I presented and asked to have added to the provision in regard to the separation of elections, except this, that I have provided, in place of a majority vote of the electors of a city, that it shall require a three-fifths vote, and that thereupon the Legislature shall be required to grant home rule to the cities in regard to streets, highways, public places, parks and sewers, and the compensation of city officials and servants whose duties appertain to those subjects. I deem this, sir, as a very modest measure of home rule; I deem it, sir, as the slightest recognition that this Convention can pay to the sentiment which pervades this State upon this subject; and I protest against this Convention adopting a provision similar to this which is now before us and asking any one seriously to regard it as home rule. I believe, sir, in honesty in legislation, honesty and straightforwardness in a convention of this character, and, for one, I do not care to put myself on record as voting for a proposition of this character under the idea that it contains a single scintilla of home rule.

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

"Whenever three-fifths of the electors of any city shall elect that such city shall exercise exclusive legislative and administrative powers concerning the streets, highways, parks, public places and sewers within said city, and the compensation of city officials and servants whose duties appertain to any of said subjects, the Legislature shall confer such power upon the mayor and common council of said city, and provide by law for the election and organization of such mayor and common council, in such manner

and by such method as shall, in the judgment of the Legislature, conserve the rights of, and represent all, the people of such city, anything herein to the contrary notwithstanding. The Legislature may confer upon said mayor and common council such further powers of local legislation and administration as the Legislature may from time to time deem expedient."

Mr. J. Johnson — Mr. President, the amendment which has just been presented by Mr. Spencer, as I have been able to gather, has much that would commend itself to my judgment. I think Mr. Spencer will concur with me that I was quite anxious to see a copy of it some time ago, in order that I might be able to look it over and further inform my judgment. I have not had any such copy, and as it is presented on the motion to strike out this section, and as it has never been printed, I see no alternative but to oppose it. A resolution of that character certainly should, in some form, be printed, before we should be asked to vote upon it. At least, it impresses me in that way.

Now, Mr. Chairman, in reference to the amendment offered by Mr. Banks; it is the same amendment that was offered by him when this amendment was in general orders, but by error in offering it only a part went up to the Secretary, and so it was not printed in full. The part in italics in general order No. 60, was the only part which went into this amendment. His amendment merely supplies that. The only effect of that amendment is that it extends the ten per cent limitation on the debt capacity of cities, which is now applicable only to cities above one hundred thousand, to all cities, reserving, however, as heretofore, the right to go beyond that limitation for the supply of water, and making the further provision, which is very necessary for counties, for cities that absorb the counties, as Brooklyn is about to do, that the old county debt which was not within the limitation shall not be suddenly added. Were it added there we should be four or five millions beyond the limitation, because the limitation now is ten per cent city, ten per cent county, debt. When it all becomes one, the fear is that they would be merged except for this provision.

Now, Mr. Chairman, with that I come to the main proposition. It is true, sir, that it has been in the thought of the people of this State for many years, has been the study of all persons interested in the municipal problem, to do something to elevate the character of the government of cities. I have before expressed to this Convention the thought, which seems to me a certainty, that with the cities more than half, two-thirds of the population; that with the fact that that one city alone is one-third, and perhaps by con-

solidation, a single city will have nearly one-half the Members of the Assembly and Senate, the time has come when the cities govern the Legislature, and will do so; and it is futile, it is madness to say that the cities can abandon self-government and come here, where they themselves control, for the best expression of government. Something must be done. The Committee on Cities asked for more, and the minority members opposed it. We will not go over the debate. Many of the majority felt that it was surrendering something of the dignity, the sovereignty, of the State. Now, sir, here is a proposition that, in my judgment, will do very much, very much, to bring responsibility and better government to cities. What will it do? The gentleman from New York says that it will not do enough because it is a suspensatory and advisory veto. That is as far as it goes. Perhaps it is as far as it was wise that it should go. I am inclined to think that it is wiser and better than the original measure. But, sir, when I have the statement here that it is all the veto power that the State of New Jersey possesses in its State executive, I think it is enough. It is very much. I was told, sir, by a member of the Senate of that State, since this Convention has been in session, that hardly ever was the veto of the Governor over-ridden in that State. It was not many years ago, sir, when that was the condition as to the Governor's veto in the State of Ohio — I am not certain but it is so now — though they could pass it over his veto by a majority vote. If I am not misinformed, while it takes a majority of each branch of Congress to pass a bill, two-thirds of a quorum, less than a majority, may pass it over the veto of the executive. And I think, sir, under the Constitution of 1846, up to that time, that was the condition of the veto power in this State. Now this presents the suspensatory and advisory veto. It does something to bring the cities to the front, and to fix responsibility.

It will build up government there, it will ennoble citizenship and bring men with patriotic impulses to give thought and time to the city that they love; it will make it an entity, a specific thing, in the policy of the State. It will impress in the Constitution that the city is to be consulted, and if its advice is disregarded, forever after the measure passed in violation of that shall be labeled wherever it may go. Therefore, I say that something should be done, and I earnestly hope that this measure of self-government for cities, approved very largely by the press, suggested after much thought, which has received the concurrence of very many that

have examined it, that this measure may not fail in this Constitutional Convention. Else nothing in this direction is done.

Mr. Spencer — Mr. President, I rise to a question of privilege. From the remarks of the chairman of the Cities Committee it might be inferred that I had shown discourtesy to him as chairman of the committee ——

Mr. Johnson — I did not mean to imply any such thing, Mr. Spencer.

Mr. Spencer — I do not think that he intended any such inference to be drawn, although I believe it was necessarily drawn from his remarks. I will state, however, a matter that seems to have passed from his recollection. When I drew this provision I made quite a number of copies and handed them to various members of the Convention, including the chairman of the committee; and the copy which I delivered to Mr. Johnson, he returned to me, disapproving of it; and as he had disapproved of it once I did not deem it necessary to speak to him again about it. At the time that I presented it before to the Convention, he suggested that it would have been proper to make numerous typewritten copies so that many of the members might have examined them. The suggestion was no doubt a good one, but I always prefer to adopt my own course, and I never intended any discourtesy toward the gentleman. As chairman of the committee, of which I am a member, I wish it understood that I have stood loyally to him as our chairman, and do yet, so long as I felt that there was anything left for which we had, as a committee, contended.

Mr. Johnson — Mr. Chairman, I did not intend, I could not intend, to make any suggestion of discourtesy. The paper which the gentleman handed me I returned to him, supposing it was his only copy, and suggested typewritten copies. I merely said what I did to explain that, either through my fault or some miscarriage, I have never had a full opportunity to examine the measure. My friend is the very gem of courtesy, and, I feel, of absolute loyalty to all engagements and all obligations.

Mr. Mulqueen — Mr. President, as I understand the amendment proposed by Mr. Spencer, it is to the effect that wherever in a city, three-fifths of the electors thereof choose to give exclusive jurisdiction over certain subjects to the city, the Legislature should give such power to the city. Now, it seems to me, Mr. President, that this is some measure of home rule. The great failure of this Convention will be its refusal to give to the cities some measure of home rule. The chairman of the committee, and he seems to be the

only member of the Committee on Cities who favors this mongrel proposition, states that it is necessary for us to create a certain pride among the citizens residing in our cities to the end that they will become more interested in our city government. Now, sir, what does home rule mean? It simply means that you must give to the locality the right to govern itself in purely local matters. We have pronounced here for separate elections in all cities containing more than fifty thousand inhabitants. I am informed by a member of the Committee on Cities that that change was made to accommodate the gentleman from Jefferson (Mr. Brown), because he said: "If you have separate elections in my city, you will elect a Democratic mayor; but if you have an election for mayor at the same time that they elect State and national officers, we will have a Republican mayor." This, of course, characterizes this measure as legislating for Democrats in one section and Republicans in another. As a member of this Convention I hoped that its work would be approved by the people. I hate to think that this Convention will send out to the people a measure, such as this which we have here, and call it home rule. Why, as Mr. McClure has asked, what it is? Simply that a majority of the Legislature shall enact that the city of New York, for a given purpose, shall spend one, two or three million dollars. When the measure has been passed it will be presented to the mayor and the mayor may disapprove of it, and then it will come back to the Legislature and be passed by the same number of votes. Home rule? Where is the responsibility in that? The test of home rule is to have certain men make laws for the municipality, to the end that if they do not do their full duty the people of that municipality may punish them for it. You fix responsibility, but how do you fix responsibility when you leave it to the Legislature, by a majority vote, to pass measures affecting a certain locality. How, if you please, can the people of the city of New York, or the people of the city of Brooklyn, punish a Legislature that passes laws which are against the interest of those municipalities? If you give to the municipalities the right to enact purely local matters, and the authorities of the locality should commit a grievous wrong, then the people of that locality may turn them out of office. Let me give the city of Brooklyn as an illustration. Last year, in the board of supervisors, there were fifteen Democrats and four Republicans. The people of that city disapproved of the action of the board of supervisors, and what was the result? This year we have fifteen Republicans and four Democrats, and so it would be in the city of New York, and in all the other cities of the State, if you

fixed the responsibility upon the local authorities. But, sir, the Legislature can pass any law, no matter how inimical to the interests of the State, and yet the people of the locality will have no power whatever to punish those legislators. How could the city of New York ever reach the member from St. Lawrence, or the member from Tioga, for his vote upon some measure injurious to the city?

When this measure was up before, Mr. President, I proposed a substitute which would have given absolute home rule to the cities. The danger we suffer from in cities is the constant meddling of the Legislature in our affairs. Every reformer in the city of New York, every member of the good government clubs, clubs made up, as we all know, of an army of disinterested patriots, every one of whom thinks himself the very best man to fill every vacancy in the city of New York, even those men said: "You cannot have home rule, you cannot have good government in cities, unless you place absolute power within the hands of the municipal authorities." I hope, Mr. Chairman, no Democrat will vote for this proposition, because the chairman of this committee, and, as I say, he seems to stand alone for it, is anxious to have something passed, no matter what it may be, so long as it is labeled "home rule." If we pass it, the work of the committee upon this subject will become a shame and a disgrace. You, sir, were honest in your intentions in the beginning. You know as well as I that this is not home rule, that it does not give the municipalities any greater power than they have to-day; it does not fix the responsibility upon them; but you, in your desire to have some bill passed, to have some measure in the Constitution, against, it seems, even the advice of the members of the majority on your committee, as well as those of the minority, have accepted this proposition, written, I am told, by a select few of this Convention; and now you declare that you have receded from all your protestations at the beginning for home rule for cities, and believe that this is a proper measure to give to the great cities of New York, Brooklyn and the other cities of the State, in the line of home rule for them and in the management of their own affairs. I hope, Mr. President, that the amendment of Mr. Spencer will be carried. It is some measure of home rule. It is not accessible to us; we don't understand it; it is so important, Mr. President, that I would ask the Secretary to read it slowly and carefully to the end that every member of this Convention might take it down, and so, understanding it, vote intelligently upon it. I hope no vote will be cast against it simply because of the suggestion of the chairman, that it comes in at the eleventh hour. Though it be at the eleventh hour it will retrieve the work of this committee, which

now is a failure, and will redound to the credit of this Convention if passed.

Mr. Nicoll — How much time is left, Mr. President, for this debate?

The President *pro tempore* — Nine minutes.

Mr. Nicoll — Then I will be very brief, Mr. President, because there are a number of other gentlemen from cities who desire to be heard upon this subject. If there is any one subject that has been talked to death in this Convention it is this subject of home rule. It was talked for one week by the chairman of the Committee on Cities, and a number of us who were opposed to it talked another week. It was discussed again when his amended proposition came before the Convention; and when it came up upon the order of third reading the other night we all had a hack at it; and home rule in this Convention is dead; dead as a door nail, and not the efforts of Mr. Spencer, who is a warm advocate of the proposition of local self-government for cities, or the eloquence of Mr. Mulqueen, can resurrect it. Nothing that I can say, I know, can help it along. I cannot galvanize a corpse. The only excuse that I have for speaking at all upon the subject to-night is this; when this proposition came up upon the order of third reading, while I criticised it as a frivolous proposition, I did state that I intended to vote for it because it scented, I may say smelled, of home rule; and I was so much in favor of anything relating to home rule that I was going to vote for this proposition simply because it smelled of it; but since that time I have been down to the city of New York, and I have conferred with all of those gentlemen who have had this cause of home rule and the better local government of their cities at heart for many years, who have been looking forward for the last decade to this Convention to give some measure of proper local self-government to the great municipalities of this State. I have been over this proposition, this last emanation of the chairman of the Committee on Cities, with them, and they have all agreed with me, or at least I have agreed with them, that this proposition is absurd, is ridiculous, is frivolous, is misleading, and that we ought to kick it out of this Convention as a spurious measure of home rule. There is nothing to it. It does not change the present situation. It simply puts into the Constitution the present practice with regard to measures relating to the special government of cities; and I have the honesty to confess to this Convention that I propose to change my mind and vote against it, because it amounts to nothing. We have had the chance — or at least you have had the

chance — we have always been ready to accept your chance — of giving some measure of local self-government to cities. You are not doing it because you control the cities at the present time. Gentlemen from the rural districts now have a great opportunity. They come down from the county of Cattaraugus, from the county of Chautauqua, to the Legislature, and when they get there they have a great chance, because they have the cities of New York and Brooklyn to legislate about. They can get appointed to investigating committees and make a State reputation by investigating some of our departments. You will never give up that chance so long as you live. I never knew yet of a minority giving up the control of a majority, or of any man giving up a good thing when he had it. You have it, and you have made up your mind not to give it up; and I do not blame you much. There is nothing left for us to do in the cities except to move out into the country, and after you have passed the apportionment measure, why, most of us will be willing to trade our houses for a farm — give a mortgage on them. Now, that is the perfectly honest and frank attitude that a member of the Cities Committee ought to take with regard to this home rule measure. For my own part, if this apportionment measure and this other cities measure should succeed, I am willing to swap my house on Thirty-eighth street for a farm in St. Lawrence or Cattaraugus, or the lonely Chautauqua, or the lonesome Wyoming, or any other of the interior sections of the State. I will become a trustee of the village of Arcade, like Mr. Sam Johnson, or any other place. I will go out of business as a resident of the city. I will be elected to the Legislature of this State from some of the rural districts, and I will take a hack myself at the government of cities. But that is the real situation. We might as well be honest in these closing hours of the Convention. I will go back to Long Island, I will represent the county of Queens in the Legislature, and I myself will be chairman of an investigating committee and show up one of the city departments in Brooklyn, and gain a great reputation as an investigator; or I will get my sisters, my cousins and my aunts, my nephews, uncles and brothers appointed on the various departments of the city government. I will take a slice of the fat contracts in Brooklyn, and I will make a handsome profit out of it all. Of course, you do not intend to give it up. What is the use of prolonging this debate? I have already spoken five minutes out of the nine, and now I will give way to some of the other eloquent gentlemen. (Laughter.)

Mr. I. Sam Johnson — Mr. President ——

The President *pro tempore* — The hour for closing the debate has arrived. (Laughter.)

The President *pro tempore* put the question on agreeing with the motion offered by Mr. Banks, to recommit the amendment to the committee with instructions to report forthwith as read by the Secretary, and it was determined in the affirmative.

The Secretary then read again the amendment proposed by Mr. Spencer.

The President *pro tempore* put the question on agreeing to the amendment as read, and it was determined in the negative by a rising vote — 32 to 52.

The President *pro tempore* — The question now is upon the final passage of the proposed constitutional amendment as amended by Mr. Banks, which the Secretary will read:

The Secretary read the amendment as directed in the language following:

"Article 8 of the Constitution is amended by inserting the following as a new section:

"Section 12. All cities are classified according to the latest State enumeration, as from time to time made, as follows: the first class includes all cities having a population of two hundred and fifty thousand, or more; the second class, all cities having a population of fifty thousand and less than two hundred and fifty thousand; the third class, all other cities. Laws relating to the property, affairs or government of cities, and the several departments thereof, are divided into general and special city laws; general city laws are those which relate to all the cities of one or more classes; special city laws are those which relate to a single city, or to less than all the cities of a class. Special city laws shall not be passed except in conformity with the provisions of this section. After any bill for a special city law, relating to a city, 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 such city, and within fifteen days thereafter the mayor shall return such bill to the house from which it was sent, or if the session of the Legislature at which such bill was passed has terminated, to the Governor, with the mayor's certificate thereon, stating whether the city has or has not accepted the same.

"In every city of the first class, the mayor, and in every other city, the mayor and the legislative body thereof, concurrently, shall act for such city as to such bill; but the Legislature may

provide for the concurrence of the legislative body in cities of the first class. The Legislature shall provide for a public notice and opportunity of a public hearing concerning any such bill in every city to which it relates, before action thereon. Such a bill, if it relates to more than one city, shall be transmitted to the mayor of each city to which it relates, and shall not be deemed accepted unless accepted as herein provided by every such city. Whenever any such bill is accepted, as herein provided, it shall be subject, as are other bills, to the action of the Governor. Whenever, during the session at which it was passed, any such bill is returned without the acceptance of the city or cities to which it relates, or within such fifteen days is not returned, it may, nevertheless, again be passed by both branches of the Legislature, and it shall then be subject, as are other bills, to the action of the Governor. In every special city law which has been accepted by the city or cities to which it relates, the title shall be followed by the words "accepted by the city," or "cities," as the case may be; in every such law which is passed without such acceptance, by the words "passed without the acceptance of the city," or "cities," as the case may be.

"Section 11 of article 8 of the Constitution is hereby amended so as to read as follows:

"Sec. —. No county, city, town or village shall hereafter give any money or property, or loan its money or credit to or in aid of any individual, association or corporation, or become directly or indirectly the owner of stock in or bonds of any association or corporation; nor shall any such county, city, town or village be allowed to incur any indebtedness except for county, city, town or village purposes. This section shall not prevent such county, city, town or village from making such provision for the aid or support of its poor as may be authorized by law. No county or city shall be allowed to become indebted for any purpose or in any manner to an amount which, including existing indebtedness, shall exceed ten per centum of the assessed valuation of the real estate of such county or city subject to taxation, as it appeared by the assessment-rolls of said county or city on the last assessment for State or county taxes prior to the incurring of such indebtedness; and all indebtedness in excess of such limitation, except such as may now exist, shall be absolutely void, except as herein otherwise provided. No county or city whose present indebtedness exceeds ten per centum of the assessed valuation of its real estate, subject to taxation, shall be allowed to become indebted in any further amount until such indebtedness shall be reduced within such limit. This section shall not be construed to prevent

the issuing of certificates of indebtedness or revenue bonds issued in anticipation of the collection of taxes for amounts actually contained, or to be contained in the taxes for the year when such certificates or revenue bonds are issued and payable out of such taxes. Nor shall this section be construed to prevent the issue of bonds to provide for the supply of water, but the term of the bonds issued to provide for the supply of water shall not exceed twenty years, and a sinking fund shall be created on the issuing of the said bonds for their redemption, by raising annually a sum which will produce an amount equal to the sum of the principal and interest of said bonds at their maturity. [All certificates of indebtedness or revenue bonds issued in anticipation of the collection of taxes, which are not retired within five years after their date of issue, and bonds issued to provide for the supply of water, and any debt hereafter incurred by any portion or part of a city (if there shall be any such debt) shall be included in ascertaining the power of the city to become otherwise indebted. Whenever hereafter the boundaries of any city shall become the same as those of a county, the power of the county to become indebted shall cease, but the debt of the county at that time existing shall not be included as a part of the city debt.] The amount hereafter to be raised by tax for county or city purposes, in any county containing a city of over one hundred thousand inhabitants, or any such city of this State, in addition to providing for the principal and interest of existing debt, shall not, in the aggregate, exceed in any one year two per centum of the assessed valuation of the real and personal estate of such county or city, to be ascertained as prescribed in this section in respect to county or city debt.

Mr. Hotchkiss — Mr. President, there are two distinct propositions contained in this amendment, one of them affecting the so-called home rule of cities, and the other affecting an entirely distinct matter, to wit, the debt limitation of cities. The amendment affects two entirely different sections of the Constitution, and it is known by us all that ——

The President *pro tempore* — The gentleman is out of order. After the third reading of a proposition, no debate can be permitted under any circumstances whatever.

Mr. Hotchkiss — I am calling the attention of the Convention to something. I want to move a division.

The President *pro tempore* — No motion can be entertained.

Mr. Hotchkiss — I want to move a division of this question.

The President *pro tempore* — A division cannot be made on third reading.

Mr. C. B. McLaughlin — I desire to move that the time be extended for thirty minutes.

The President *pro tempore* — No motion of any kind can be entertained now.

Mr. Cochran — May I call the Chair's attention to the report of the Committee on Revision. I think that is all Mr. Hotchkiss desires to get at. It is to save us future trouble. The Committee on Revision made a special report, and say this latter part of the amendment is not applicable to the part to which it apparently relates.

Mr. J. Johnson — Mr. President, I call the gentleman to order.

The President *pro tempore* put the question on the final passage of the amendment, and the Secretary proceeded to call the roll.

Mr. Bowers — Mr. President, I desire to explain my vote. So far as the amendment of Mr. Banks is concerned, if I could be given the opportunity of voting for it separately, I certainly should do so. It is a wise and an eminently proper amendment, one which ought to have been adopted by this Convention. So far as the rest of the amendment is concerned, popularly spoken of as the home rule that this Convention proposes to offer to the cities of the State, I am bound to say that I consider it so great a farce that I cannot be put in the position of having voted in favor of a constitutional amendment which contains those clauses. It is worse than giving nothing, for it is a pretense by which the Cities Committee wishes to go before the public under the claim that at least their honored chairman has carried his purpose of giving to the cities of the State home rule. Under these circumstances, much as I regret that I am unable to cast my vote in favor of the amendment of Mr. Banks, I feel it my duty to vote on the whole proposition, no.

Mr. Cochran — I desire to say, sir, in voting on this amendment, that I consider all but the last paragraph perfectly farcical; but the last paragraph is of such vital importance to the city of Brooklyn, in view of the annexation of all the county towns, that I am compelled to vote aye. I vote aye.

Mr. Davenport — Mr. President, I desire to say in explanation of my vote, as a member of the Committee on Cities, that a more emasculated and enervated puling never struggled from darkness into light than the first portion of this proposition. The latter part is an absolute necessity, in my judgment. Therefore, regarding the

first as valueless, but too weak to influence the second, I vote aye.

Mr. Dean — Mr. President, the committee having conceded everything for which I contended on the eighth day of August, and in spite of the debt limitation which has been placed upon this as a rider, and which I believe to be entirely hostile to the best development of municipal government, I vote aye. (Laughter.)

Mr. Holcomb — Mr. President, I would like to explain my vote by saying that if I could have the privilege of voting for the proposition as presented by the gentleman from Albany, I would be very pleased to do so. Aside from that I consider the amendment as proposed to us to-night to be absolutely without merit, without character, without the least characteristic to commend it to this body or to any member of this body. It seems to me to begin nowhere and end nowhere. If a proposition be presented to the Legislature, and be passed, and come down to the city, and come back to the Governor after the adjournment of the Legislature, the legislation absolutely would fail, as I read the proposed amendment. Therefore, I believe that a hostile Legislature could defeat the proposition from beginning to end, without the slightest difficulty in the world. I consider it literally childish, meaning nothing. I vote no.

Mr. Hotchkiss — Mr. President, the situation in which we find ourselves to-night is the legitimate outcome of the situation which I pointed out to the Convention about a month ago. When these reports from its Cities Committee on debt limitation and on the sale of city franchises first came in, I moved that they be made special orders, as the cities amendment, so-called, covering the subject of home rule, had been made. I was opposed in that motion by the chairman of the Cities Committee, and although there was a vote taken upon it, the majority in this body voted unanimously, almost to a man, not to progress the amendment for the debt limitation of cities. As soon as the work of the Convention had progressed sufficiently to show that the amendment on debt limitation was buried unless it was forced to the front, Mr. Banks was allowed the opportunity, in order to get it before the Convention, to attach it here to this emasculated thing called home rule. Under these circumstances, I do not propose to be driven into voting for one because of my regard for the other. I vote no.

Mr. Hottenroth — I desire to explain my vote. If I could feel satisfied that the first portion of this amendment was perfectly harmless, I would vote for it in order to save the last portion of it,

but, on the other hand, it seems to me that it is merely the lending of the consensus of opinion, at least of this Convention, to the hue and cry against hasty legislation. Now, it might seem at first blush that this would prevent hasty legislation, but if we consider it carefully, we have a proposition that matters relating to local affairs in cities shall be presented to the Legislature. They go through the form of being passed by a committee, then passed by the Assembly, then passed by the Senate, and finally they are sent to the mayor of the city. He has fifteen days within which to return them. Now, if that is bad legislation, it can be rushed through, and about that time the session will have nearly reached its end without a knowledge on the part of members of the whole import and effect of the legislation. It will prevent good legislation, and not only that, but it will shift the responsibility. The Legislature might well, say, in the event of a mayor urging the passage of a bad measure and its being passed, "We were not responsible; you can hold your local authorities responsible." Now, if we are to have any authority, let us have it, but do not shift this responsibility from one to the other. But the main thing is the delay in legislation, the preventing of good legislation and the preventing of the carrying out of what the Convention set out to do, the removal of hasty legislation at the end of the session. I vote no.

Mr. Jenks — Mr. President, up to this moment I have, in my feeble way, done all in my power in the interest of home rule. I have made suggestions to the committee, I have supported the minority; I have voted on every amendment which really meant anything, but I can go no further. The gentleman (Mr. Jesse Johnson), the other night, called this the shirt of Nessus. I have examined it with some care, and instead of being the shirt of Nessus, there is not enough of it to make an average paper collar. It is weaker than Tupper's verse; it is milder than an old maid's cat; it is paler than a winter's moon; it is colorless as a whited sepulchre; it is meaningless as a platform plank; it is paresis; it is puerility; it is a childish platitude; it is a miasmatic vapor from a mass of meaningless mush. (Laughter.) It is sans eyes, sans teeth, sans hair, sans everything. The only merit it has was filched from the minority report of the Committee on Cities. All it does is to tell the Legislature to make haste slowly. If the mayor of the city be of a different faith from the Legislature, then the Legislature will pass the bill, because they will say he vetoed it on account of politics. If the mayor be of the same political faith as the Legislature, then the mayor is never going to veto it. It is all very well as a copy-book

text; it is very pretty as a side-show; a child could play with it. It is as weak as circus lemonade; but when it is put before the people of this State as a solemn declaration of a Constitutional Convention, as a measure of home rule, I part with my friend, the chairman of the Committee on Cities, and cannot have my vote go upon record, or go to the people of this State, as if I had found something, casting aside party affiliations and party lines, that I could vote for on the ground that it was truly home rule. I vote no.

Mr. J. Johnson — Mr. President, methinks my ladies do protest too much that there is nothing in this. I remember, sir, that the progeny of a monster destroy one another. One protestant says: "I want the second section, but I cannot vote for the first;" and the next one says, "Both are harmless," and they all agreed and that, without any witticism or without any devouring of the dictionary for similes — indeed they voted that there should be a halt of five days in passing any bill. They do protest too much. It is the shirt of Nessus, and the collar clings. I vote aye.

Mr. McKinstry — Mr. President, I want to say a word in behalf of the counties referred to by my pleasant friend, Mr. Nicoll. I want to say that the representatives of those counties are completely tired of having their time at Albany taken up with legislating for New York city and Brooklyn. Of course, when we first come to Albany, we are greeted by the Republicans of New York as saviours and rescuers of these great cities, and it is very pleasant. It is very pleasant to be called angels of purity and light and all that stands between those cities and destruction. I sometimes think that if in olden times they had had a Legislature and could have had members there from Chautauqua and Cattaraugus and Allegany, they might even have saved Sodom and Gomorrah; but when we come to the reality, sir, we find that these measures are simply to enable Republicans in New York and Brooklyn to obtain power and patronage and plunder that they cannot get in other ways, and our country members are tired of it. When I came to this Convention and heard the oft-quoted speech of our President, and the sentiment here for home rule, I was very much delighted on that account. I thought we were to be relieved of this trouble. I took early occasion to become acquainted with Mr. Johnson, and I will say that he impressed me as a man of absolute sincerity of purpose. He agreed with me, and I agreed with him, that it would be better for the Republican party in the long run to abandon this interference with the large cities. But now, when he brought in his amendment, which really had a large measure of home rule, how was he met? Why, sir, the scene reminded

me of one we have at our country fairs, where a darkey puts his head through a hole in a vertical blanket, and all the bystanders take a throw at that head for a nickel a throw. (Laughter.) It seems to me as if all the expert throwers in this Convention took a shy at Brother Johnson's head, and I do not wonder that after a while his heart broke and he gave it up. And the situation now reminds me of a family of children I once heard of, quarreling as to which was to have the wishbone of a Christmas turkey; and it soon became somewhat disagreeable to the man of the house. Finally he laid down his newspaper and said, "I will settle this dispute. We won't have any Christmas turkey this year; we will have bacon and liver." So I say that I think our friends of the minority are largely to blame for this failure of home rule. They had the toothsome turkey of home rule within sight, but they made such a quarrel over it that they are now invited to a diet of bacon and liver. (Laughter.) I vote aye.

Mr. Morton — Mr. President, I have listened with close attention on various occasions to the attempts of a number of delegates to this Convention, who have purported to give their reasons why they were opposed to this article. I simply wish to say, as a matter of fact, founded on my own experience, and I feel that it is the experience of many of the delegates on the floor of this Convention, that several of the gentlemen who have addressed themselves to this subject have, in their official capacity in relation to the great cities of this State, entrenched themselves year after year in the halls of this Capitol as a sort of a third power, or a council of administration in the Legislature, and transferring themselves to the executive chamber, have, as to the action of the Legislature, acted absolutely as an additional branch of the legislative power of this State in matters respecting these cities. It is a fact known to many delegates of this Convention that the local departments of the great cities of New York and Brooklyn have been continuously, year after year, represented in these halls, and that they have used their power and their influence either for or against many measures touching the welfare of those cities, and that they have been uncommissioned counselors to the Legislature and to the executive of the State; and it is known that many measures — it is a matter of record, a matter of history, that many measures have been passed by the Legislature and approved of by the Governor that have proved disastrous to those cities. And, according to the statement of these gentlemen here, made repeatedly upon the floor of this Convention, they have claimed that the cities were represented, and yet that specious legislation when it was attacked,

was always disclaimed by the authorities of those cities, and the whole responsibility for the legislation thrown upon the Legislature. It has been done, sir, for many years, and I hold that if there were nothing else in this city article except this provision which remands the acts of the Legislature to the chief officer of the cities for his approval or disapproval, that that article alone is worth a place in the Constitution and is deserving of the vote of every man who is really in favor of honest home rule for the cities of this State. I vote aye.

Mr. Powell — Mr. President, I came to this Convention with the sincere hope and the intense desire that we might incorporate into the Constitution of this State something that would give a large degree of home rule to our cities; and with that feeling actuating me I supported the original article that was brought in by the Cities Committee. To my surprise, from the minority, which has been crying about home rule and talking about home rule, there came only a captious opposition. First, we had the criticism of the language employed from a grammatical standpoint, and then we had a criticism of the language from a rhetorical standpoint; and then we had a comparison of the language with that of Macaulay's poems; and so we have gone on step by step, until finally the last objection that comes from the minority is that this is only a collar. Well, sir, it is the first time in my life that I ever heard a McLaughlin Democrat from the city of Brooklyn make any objection to a collar; and I am led to think that my friend, whom I admire and love very much, has become a heretic, and that he has gone over body and soul, baggage and everything to the Shepard Democracy. I congratulate him on his change; I congratulate him that he has got away from the wearing of a collar and aspires to the wearing of a shirt. (Laughter.) I vote aye.

Mr. Barhite — Mr. President, I am not very particular about it, but I guess I will vote aye. (Laughter.)

Mr. Becker — Mr. President, I voted in the Cities Committee for the original amendment, and supported it on the floor of this House. I know that no word was raised against what it contained by the minority until the police clause and the election clause were put into the amendment, and I know that from that time forward, by vituperation, misrepresentation, abuse and every other form of parliamentary obstruction that could possibly be devised and adopted, the minority have tried to defeat that amendment. Later on we found amongst our own friends some objection in view of the fact that the minority evidenced such an intent to keep the

most valuable portions, as we regarded them, of that amendment out of the organic law. We saw fit, many of the majority did, to prevent the mayor from having the absolute power of veto and other matters. I am frank to say that I regret it. I stand in the same position in which I stood at the beginning, that in these purely business matters which are governed by this amendment the Legislature should have nothing to do except to permit the municipalities to act as they want to in regard thereto, and that the responsibility for doing or not doing should be solely with the municipal authorities. But it seems that we are not to have this. This is the best that we can get, owing to much fear that the great powers of the State of New York will lose their hold on the question of putting in a sewer, or paving a street, or paying a petty salary to some policeman. If that be so — it seems to be so — then I must take, as other gentlemen have here, for all legislation is a matter of compromise — the best thing that I can get. And I believe still that there is a great deal of good in this amendment. I have heard that one electric light is a better defense against thieves and burglars than twenty-five policemen; and I believe that the subjecting of measures which are proposed in the Legislature to the light of public examination and approval or disapproval by the press and by the people will at least do something in the line of home rule for cities, and, therefore, I vote aye.

Mr. E. R. Brown — Mr. President, I appreciate, or think I appreciate, the dilemma in which our Democratic friends find themselves to-night. When I came to this Convention I came quite uninformed in regard to the details at least of the proposed home rule which the gentlemen suggested. By prolonging the debate and by making objections to minor matters which were not exactly to their taste they afforded an opportunity to the rural gentlemen in this Convention to find out what their real purpose was. It is unfortunate for them that they should have so far prolonged the debate upon a police clause and upon other clauses that the members from the country should have become informed in regard to what their real purpose was. But I did not understand the bitterness of their disappointment until the gentleman from New York (Mr. Nicoll) compared this bill to a manikin, saying that he had intended to have on Manhattan Island a real live Indian sachem, uncontrolled by any legislative fetters. He has now to put up with a mere manikin. And the gentleman from Kings (Mr. Jenks) spoke of the original proposition, or of his idea of what it was to be, as some delightful after-dinner dish which he was to attack as you would something with a trip hammer. He would

get at it, devour it and make it his own. It was to be delicious food to him; and it is a great disappointment to him, Mr. President, that he should have been fed upon so moderate a meal. And the gentleman from New York (Mr. Hotchkiss) regretted that he did not give him bread instead of a stone; and I have come to the conclusion that it was bread he was seeking in seeking home rule here in this Convention. And finally, Mr. President, came the gentleman from New York (Mr. Bowers), who travels in the shadow of presidential interference, but who now regrets that he should have spent so much time upon the discussion of the police clause, and should not only have lost the three-fifths amendment which the President suggested, but should have been reduced to a plain majority. Now, Mr. President, in regard to this amendment, it contains one vital point. It contains a check upon special legislation; but because it is not such a check as will prevent the interference of these gentlemen who believe that they are to be in control of local matters on Manhattan Island and in the county of Kings, it is not entirely to the taste of all of them. I vote aye.

Mr. McIntyre — Mr. President, this incident reminds me very much of Shakespeare's play, "Much Ado About Nothing." If I could have my way with this thing I would have it embalmed and surrounded with immortelles and hung upon the walls so that it could be preserved as a memento; but as the art of embalming has not really reached that state where it can make something out of nothing, I suppose the majority seem inclined to put this into the Constitution so that we can read it hereafter and endeavor to find among the six pages of solid matter something of real merit. The only value of the proposition is that we may be able to get a little information about legislation in the Legislature. It seems to me that does not pay for the trouble. I think it ought to be beaten, but, out of respect for the man that has worked so hard for it, I will vote aye.

Mr. Tekulsky — Mr. President, I desire to explain my vote. I am committed to home rule. I am in favor of home rule, always have been in favor of home rule, and one of the propositions that I introduced in this Convention was a home rule measure; but owing to the fact that a deal has been entered into by the supposed leaders of the minority and the majority in order to protect the crooks and gamblers of the State of New York, I vote no.

The call of the roll having been completed, the following result appeared:

Ayes — Messrs. Abbott, Acker, Ackerly, Arnold, Baker, Banks, Barhite, Barnum, Barrow, Becker, Bigelow, Brown, E. A., Brown, E. R., Cady, Carter, Cassidy, Church, Clark, G. W., Cochran, Cookinham, Cornwell, Countryman, Crosby, Davenport, Dean, Deterling, Dickey, Durfee, Emmet, Faber, Floyd, Foote, Francis, Frank, Andrew, Frank, Augustus, Fuller, C. A., Fuller, O. A., Galinger, Gilbert, Goodelle, Hamlin, Hawley, Hecker, Hedges, Hill, Hirschberg, Holls, Jacobs, Johnson, I. Sam, Johnson, J., Kellogg, Kinkel, Kurth, Lauterbach, Lester, Lewis, C. H., Lincoln, Manley, Mantanye, Marshall, McDonough, McIntyre, McKinstry, McLaughlin, C. B., McMillan, Moore, Morton, Nichols, Nostrand, O'Brien, Parker, Parkhurst, Pashley, Phipps, Pool, Porter, Powell, Putnam, Redman, Root, Springweiler, Steele, A. B., Steele, W. H., Storm, Sullivan, T. A., Turner, Vedder, Vogt, Wellington, Whitmyer, Wiggins, Woodward, President — 93.

Noes — Messrs. Blake, Bowers, Burr, Bush, Danforth, Deady, Deyo, Durnin, Farrell, Fitzgerald, Forbes, Giegerich, Goeller, Green, A. H., Green, J. I., Herzberg, Holcomb, Hotchkiss, Hottenroth, Jenks, Maybee, McClure, McLaughlin, J. W., Mereness, Mulqueen, Nicoll, Ohmeis, Osborn, Parmenter, Peabody, Peck, Platzek, Schumaker, Smith, Sullivan, W., Tekulsky, Titus, Towns, Truax, C. H., Truax, C. S., Veeder, Williams — 42.

Mr. C. B. McLaughlin — Mr. President, I desire to move that the time of this sitting be extended for fifteen minutes for the purpose of considering a resolution which I propose to offer looking to the final adjournment of this Convention.

President Choate resumed the chair.

The President — The question is upon Mr. McLaughlin's resolution.

Mr. Dickey — Mr. President, I make the point of order that the time having already expired, the motion cannot now be made.

The President — We have decided that point a great many times before. I hold that the Convention is master of its own movements as to extensions of time. Mr. McLaughlin's resolution is in order.

The President put the question on the adoption of the motion of Mr. McLaughlin to extend the time of the session for fifteen minutes, and it was determined in the affirmative.

Mr. McLaughlin — I offer the following resolution:

R. 226.—"Resolved, That the consideration of proposed amend-

ments to the Constitution be terminated with the final disposition of bills heretofore ordered to a third reading, and that thereafter the Convention proceed to the consideration of such matters as are necessary for the final close and submission of the Convention work to the people."

Mr. McKinstry — Mr. President, I wish to debate the resolution and ask that it lie over under the rule.

The President — It seems to relate to the business immediately before the Convention, as it affects the present disposition of third readings and general orders.

Mr. Cochran — Mr. President, I am sure, sir, that I, for one, am as anxious to leave this Convention as any other delegate here, but I believe, sir, that there are a great many important amendments still undisposed of, and as I said the other night, when a similar resolution was offered, I feel that we would be negligent to the duties which have been imposed upon us as delegates to this Convention if we adjourn one day before we consider everything which was properly before us. I, sir, have only one amendment on this calendar, and in that I have no personal interest whatever; but, sir, there have been representatives of the executive of this State waiting on delegates to this Convention and asking that that amendment be considered by the Convention, because of its importance to the State. Not to me, sir, individually; I have no interest in it; I care nothing about it; but when representatives of the State, of the executive, come here and say that this amendment is of importance to the State, I say, sir, that as a Convention we have no right to adjourn until we have at least considered that amendment.

I have another amendment, sir, Mr. Roche's, relative to the pensions of civil officers. I hold in my hand a petition from the police department of the city of Brooklyn asking that that amendment be considered by this body and that some action be taken with reference to it. The municipal police, by the amendment of Mr. Roche, have been especially excepted from the general provisions of that amendment. There is in the city of Brooklyn now a pension law for the city police, but there has been raised a grave question as to the constitutionality of one of the sources from which that fund is raised, and I desire, sir, when that amendment comes before this committee, to move an amendment so that that municipal police pension fund could be retained, and so that there could be no question as to the constitutional right of the members of that force to have the fund, which I believe every citizen of the city of Brook-

lyn desires they should have. Those, sir, are only two within my own knowledge, and, yet, the first day after our compensation as delegates to this Convention has ceased, we have sprung upon us another resolution to adjourn. I say to you, gentlemen of the majority, vote it down. We owe a duty to the State, and that duty is on you, not on me. I am only one of the minority. Whatever I ask here will probably not be considered, but I say on you, gentlemen of the majority, rests the duty to keep this Convention in session until not only these two matters to which I have referred, but the many other matters, probably fifty or sixty in number, shall be at least considered by this Convention, and I hope this resolution will not prevail.

Mr. Durfee — Mr. President, none of the propositions that remain to be acted upon by this Convention were introduced by me. I have no personal interest in any one of them. Every consideration of personal interest would induce me to support the resolution which has been offered. But, Mr. President, I came here as a delegate to this Convention with the sole thought and purpose to discharge, as far as in me lay, my duty as such delegate, and I do not believe that I shall have discharged my duty, nor do I believe that any gentleman on this floor will have discharged his duty, by voting for an adjournment of this Convention with its work not fully performed. For my part, at whatever sacrifice, at whatever cost of personal inconvenience, I prefer to remain here in the discharge of the duty imposed upon me, as I see it, until all shall have been done decently and in order (applause), and until we can adjourn, as such a body as this, called together only once in twenty years or more, ought to adjourn, in a dignified and orderly way, having to the best of its ability performed the duty with which it has been charged by the people of this State. Holding these views, Mr. President, I shall oppose the resolution which has been offered by the gentleman from Essex.

Mr. I. S. Johnson — Mr. President, I suppose that it will avail nothing for me again to urge that this Convention do its duty. I suppose it will avail nothing if I call attention to the fact that upon the calendar of this body there are seven propositions which have been reported as the propositions of various committees of this body; that many of them have occupied the attention of the committees for nearly, if not quite, four months; that they are the combined wisdom of those committees, and that they deserve the consideration of this body. There are matters before this Convention that have been passed by the Committee of the Whole, have

been ordered to a third reading and, upon the motion of the attorney of a corporation which may be affected, one of those amendments has been laid upon the table, and I have endeavored to secure an opportunity to ask that it be taken from the table and considered.

Mr. C. B. McLaughlin — Mr. President, I rise to a point of order. If it is heretofore ordered to a third reading, his measure is precluded.

Mr. Johnson — I suppose that everything that is not ordered printed to-night will not be considered to-morrow. I know that it is a matter of interest to the people of this State that something should be done by which the purity of elections shall be preserved, that something shall be done that the men who happen to have large sums of money at their command cannot go forth and purchase their nominations with impunity. I do not know why this matter has been allowed to rest, whether it is because a whisper has came from some corporation to other members of this body than the one who moved to lay it on the table. I do not know whether an official representative, that was so properly referred to by the President of this Convention, has sent out word that it will interfere with his manner of managing the affairs of one of the great parties, or both of the great parties. I think such matters as this deserve consideration at the hands of this Convention. I find again that a short time ago a party of men met in this city representing a half dozen more — all of the organizations of farmers in this State. They asked in their memorial and their petition that the matters which they thought of great interest to them should be considered by this body. They were allowed to have their memorial read and placed upon the files of members of this Convention; but when it comes to the question as to whether those matters shall be considered and heard in this Convention, then comes the rule that no further action shall be taken. The great body of working men of this State have said that they have certain matters which ought to be considered and which they have asked to have considered, and they are refused. Why are they refused? The question arises here whether the great corporate trusts shall be stopped, whether there shall be something to prevent the monopolies owning the State, and again a refusal comes, that it shall not be considered. I tell you, sir, that the time is coming, and it is not far distant, when the people will say that the State should own corporations and have the control of them, and not the corporations own and control the

State; and I think it is a whisper from them that prevents the consideration of such questions as have been waiting and asking for consideration here. I hope, sir, that this resolution will not be passed. I hope that there is manhood enough in the majority, and in the minority, to stay here and do their duty; and I shall not believe that there is not that manhood until this vote is taken favorably upon the resolution.

Mr. Storm — Mr. President, I do not believe that any amount of talk will change any votes upon this subject. I might have made my speech in half the time that has been consumed. In fact, I missed my only opportunity of making a speech to be handed down to posterity never to be read. However, even that opportunity was denied me. Now, in the interest of the economy of time, I move the previous question upon this subject.

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 adoption of the resolution offered by Mr. McLaughlin.

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

The President — That privilege has been denied us by the late rule.

The President appointed as tellers Messrs. McDonough and Cochran.

A rising vote was then taken upon the question as stated, and it was determined in the affirmative — 65 to 54.

The President announced the Convention adjourned until ten o'clock Friday, September 21, 1894.

Friday Morning, September 21, 1894.

The Constitutional Convention of the State of New York, met in the Assembly Chamber at the Capitol, Albany, N. Y., September 21, 1894.

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

The Rev. R. H. Shirley offered prayer.

Mr. Durnin — Mr. President, I move that the reading of the Journal of yesterday be dispensed with.

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

The President — The Chair would state that a bill has been received from parties for summoning and paying witnesses' fees in the contested election case in the Sixth District, amounting to some seventy-five or eighty dollars, which has been referred to the Committee on Contingent Expenses. Motions or resolutions are now in order.

Mr. I. S. Johnson — Mr. President, I move to take from the table the motion which was made by Mr. McMillan, relative to the bribery amendment, which was laid on the table September fourth.

The President — Mr. Johnson moves to take from the table the resolution offered by Mr. McMillan, which was laid on the table September fourth. The Secretary will please read it.

The Secretary read the same, as follows:

"Resolved, That the vote by which the report of the Committee of the Whole, on general order No. 54, relating to the use of money for political purposes, was agreed to, be reconsidered, and that the motion lay on the table."

Mr. Bowers — Mr. President, what was the date of that?

The President — It was laid on the table September fourth.

Mr. Nicoll — Mr. President, I make the point of order that this motion is in violation of the rule adopted last night with reference to the future business of the Convention.

Mr. E. R. Brown — Mr. President, the resolution adopted last night had reference only to those amendments that had been ordered to a third reading.

Mr. Veeder — Mr. President, I rise to inquire upon what subject delegates may now call for the ayes and noes under the rules.

The President — The Secretary will please look up that rule.

Mr. Veeder — I would like to hear it read, so that we may know how far we are able to get upon the record, as the rules now stand.

The President — Has the chairman of the Committee on Rules a copy of that rule in respect to the ayes and noes? The ayes and noes were prohibited, as far as the chair recollects, upon previous questions and in matters of procedure relating to the order of business.

Mr. Veeder — In other words, the ayes and noes can only be called for on the final passage of an amendment?

The President — Oh, no; upon agreeing or disagreeing to a report of the Committee of the Whole.

Mr. McMillan — Mr. President, I desire to say that I was impelled to offer this resolution for the reason that several delegates on the floor stated, after the Committee of the Whole had reported and the report had been agreed to, that it did not meet with their approval; that while all concurred in the principle involved in this amendment they did not feel satisfied with the particular provisions of the amendment itself. The suggestion seemed to have been made that it would interfere with the reform clubs in the city of New York; that it would interfere with many of the newspapers in the city of New York; and the resolution was offered by myself solely for the purpose of permitting those who were specially interested in the matter to perfect it, if possible. I have no objection personally to the consideration of this matter, but I would ask that the Clerk read the proposed amendment for the information of the Convention.

The President — Will Mr. McMillan designate the number of it?

Mr. McMillan — It is printed No. 443.

The Secretary read the same, 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.

"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 prosecu-

tions 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.

The President — Was not that amended?

The Secretary — Yes, sir; and I have read it as amended.

The President — The question is on Mr. I. S. Johnson's motion to take this from the table.

Mr. I. S. Johnson — Mr. President, I believe that if there is any one thing upon which this Convention should act it is upon a measure of this kind, either in one way or the other. I believe something should be done to remedy an evil which, I think, exists all over this State, namely, the securing of nominations by the use of money. This measure, together with several others, was introduced and referred to this and other committees, and, as a result, the amendment, which was voted upon after being somewhat perfected and passed to a third reading, was reported by the committee. When it came before the Committee of the Whole it met with some opposition, upon the theory that it would affect injuriously the stockholders of corporations. It was urged that in case it was passed in the form in which it was reported by the committee, the injury would result to the stockholders, and not to the officers; and hence, undoubtedly, some members thought it was wise to oppose it. Other members thought that the first section recognized the right to use money at the polls and at caucuses, although the Legislature was required to vote upon it. Now, whether those suggestions have any weight or not, is a question for this Convention to determine; but, as to the main question, as to the use of money in securing nominations, it seems to me there can be no question whatever. I think it is due to the candidate; I think it is due to the people of this State, that if we can — as suggested by the President in his opening address — throw some other safeguards around the ballot, we ought to do it. So far as I am personally concerned, I am satisfied that if we make this amendment, the amendment which was introduced by myself, amending the present Constitution, by the insertion of four or five words, we will have a provision of the Constitution which prohibits the use of money at elections; that prohibits candidates from going out and purchasing nominations, and a provision which would, in my judgment, prevent corporations from using their money for the purpose

of securing those nominations. Hence, my amendment was simply extending the present Constitution by inserting the words "primary elections, caucuses or conventions," so that the same provision of the Constitution should apply to primaries that now applies to elections. If that is satisfactory to the gentlemen who introduced other measures, I should be satisfied with it, when it comes in a proper manner, to offer this as an amendment. But I do not wish by this to take away any suggestion that is contained in the proposition introduced by any other member. Therefore, I hope this matter will be reconsidered, and then we can consider it anew.

The President — The question is whether the Convention will take from the table this matter which was laid thereon upon the fourth of September.

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

Mr. I. S. Johnson — Mr. President, I call for a count.

The President appointed Mr. McDonough and Mr. Rogers tellers, and, upon a rising vote, the motion was again declared to be lost.

The President — Are there any other motions or resolutions? If so, they are in order.

Mr. Cookinham — Mr. President, I ask to take from the table a resolution which was offered by me on Friday last in regard to the bill presented by the sitting delegates from the Erie district for counsel fees in the contested election matter.

The President — The Secretary will read that resolution.

The Secretary read the same as follows:

R. 210.— "Resolved, That Harvey A. Putnam and Thomas A. Sullivan be, and they are, hereby allowed the sum of $2,313.79, their expenses for counsel fees and disbursements in their contests in the Thirtieth District against Herman F. Trapper and Charles C. Beckwith."

Mr. Cookinham — Mr. President, I have not the slightest idea of saying anything upon this resolution, except that I believe the Convention should dispose of the matter. The bill was referred to two committees. The facts were stated before those committees, and, by a divided vote, a report was made in favor of allowing the bill as presented. A majority of the committee, as I understand it, believed that the amount was reasonable, that the Convention had the power to audit the bill, and that it ought to be audited. I, therefore, believe the Convention should act upon it.

Mr. Deady — Mr. President, that that bill should be allowed, I think nobody will contend against; but that it should be allowed by this Convention is quite another thing. This bill was audited as reasonable, and all of the committee agreed that the bill was a reasonable bill; but no one of the committee, I believe, except the gentleman who has just spoken, thought the Convention had any power whatever to pay this bill. If the Convention will notice the reading of this resolution, it does not say that it shall be allowed by the Convention. The Convention, I should say, would be perfectly willing to allow that these gentlemen should pay their counsel their expenses, but this Convention has no power — as gentlemen will see by the reading of the statute appropriating money for the expenses of this Convention — to do this thing. You will readily see that this Convention cannot possibly by any torturing find these expenses to be part of the expenses of this Convention. It is an expense incurred by members of the Convention, and we might just as well allow them for their board bill as to allow them the expenses incurred for counsel fees. There is no question but that the Legislature has the power to defray these expenses and to reimburse these gentlemen, but this Convention has not that power. The members of the Convention will notice that in every session of the Legislature where there is a contest, in order to even allow Members of Assembly for their expenses a special bill has to be passed appropriating the money for that purpose. We have no such power. The money that is intrusted to us for the legitimate expenses of this Convention can only be used by us for such expenses.

The President — Does any other gentleman desire to be heard upon Mr. Cookinham's motion? If not, the question will be put.

The President put the question upon the motion made by Mr. Cookinham, and it was determined in the negative.

The President — Are there any other resolutions or motions? This seems to be a favorable morning for resolutions, and perhaps Mr. Dean has something to offer.

Mr. Dean — Mr. President, I am very anxious to be regulated by the resolution adopted last evening to adjourn to-morrow, and I, therefore, refrain from offering anything.

The President — Third reading will now be proceeded with. Third reading No. 27, printed No. 432, introduced by Mr. C. H. Truax. The Secretary will read the title.

The Secretary read the title, as follows:

"Amendment introduced by Mr. C. H. Truax (introductory No. 256), to amend article 14 of the Constitution."

The President — This matter is now open for debate. The amendment was introduced by Mr. C. H. Truax, who will probably be able to enlighten the Convention upon it.

Mr. C. H. Truax — Mr. President, this is such a simple matter that it needs no argument, except to read the three lines that compose the proposed constitutional amendment: "This Constitution shall be in force from and including the first day of January, one thousand eight hundred and ninety-five, except as herein otherwise provided."

It amends article 14 of the Constitution in no other respect.

Mr. Veeder — What have the people to say about it?

Mr. C. H. Truax — I do not know what the people have to say about it. We shall have to wait until election day, in November, and then we shall see what the people have to say about it.

The President — Does any other gentleman desire to be heard on this amendment?

Mr. J. Johnson — Mr. President, I would like to ask Mr. Truax what is the necessity of any provision of this kind, in view of the amendment as it now stands?

Mr. C. H. Truax — I do not understand what the gentleman means. The act under which we are assembled here requires us to specify the time when the Constitution shall take effect, and we do specify it in this manner.

Mr. Veeder — I move to amend Mr. Truax's proposed amendment by inserting in line 5, after the word "Constitution," the words "if adopted." I move to recommit the proposed amendment to the committee, with instructions to amend it and report forthwith.

The President put the question on the motion made by Mr. Veeder, and it was determined in the negative.

The President — If there is no further debate, the Secretary will now read the amendment for the third time.

The Secretary read the same, as follows (O., I. No. 256, P. No. 432):

"Article 14 of the Constitution is hereby amended by striking out all of said article except the thirteenth section, and by amending that section so that the article shall read as follows:

"ARTICLE XIV.

"This Constitution shall be in force from and including the first day of January, one thousand eight hundred and ninety-five, except as herein otherwise provided."

The President — This matter having been read the third time, the question is now on its final passage. The Secretary will call the roll, and those in favor of it will say aye, and those opposed, no.

The Secretary proceeded to call the roll.

Mr. Holcomb — Mr. President, I would like to explain my vote. I see in the Herald this morning that one of the delegates to this Convention has made the discovery that the present Constitution does not require amendments to be submitted to the people at all, and, because the Convention has just voted down the motion made by the gentleman from Kings (Mr. Veeder), to insert in line 5, after the word "Constitution," the words "if adopted by the people," I shall have to vote no.

The President — This constitutional amendment having received the affirmative vote of a majority of the delegates present, is adopted — 107 in the affirmative and 4 in the negative.

The vote in detail was as follows:

Ayes — Messrs. Abbott, Acker, Ackerly, Arnold, Baker, Banks, Barnum, Becker, Bigelow, Brown, E. A., Brown, E. R., Burr, Cady, Campbell, Carter, Church, Cochran, Coleman, Cookinham, Cornwell, Countryman, Crosby, Davenport, Davies, Deady, Dean, Deyo, Dickey, Doty, Durfee, Durnin, Emmet, Faber, Farrell, Floyd, Forbes, Francis, Frank, Augustus, Fraser, Fuller, C. A., Fuller, O. A., Galinger, Giegerich, Gilbert, Gilleran, Goeller, Goodelle, Green, A. H., Hawley, Hedges, Herzberg, Hill, Hirschberg, Holls, Hottenroth, Jenks, Johnson, I. Sam, Johnson, J., Kellogg, Kurth, Lester, Lewis, C. H., Lewis, M. E., Lyon, Manley, Marshall, Maybee, McArthur, McDonough, McIntyre, McKinstry, McLaughlin, J. W., McMillan, Mereness, Moore, Morton, Nichols, Nostrand, O'Brien, Parker, Parkhurst, Pashley, Phipps, Platzek, Putnam, Redman, Roche, Rogers, Spencer, Steele, W. H., Storm, Sullivan, T. A., Tibbetts, Truax, C. H., Truax, C. S., Tucker, Turner, Vedder, Vogt, Wellington, Whitmyer, Wiggins, Williams, Woodward, President — 107.

Noes — Messrs. Holcomb, Schumaker, Titus, Veeder — 4.

The President — The next proposed amendment on order of third reading is No. 28, printed No. 393. The Secretary will read the titles.

The Secretary read the title of the same as follows:

"Introductory No. 206, printed No. 393, introduced by Mr. H. A. Clark, relating to civil service."

Mr. Hotchkiss — Mr. President, may I ask from the Chair, or from some one who can give the information, the meaning of the words in the ninth and tenth lines, "who are not otherwise disqualified for such appointment or promotion?"

The President — The Chair has no knowledge on that subject.

Mr. Hotchkiss — Has any member of the Convention any interpretation to put upon those words. If not, I move that this proposed amendment be referred back to the committee from whence it came with instructions to strike those words out and report forthwith. To me those words are meaningless.

The President — Do you mean the words "Union soldiers and sailors?"

Mr. Hotchkiss — No, sir; I mean the words immediately following: "who are not otherwise disqualified for such appointment or promotion." There is no attempt on the part of this section, or in any of the words in it, to qualify anybody. It is simply words of exemption with respect to soldiers and sailors.

Mr. Hawley — Mr. President, I think there is great difficulty in understanding exactly what this last sentence, to which Mr. Hotchkiss has called attention, means, and that it ought in some way to be reconstructed. I doubt whether the suggestion which has just been made will effectually accomplish that purpose, because if you strike out the words "who are not otherwise disqualified," the sentence will then read that "honorably discharged Union soldiers and sailors shall be exempt from the provisions of this section." That is to say, they shall be exempt from any merit or fitness. The sentence as it now reads would seem to exempt them from any qualifications whatever. The Committee on Revision have had this sentence under long consideration. The friends of the measure have considered it, and I think I am right in saying that the present phraseology is not exactly satisfactory to anybody; certainly it is not exactly satisfactory to anybody whom I have heard speak upon the subject. I am not able to furnish any satisfactory solution of the difficulty which seems to be in the sentence under consideration, but I certainly hope somebody will be able to present to the Convention, before this article shall be put upon its final passage, some form of expression which will express the idea which is desired here, but yet which shall require some measure of fitness and qualification for public positions even of a Union soldier.

Mr. Hotchkiss — Mr. President, I move that the proposed amendment be laid aside for the present until it can be perfected, not losing its place on the calendar in the meantime.

The President — You mean the amendment offered by yourself?

Mr. Hotchkiss — No; I mean the proposed constitutional amendment.

The President — The Chair is of opinion that that cannot be done during third reading.

Mr. Hotchkiss — It seems to me unfortunate, to say the least, that we should be compelled to vote upon a measure so important as this that it is apparently satisfactory to no one who has considered it.

The President — It is very easy to have those words stricken out, and then make it satisfactory to everybody. The question is on Mr. Hotchkiss's amendment to recommit with instruction to report forthwith striking out the words "who are not otherwise disqualified for such appointment or promotion."

Mr. Tibbetts — The effect of that amendment would be to nullify the last clause by striking out those words. It would really be interpreted that they could not receive such appointment and promotion in any case. Now, sir, for the purpose of making this more explicit, I move the following amendment:

"Honorably discharged Union soldiers and sailors shall be exempt from such examination, and shall be entitled to preference in such appointment and promotion."

That reads the same as the civil service law does now.

Mr. Countryman — Mr. President, I move to amend the motion to recommit so as to strike out the entire clause reading as follows:

"Honorably discharged Union soldiers and sailors, who are not otherwise disqualified from such appointment or promotion, shall be exempt from the provisions of this section."

It is, perhaps, proper for me to say that it is one of the best principles of the Mugwumpian creed that this article, as reported by the committee, should be acknowledged and acted upon in the administration of the civil service. It would afford me great pleasure to vote in favor of the article as reported by the committee, but in this last clause I submit that we recognize and incorporate into the Constitution a principle which is at war with all Democracy and Republicanism, whether we regard it from the standpoint of principle or from the standpoint of partisanship. It would recognize and create a privileged class in the community. It would exempt

all soldiers and sailors from the provision of the Constitution, and would entitle them, without regard to merit or fitness, to any office to which they aspired as against other members of the community. Are we prepared to recognize any such privilege as that, and especially, too, by recognizing it in the fundamental law of the State? Are we prepared, as Democrats on the one side, or as Republicans on the other side, all of whom profess to look to that great apostle of Democracy and Republicanism, Thomas Jefferson, and to repudiate one of the first principles which he inculcated as necessary to be recognized in our institutions, by catering to the military class, as such; by establishing them as a privileged class in the country, and thus putting ourselves, at least, in an attitude where we may soon be subject to the dangers arising from such a recognition, as was pointed out by that great apostle of American democracy, and as fully established by an early writer, Montesquieu, in his "Spirit of Law," who laid it down as a general principle that it is one of the great dangers of all democracies and all republics that they were inclined to cater to the privileged military class as such? Mr. President, no one has a greater respect for the soldiers and sailors than I have, and I would do anything reasonable and proper and constitutional and consistent with these institutions to recognize and honor them, but when it comes to establish them as a separate privileged class in the community, exempt from the Constitution of the State, I am not prepared by my vote to recognize any such principle. I was about to criticise this clause more in detail, but I understand it to be now practically conceded on all sides that, in its present form, it ought not to be accepted here. I say it ought not to be accepted in any form whatever, and, therefore, I hope that clause will be stricken out.

Mr. I. Sam Johnson — Mr. President, I should be false to the State, false to the nation, and false to more than half a million soldiers who went from this State to do their duty at the front, men who sacrificed more than any other class of people in this State ever sacrificed, if I should allow to go unnoticed the remarks made by the learned gentleman from Albany (Mr. Countryman) on Saturday last; and I desire to call attention to them especially because in all the speeches made in the South by Confederates I have never seen anything which was more contemptible to the Union soldiers than were these words: "You have emptied the national treasury and mortgaged the revenues of the government for the next fifty years to bribe the soldiers to get their votes."

Mr. Countryman — And I repeat that remark now, sir.

Mr. Johnson — If the gentleman will consider for a moment the charge made here, that the Union soldiers are being bribed by the use of pension money, I think he will find that there is no man upon the Democratic side that will support him in that charge for a single moment. Mr. President, the Democratic soldiers in the army were as brave, as honest, and as faithful as were the Republican soldiers. When they met on the great battle-field of Gettysburg, and stood there, a line four miles long, and when the prayers of the American people were going up all over the country on that Sunday when the fight was hottest, I tell you, gentlemen, they were not men who were to be bribed. When they lay in Andersonville prison for months and months, and were offered their liberty and refused it at the sacrifice of honor, they were not the men to accept bribes. Mr. President, this is not a matter of pensions or of giving something. It is a matter of carrying out a contract, a vested right. A distinguished Democrat in the Senate of the United States, within the last year, I think, has passed in that body an act which declared upon its face that it was a vested right. And why was it a vested right? It was a vested right because before those men served the country, and at the time they were serving the country, there was put into the laws of Congress a provision like this: "Any officer or soldier who has been disabled by reason of wounds or disease contracted while in the service of the United States shall be placed upon the list of invalid pensions."

Before this they had said:

"If any person, officer or soldier called into the service of the United States be wounded or disabled while in the service, he shall be taken care of and provided for at public expense."

That ripened into a contract, into a vested right. And because some poor man who happened to be upon the field of Chancellorsville when that fire rushed over acres and acres, and had his limbs burned, and came out of the service and asked a pension, is it to be said that he is a bribe-taker?

The President — Does not Mr. Johnson lose sight of the question before the Convention, which is upon striking out these last three lines?

Mr. Johnson — No, sir; I do not, because that is the only thing in it which has any reference to the Union soldiers.

The President — The only reference to Union soldiers is their being exempt from the provisions of this act.

Mr. Johnson — As I understand it, the gentleman moved to strike out all that portion, and I say that when it is charged that

the Union soldiers are bribe-takers, the statement ought not to go unnoticed in this Convention. I say that side by side with that statement should go a repudiation of it. I have never applied for a pension, and I never expect to as long as I can earn my own living, but the men who have suffered and have thus been obliged to ask for a pension should not be maligned in this way, and it is an outrage to charge them with being bribe-takers. Why, sir, the gentleman ——

The President — The Chair must insist that the subject of pensions is not embraced within the pending amendment.

Mr. Johnson — But it was embraced in it when this language which I have quoted was used.

The President — You have answered that.

Mr. Johnson — I have, and the gentleman (Mr. Countryman) has reiterated it. I think, gentlemen, that this provision should be continued in some form that will recognize the rights of the Union soldiers.

Mr. Mereness — Mr. President, I would like to inquire of the friends of this measure, whether this will include all the soldiers and sailors who have enlisted and served the allotted time since the close of the war; and, if that is so, why they ought not to include those who have served the prescribed time in the State militia?

Mr. McIntyre — Mr. President, I move to amend lines 9, 10 and 11, so that they shall read as follows: "Honorably discharged soldiers and sailors who served in the late war, and who are not otherwise disqualified for appointment or promotion, shall be exempt from the provisions of said competitive examination."

The President — Mr. McIntyre will send his amendment to the Secretary's desk.

Mr. Nicoll — Are amendments in order, Mr. President?

The President — They are.

Mr. Nicoll — I would like to offer an amendment to strike out lines 3 and 4, and substitute the following: "Appointments and promotions in the civil service of the State, and for all the civil divisions thereof, including cities and villages." The purpose of my amendment is obvious. I know of no reason why the desirable principle contained in this amendment, if it is proposed to be put into the Constitution at all, should not be extended to civil appointments in counties, towns and villages. What reason can be given for excluding office-holders in villages or in towns, or in counties, from this principle? Why should not their fitness be ascertained as

far as possible by examination, and why should not the test of merit and fitness be applied to them as well as to candidates for office in the cities or the State at large? There is a disposition here, I think, to exempt the towns and villages which should not be permitted. For my own part, it seems to me a matter of grave doubt whether this provision ought to be in the Constitution at all. The Legislature has taken care of the subject, and the laws are being executed now with more or less diligence. It may very well be left as it is, but, if it is to go in the Constitution, let us at least be consistent and extend it over the whole State.

Mr. Gilbert — Mr. President, in answer to that, I would say that the committee thought this whole provision was carefully guarded against. It was deemed entirely unnecessary and impracticable to attempt to apply it to villages and towns and counties. When gentlemen come to think about it, they will see that there are scarcely any appointments in a county, and scarcely any in a town or a village, and to have the machinery of an appointing board for a county, where there are only one or two appointments, would seem to be impracticable. The Legislature may do it, but we do not think they should be required to do it, for the simple reason that it is impracticable.

Mr. McClure — Will the gentleman allow a question?

Mr. Gilbert — Certainly.

Mr. McClure — I would ask the gentleman whether there are not in the counties such appointments as deputy county clerks, deputy sheriffs, and many other appointments of a similar kind, where it would not be impracticable at all to apply the terms of this amendment?

Mr. Gilbert — My answer to that is, that almost all those officers are not in our counties at all. Franklin county has no such officers.

Mr. McClure — Mr. President, we are not here making amendments to the Constitution to affect Franklin county alone. I asked the question relative to all the country localities of the State; not as to Franklin county simply. I do not understand that this committee propose this amendment in the interest of Franklin county alone. I take the position that Mr. Nicoll has taken, that there seems to be a desire, or an unwarranted and unnecessary discrimination, as between the county officials and the city officials. If this is a good thing to put in an amendment — and I share the doubt of Mr. Nicoll as to the propriety of it — it should apply to the entire State, to sheriffs, county clerks, registers and surrogate officers. It is absolutely necessary that in those counties there should be

some discrimination made as to the men who fill those positions. This amendment should be broad enough to entitle it to the support of the public at large, and I cannot understand the explanation of the gentleman as being at all valuable when he says that the committee found my suggestion to be not at all practicable. Of course, a committee can so find if they desire, but that is a very insufficient explanation of their failure to have this article apply to all parts of the State.

Mr. Gilbert — The gentleman seems to entirely miss the point of my answer. I think he should consider it as sufficient. The officers to whom he refers are not officers we have in our counties, and I only mentioned one by way of example. Of course, in New York county they do have such officers, and the city provision covers them.

Mr. McClure — Mr. President, I desire to say a word in answer. The gentleman from Franklin (Mr. Gilbert) seems to take advantage of the suggestion that I referred to registers, and to say that they do not exist in his county. The duties of registers are, however, discharged by county clerks in those counties of the State where there are no registers, and in a great many counties there are registers.

Mr. Gilbert — Yes; but they are elected.

Mr. McClure — The gentleman will please not misapprehend me. I am not talking about elective officers. I am talking about the officers that the elected officers appoint. There are deputy county clerks in every county of the State, I think, and every member of this Convention knows it. There are appointees of the sheriff, such as deputies and clerks. There are appointees of the surrogate's office, with all its important business, having charge of the affairs of widows and orphans, and you can put in any politician you chose and he shall not be subject to the terms of this amendment; whereas, in the city of New York and in the city of Brooklyn and in Buffalo, it cannot be done. Then in the district attorney's office there are assistant district attorneys, officials charged with a semi-judicial duty. And the same is true with respect to county treasurers. Why, sir, the instances are too numerous to mention, and I could overwhelm the gentleman from Franklin with them, if he would not come back at me with the simple suggestion that it is not practicable to apply this amendment to them. Mr. Hawley tells me that there are five appointees in his town who would be subjected to this amendment. Now, gentlemen, be fair in this matter.

Mr. Nicoll — Be broad.

Mr. McClure — Yes; be broad, as Mr. Nicoll says. Come out of the position which Mr. Nicoll illustrated you as being in so humorously last night, and try and sit here and bear in mind that you are making constitutional amendments for the whole State. I would like this Convention to make the amendments to this Constitution so broad and fair and general that there cannot be the charge made that there is a discrimination intended, and that what is good law, by way of constitutional amendment, for a city, is not good law for the country, as if all the honesty and integrity and intelligence of the State were lodged in the country districts, and there was no discrimination as to appointments there.

Now, I want to add a few words with reference to the part of the amendment that refers to the exemption of honorably discharged Union soldiers and sailors. That seems to be an exception which is not at all necessary at this day. With reference to the eloquent remarks of my friend, Mr. Johnson, I have only this to say, as was said by a distinguished counsel with reference to the summing up of his opponent in a case, that after having heard that speech for so many years, he would simply remark that he always did like that kind of a speech.

Mr. Durfee — Mr. President, I have an amendment to propose to the last paragraph of this proposed constitutional amendment. I move that it be recommitted to the committee, with instructions to report forthwith, as follows: Strike out in lines nine and ten, the words "who are not otherwise disqualified for such appointment or promotion," and in line 11 strike out the words "provisions of;" and in line 9, after the word "sailors" insert the words "of the late civil war;" and in line eleven, in lieu of the words "provisions of," insert the words "examinations required by;" so that the last clause will read as follows: "Honorably discharged Union soldiers and sailors of the late civil war shall be exempt from the examinations required by this section."

It will be observed that the first paragraph of this amendment requires that appointments and promotions shall be made according to merit and fitness, which is to be ascertained, as far as practicable, by examination. I do not suppose that it is the intention of anybody that soldiers and sailors shall be relieved of the requirement of merit and fitness; only that they shall be relieved of the requirement of passing an examination. Merit and fitness may be ascertained in other ways than by examination. I, therefore, make this amendment for the purpose of simply exempting the soldiers and sailors from the examination required by the section.

With reference to the suggestion made by the gentleman from New York, that this amendment ought to apply throughout the State in the country districts, there are very few places in the counties of the State known as the country districts, that are filled by appointment. It is a rare thing that you find an assistant district attorney or an assistant surrogate. Of course, there are one or two deputy clerks; but, with that exception, there is hardly an office that is filled by appointment. As Mr. Gilbert has suggested, the creation of boards of examiners to examine a limited number of persons for a very limited number of positions to be filled, would seem to be most impracticable and entirely undesirable.

Mr. Mulqueen — Mr. President, I rise as a Democrat to repudiate the sentiment expressed by the gentleman from Albany, Mr. Countryman, that the pensions given by a grateful country to its soldiers and sailors are used as bribes. Sir, the soldier receives his pension, not as a charity, but as a right. It is given by the country to the men who, in our country's need, risked their lives that the Union might live. I am glad to say that the gentleman (Mr. Countryman) is in doubt whether he is a Democrat or a Republican, because I believe every Democrat, both in this Convention and out of it, is proud that this land of ours appreciates the services that were rendered to it by the soldiers of the country, irrespective of party, and we rejoice that our country is, at least, doing its mite to save those poor men and their families from want because of the sufferings they endured in the great battle for the Union.

Mr. Peck — Mr. President, I think enough discussion has been had upon this subject to make it appear that it is very dangerous to pass this article in its present form. This examination in the full Convention has disclosed many defects in the article. But I have handed up an amendment to the section which, it seems to me, is very essential, if it is to be passed at all. As it now is it provides that all honorably discharged soldiers and sailors, wherever residing, whether in California or Alaska, or Maine, or at any distant point in the United States, may, if they come here, be appointed and must be appointed to places in the public service without any examination at all. This amendment is, of course, intended to benefit the soldiers and sailors residing in this State, and I have, therefore, handed up an amendment to insert after the word "sailors" the words "citizens of this State." So, that if it shall be passed at all — as I think it ought not to be, for it better

be left to the statutes — it will benefit the citizens of this State alone.

Mr. J. Johnson — Mr. President, while I will not claim to have been one of the foremost advocates of civil service, I certainly have been friendly to it; but, sir, I see no necessity whatever of loading up this Constitution with any provision of this kind. It is legislative first, last and all the time. I can see reasons for legislating where the Legislature has failed in its duty. For instance, the question of pool selling is legislation, and there I believe the Legislature has failed in its duty, and I can see my way there to legislate in the Constitution. But there is no advocate of civil service to-day that will deny that all the fair demands of the advocates for civil service have been met by the law-making power. The Legislature has not been backward. Why, then, legislate? We might as well legislate here as to the form of an insurance policy, or as to the technique of bridge building across some creek. And there is another reason. Here we are trying to engraft a general principle, and we admit at the outset that there is an exception, and we are trying to adjust for the permanent language of the Constitution the exception which we all agree should be made, and we cannot do it. Sir, I would not vote for any legislation without this exemption for Union soldiers. That is necessary. But is there no difference between the volunteers who left the farm, the mill and the forge at the call of country to save the nation, and the men who, yesterday or the day before, went down to Fort Hamilton and enlisted? I am in favor of the Union soldier that saved the country. If this must go through, have that there; but I am not quite certain that I am anxious to put in the Constitution that every man who enlists for the next twenty years in the army, and gets out again, can evade civil service, and that is what this does. I think the amendment should be beaten. It does not belong in the Constitution, and I think the advocates of civil service, of which I am one, should be satisfied with the full and abundant provisions that have been made from time to time by the Legislature, fully abreast of the times, and for all that was asked.

Mr. Dean — Mr. President, I had not intended to speak on this subject, but there seems to be such a disposition to take up the full hour allotted to it that I thought it would not be out of place for me to make a few remarks as representing the younger element, the men who have been born since 1850, and who have been making sacrifices ever since to the inordinate ambition of the old soldier to hold all the offices. Mr. President, I know some old soldiers. Some of the best friends I have were in the army,

and they were fighters, but they are not asking any special concessions on the part of this Convention, or on the part of the people of this State. The men who went to the front and fought, the men who had the courage to do and die, if need be, for their country, are not beggars; they are not paupers. They are not asking this Convention to place in the fundamental law of the State special provisions that they shall hold office, whether they are qualified or not. That is substantially what this provision does. We may make all the exceptions we wish, but if an old soldier gets to one of these appointing officers, he manages to get in, whether he is competent or not. I know at least half a dozen instances in the city of Albany where men who are absolutely incapable of satisfactorily performing their work are filling public positions under the civil service. That is what is the matter with the civil service. It is not because of any civil service reform, but it is because we have been putting incompetent men into office because they discharged their duty in the early sixties, as any one of us is ready to discharge our duty to-day if called upon. We are discharging the duties of the hour, and we are ready to discharge whatever duties we are called upon to perform. I am opposed to this civil service amendment, whether under an exception to the old soldier or under any pretext whatever.

Mr. Woodward — Mr. President, I wish to suggest that we discuss this question until to-morrow night and then adjourn.

The President — There are but fifteen minutes left now of the time for this discussion.

Mr. Morton — Mr. President, very much might be said about the operation of the civil service in this State, but I do not propose to say it here. There is no principle more firmly established in the policy of this government, both national, State and local, than the preferment which the grateful people of this country are always willing to bestow upon the soldiers and sailors who defended the Union in the hour of its peril. Laws of the State of New York cover this case completely, and the laws of the United States and the orders of the executive branch of both the national and State government attempt to cover this question, but they never have successfully done so. After thirty years and more of experiment upon this subject, it is high time that in the few remaining years that are left to be occupied by this question something more tangible and practical than has ever yet been done should be secured, and I think the place to secure it is in the Constitution of the State. I believe the amendment offered by Mr. Durfee practically effects

the purpose, but it is deficient, in my judgment, in that it does not declare the eligibility of the soldier and sailor to appointment, and I, therefore, offer this amendment, to be added to the one presented by Mr. Durfee:

"And shall be eligible for such appointment or promotion without such examination."

Mr. Tibbetts — Mr. President, we are not here as beggars. We are not here as the originators of this idea. It is proposed to put in the Constitution of this State some amendment in reference to the civil service. If such an amendment is put in the Constitution, we say you shall take no step backward, that you shall do by the soldiers and sailors of the late war what this State has done by statute, and what the United States has done by statute, and what every Northern State has done, either by statute or in its Constitution, a provision that the great Empire State ought not to leave out if you put this civil service provision into the Constitution. We say that if you put it in there, you shall not take a step backward and shut the veterans out from the provisions which the Legislature of this State, both Democrats and Republicans, have so generously proposed. I want to read a little extract from the last law that was passed upon this subject, the civil service law itself, which makes this exemption:

"In grateful recognition of the services, sacrifices and sufferings of persons who served in the army or the navy of the United States, in the late war, and have been honorably discharged therefrom, they shall be certified as such by the commissioners, board or officers authorized to report the names for appointment or promotion to the appointing officer, or other appointing power, and shall be preferred for appointment to positions in the civil service of the State, and of the cities affected by this act, and the several acts hereby amended, over all other persons, though graded lower than others so examined and reported, provided their qualifications and fitness shall have been ascertained, as provided under this act, and the several acts hereby amended, and the person preferred shall not be disqualified from holding any position in said civil service on account of his age, nor by reason of any physical disability, provided such age or disability does not render him incompetent to perform the duties of the position applied for."

Then a provision follows that which exempts them absolutely from any examination for a position where the pay is under four dollars a day. Now, speaking on the proposition which I made originally, I thought it would cover everything; I thought by

putting it in the language which I did, it would cover all the propositions. It may be, however, that residents of the State should be included. I am inclined to think they should. It probably is true that soldiers of the late civil war should be included, so that those who enlisted in the regular army since 1865 should not have that preference. I have tried to remedy that in my amendment. But, sir, the word "preference" should be in there. If you leave out the word "preference" we will be no better off than we were before. We shall be left then to the discretion of a civil service commission who have forgotten all about the late civil war, whose ancestors knew nothing about it by actual experience, and who are civil service reformers of the English type. We do not want it left to such a commission. We ask that if you change the original wording as it was presented it shall read in the manner which I propose, and that the soldiers and sailors shall be entitled to preference in such appointment and promotion, and shall be exempt from such examination. Then you do make a preference; then you do say that with equal standing we shall have preference. That is all we ask, and that we are entitled to have. Mr. Countryman and those of his kind, who were not our friends in the late civil war, talked very differently then. They were then very anxious for the boys to go to the front. They got behind them and crowded them on ahead; young men and old men, too, were crowded to the front. Mr. Countryman and his ilk stayed behind. We performed the service that the country demanded for Mr. Countryman, and for the people of the State of New York, and now we insist that you have not recompensed us for it. You gave us eleven dollars and thirteen dollars a month in depreciated currency ——

Mr. Countryman — Will the gentleman permit a question?

Mr. Tibbetts — Yes, sir. As many questions as you like.

Mr. Countryman — My question is: How much do you want?

Mr. Tibbetts — We do not want any pay in dollars and cents, but we do say that those of us who are not able to pass these examinations by reason of palsied arms or debilitated intellect, and who have not had an opportunity by a recent graduation to answer technical questions, shall not be handicapped by reason of disabilities incurred in the defense of our common country in our race for a livelihood in competition with those whose youth and fresh knowledge make them our superiors in these respects; and you will remember, Mr. Countryman, the motto that was placed on the Capitol ——

The President — Mr. Tibbetts will address the Chair.

Mr. Tibbetts — I thought Mr. Countryman needed more of this than the Chair did. The President of this Convention is all right, but Mr. Countryman has expressed himself so that we are satisfied that we know his position. Now, that motto was — and I want you all to remember it because it was the sentiment of the people throughout all the north — "This nation owes no debt it cannot pay, except the debt it owes its brave defenders." That was the sentiment of the North, gentlemen, but you have forgotten it, or you are forgetting it, those of you who were born since that war closed. Mr. President, if this is to be left as the statute reads, we are content. If it is to be put into the Constitution we ask as a monument of gratitude, if for no other reason — because it won't be very long that these old soldiers and sailors will be with you — that you shall make that honorable exception in their favor, in the language of the statute, or in language equally strong.

Mr. Gilbert — I want to correct a misapprehension, Mr. President. This discussion has drifted away from the main proposition. I will only say, in regard to the proposition that has been discussed principally, that I do think that the soldiers, to whom we owe a debt that we can never pay, are entitled to preference. As my friend who has just taken his seat said, in a little while they will be with us no more. But now I come to the main proposition. The gentleman from Kings (Mr. Johnson) has stated here with great emphasis that the Legislature can provide now for every requirement of civil service reform in the State. That is a total misapprehension of the facts in the case, and that I want to call attention to. It is not true. The Court of Appeals has held that appointments cannot be made in the prison service, and in the public works service, under the rules of the civil service. The case came up as to one of them, but the same reason that applied to that one obtains as to the other. So that I may say that under the law as it now stands, and under the Constitution as it now exists, the civil service rules cannot be applied to the prison service, or to the public works service. I think that is reason enough for the passage of the main proposition. If there was time, I could read to this body from the report of the Civil Service Commission what hospital superintendents and what the superintendents of other public institutions have said as to the great benefit that has accrued from this mode of service. Let me say as to the general scheme, that it provides, first, that appointments and promotions shall be based, not only upon

merit, but also upon fitness. Fitness means, fitness for the particular thing to be done; not merely general intelligence or general merit. It means that a man shall be able, by his services, to fit into the requirements of the public service. That is one thing. That is a universal proposition. Now, in the next place, how is that fitness to be ascertained? Well, in a multitude of cases it will be ascertained by the simple judgment of the person who is to make the appointment, but there are cases where it is practicable that appointments should be made where this fitness should be ascertained by examination. Now, we make the rule very elastic. We do not say that there must be examinations everywhere, because that would be impracticable; but we say that wherever it is found in actual trial to be practicable to apply the rule of examination, there it shall be applied. And we say that wherever such examinations may be competitive, and that is practicable, then they shall be competitive. But we do not say that in any given case you must have an examination whether it is practicable or not. Wherever it is practicable that such examination shall be competitive, then we say make it competitive. It does seem to me that nothing can defeat this proposition except a misapprehension of what it means.

Mr. Cochran — Mr. President, I only want to repeat what I said the other day, that I am opposed to putting into the Constitution this civil service article; but if it is to go in, then I believe we should have some provision with reference to the honorably discharged soldiers and sailors. As I understand the amendments offered by Mr. Durfee and some others, they go much further than any laws now in existence in that they exempt the honorably discharged soldiers and sailors entirely from any examination. Now, if they are exempt from examination, I fail to see how their other qualifications could be determined. I believe that all we should do is to go as far as the present law is, and that is, to entitle these honorably discharged soldiers and sailors to preference after they have passed the civil service examination. Therefore, Mr. President, I offer an amendment, which I will send up to the Secretary's desk.

The President — First, the question will be upon Mr. Hotchkiss's amendment to Mr. Nicoll's amendment.

Mr. McIntyre — Mr. President, the only words I cared about were to have inserted the words "of the late civil war." In the several amendments since I made mine those words have been incorporated, and, therefore, I will withdraw my amendment.

Mr. Hotchkiss — Mr. President, the amendment which I offered was not an amendment to Mr. Nicoll's amendment, but it was a separate amendment, intended to be offered in case his amendment failed.

The President — Then the question will be put first upon Mr. Nicoll's amendment, which the Secretary will read.

The Secretary read Mr. Nicoll's amendment, as follows:

Strike out lines 3 and 4 and substitute the following:

"Appointment and promotion in the civil service of the State, and for all the civil divisions thereof, including cities and villages."

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

The President — Now, does Mr. Hotchkiss press his amendment?

Mr. Hotchkiss — No, sir; I withdraw my amendment.

The President — Now the question will be put upon the other amendments, all of which relate to the last clause.

Mr. Gilbert — Mr. President, will you give us a count upon Mr. Nicoll's amendment?

The President — Yes, a count may be had. Mr. Holls and Mr. Countryman will please act as tellers.

The President again put the question on Mr. Nicoll's amendment, and it was determined in the affirmative by a vote of 61 ayes to 36 noes.

The President — The question will now be taken upon the various amendments to the final clause, but as the motion of Mr. Countryman, if adopted, will save a vast deal of time, and dispense with all the others, the question will be put upon that first. The Secretary will read it.

The Secretary read Mr. Countryman's amendment, as follows:

To recommit the proposed amendment with instructions to strike out the following clause:

"Honorably discharged Union soldiers and sailors, who are not otherwise disqualified from such appointment or promotion, shall be exempt from the provisions of this section."

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

The President — The question will now be put upon Mr. Cochran's motion, which the Secretary will read.

The Secretary read Mr. Cochran's motion as follows:

"Strike out lines 9, 10 and 11, and insert the words:

"Provided however that honorably discharged soldiers and sailors from the United States in the late civil war shall be entitled to preference in appointment and promotion, without regard to their standing in any list from which appointment or promotion shall be made."

The President — Mr. Holls and Mr. Countryman will please act as tellers.

The President then put the question on Mr. Cochran's motion, and it was determined in the affirmative — 59 ayes, 24 noes.

The President — The Chair is of opinion that this dispenses with the necessity of putting any of the other motions, but, if gentlemen making them insist upon it, they will be put.

Mr. Peck — This does not dispose of the resolution that I offered, that these soldiers and sailors shall be limited to such as are citizens and residents of the State of New York. I am willing that it shall be inserted, however, in Mr. Cochran's amendment, and I make that motion.

The President put the question on the motion made by Mr. Peck, to insert in the amendment already adopted of Mr. Cochran's after the word "sailors," the words "citizens and residents of this State;" and it was determined in the affirmative.

The President — The Chair is of opinion that these amendments, having been adopted, it dispenses with the propriety of putting any of the other motions. The proposed constitutional amendment will now be read for the third time, as amended.

Mr. Cochran — Mr. President, I would suggest that the word "navy," after the word "army," is a grammatical error. It should read "army and navy."

The President — If no delegate objects, that correction may be made, and the Secretary will read the proposed constitutional amendment through for the third time.

The Secretary read the proposed constitutional amendment as finally amended.

The President — This amendment having now been correctly read a third time, the final vote upon its passage will be taken. The Secretary will call the roll and those in favor will vote aye, and those opposed, no.

The Secretary proceeded to call the roll.

Mr. Abbott — Mr. President, I desire to explain my vote. I thoroughly believe in merit and fitness as applied to our civil officers whether elective or appointive. Notwithstanding that, I am opposed to this proposition, first, because I believe it to be purely legislative; second, "so far as practicable," I believe does not mean anything. "So far as practicable by examination, which so far as practicable shall be competitive," means nothing but manipulation in political boards. I believe further, while agreeing with Mr. Tibbetts, that we owe a limitless debt to the soldiers and sailors of the late war, that we cannot afford to disgrace the State by paying them in depreciated currency, and that we owe the same duty to them, as far as merit and fitness are concerned, that we owe to any citizen. I vote no.

Mr. Ackerly — Mr. President, I desire to explain my vote. I am in favor of this last clause in regard to soldiers, as now adopted, and I am in favor of civil service reform generally, but I do not like the wording of the first part of this section. I think it will do more harm than good. For that reason I am constrained to vote against it, and I vote no.

Mr. Bowers — Mr. President, I desire to explain my vote. For the first time since I have had the pleasure of considering with this Convention any proposed amendment that in form applied to the whole State, I have, to-day, the privilege of voting for such an amendment applying fairly and equally to all portions of the State. Every other amendment that has been pressed to the front that applied generally to the State was carefully worded so as to restrict the cities and put them, as was frequently stated, under tribute and under the control of the country, and has freed the country district from that supervision of the Legislature which ordinarily and properly should attach thereto. It was the intent evidently of the majority to pass this measure in the same way, but, owing to the strange surroundings which existed in the Convention this morning, some of the majority voted for the amendment offered by Mr. Nicoll, whereby the soldiers and sailors in the villages shall be given the same preference as is given to the soldiers and sailors in the cities. I have not heard it stated before to-day, that the cities were set apart for the soldiers. Possibly they do most of all that work as they do all other good work. But having now reached a point in which these quartermasters and surveyor-generals and those other country officials who went out in the last war, where they are equally protected, it affords me great pleasure to vote for this proposed amendment. I vote aye.

Mr. Countryman — Mr. President, in explaining my vote, I wish to say that I am a Republican, having voted and having given my first vote for the first Republican ticket that was ever elected or voted for in this State. But I declared my independence more than twenty years ago, and have acted independently of that or any other political organization ever since. I am also a Democrat, having been elected on the Democratic ticket as a member of this Convention, but with a distinct understanding that I came here to act independently upon all propositions coming before this Convention, and to give my vote on all questions without reference to its effect upon partisan interests or considerations. I am also a Mugwump, and have acted with that organization for many years, so far as it is organized, and expect to act with it in the future. I hope, Mr. President, that I am not an office-seeker bidding for votes here or elsewhere. Acting with any organization, I hope I am not a demagogue. I came here without wearing any collar, whether that collar is made by "papa," or is made by any political organization which "papa" directs or controls. I am not here for the purpose of keeping a list of members and giving them "the tip," and reporting them to "papa" as delinquents if they do not act as his party organization wants them to. I should be ashamed of myself if I occupied any such position on this floor.

Now, sir, I have some acquaintance with soldiers. I have very personal relations with some of them, as well as professional. I happen to have some very close relations with some of the soldiers who won very high distinction on the field, and who have since been recognized in very important positions in this State; men who were promoted to high positions because they were citizens of character and competent to fill those positions and competent to hold them, and not simply because they served in the army and have no merit of fitness. Now, I vote against this proposition, because I think it involves a principle, because I think it is wrong and sets a precedent for the future. I admit that in some respects it has been modified so as not to embrace all soldiers, who have heretofore or may hereafter serve in the army, but you are setting a precedent for the future and you are engrafting into the Constitution a provision which is utterly at war with the principles of a Constitution. I vote no.

Mr. Crosby — Mr. President, I desire to explain my vote. I am opposed, sir, to the doctrine of civil service reform, so-called. It is contrary to the principles of our government. Under our system of government every man is a sovereign. Every place in

the nation is open to all who fit themselves for such position. The abolishment of the laws of primogeniture and entail has made it impossible for the first born of families to provide places in the army, the navy and civil service for the other members of the family. Under our laws the male members of a family, young or old, are on the same footing. Such legislation has a tendency to create an official class like office holding in the army and navy. Men become time-servers and wait for those higher in rank to die or become disabled. There will be no places open for the active, energetic, uncompromising, intelligent American citizens, and when they shall be crowded out, when there is no opportunity for them by their fitness to command and secure positions, they will lose interest in the affairs of government. When that time comes, when the public cease to be vigilant, dishonesty and incapacity will develop in the public service, and there will be danger to our institutions. I am opposed to this legislation upon another ground. It is absolutely impossible to enforce it, and to hold a party responsible for the management of the affairs of government. Under our system of government the majority rules, and, if the party in power cannot control the appointees, if it cannot regulate the management of the affairs of the government, it cannot be held responsible for the conduct of the government.

I am opposed to it, because, if made applicable to every town, city and village, it will be impossible for the head of a department, for the chief in an office, to control the business of the office. If a man is competent and peculiarly fitted to discharge the duties of any position in any department, he can be retained under the laws as they are, but, if we adopt this and compel the Legislature to apply this legislation to the minor offices of cities, towns and villages, a public officer cannot manage his own department, and cannot be held responsible by the party who elected or appointed him. I am ready to take care of the old soldier, but he can be taken care of without this proposed amendment. It is legislation. It is the province of the Legislature, and not for this Constitutional Convention to regulate.

The President — Mr. Crosby's time is up. How does he vote?

Mr. Crosby — I vote no.

Mr. Dickey — Mr. President, I had great doubts as to how I should vote upon this question, but after the only Mugwump in the Convention voted no upon this question, I vote aye. (Laughter.)

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

Belonging, as I do, to the Democratic party, and being disposed to vote upon this measure, I desire to declare that I am not so voting because I am a Democrat, nor is it owing to the fact that I am a member of the Tammany organization of the city of New York; nor is it owing to the fact that occasionally there is a consultation between the members of that organization, which Mr. Countryman referred to but a moment ago. I am swayed by my readings in the last few years, and believe that in every measure coming up in any assemblage, be it the Assembly of the State of New York, or the Senate of the State of New York, or the Constitutional Convention of the State of New York, or in the House of Congress of the United States, there is a decided disposition on the part of the Democratic party and of the Republican party to harmonize and to do all that can be done for the veterans in the late war. For that reason, Mr. President, being desirous of voting upon this question, and for the reasons as stated, I vote, not because I am a member of the Democratic party or of the Republican party, but being an admirer of the services rendered by the soldiers of the late war, and, believing that this measure benefits them, I vote aye.

Mr. A. H. Green — Mr. President, the provision that has been made for the Union soldiers and sailors seems to be quite satisfactory, but the first part of this section is quite incomprehensible to me in its probable workings. If it means that there is to be competitive examination by a board of commissioners or examiners, as we have had, if it means the machine civil service which we have had and which seems to have operated as a mere fraud and humbug, I am opposed to that civil service method; but, if it means merit and fitness to be applied by the head of a department to his subordinate, then I should favor the amendment. But it seems to be very indefinite as to what it means (perhaps I might say that you can indulge in either construction, but it doesn't seem to be very definite); I am opposed to establishing in the community any class who are exempt from the casualties of life, and who have nothing to do but do their duty in their way and receive their pay. I am opposed to having any class in the community in that way. I vote against it. I vote no.

Mr. Hawley — Mr. President, I am not at all discontented with the phraseology in which the last sentence of this proposed amendment has now been put; but the whole matter is purely legislative matter, and the first sentence of this proposed amendment is nothing but a collocation of words with which any adroit politician can juggle as he chooses. It affords no protection whatever

to the cause of civil service reform. It is an open door to every kind of fraud upon civil service reform which anybody desires to practice. Examinations are to be, "so far as practicable," and fitness and merit are to be considered, "so far as practicable." Of what force and effect in the purification or elevation of the civil service is any such form of words as that? This provision is infinitely inferior to the safeguards of the present statutes of the State. It shows that the question had better be left to the Legislature than to this Convention. I vote no.

Mr. Holcomb — Mr. President, I would like to explain my vote. It seemed to me, as I read the first few lines of this proposed article, that there should be some safeguarding in respect to appointees or promotions to fiduciary or confidential places. I have been minded to make a suggestion in that behalf, but I think, differing with Mr. Hawley, that the words "so far as practicable" would leave the Legislature to take care of such places. It is evident that fiduciary and confidential positions should be exempted. I, as a Democrat, believe my party did everything that could be done during the war to preserve the Union. I am perfectly content with the record of the Democratic party during the war. Especially am I proud of the record made by the Democratic party in the city of New York and the organization which I, in part, have the honor to represent, during the war. Nothing can be done which can be considered too much for the soldiers. Nothing that can be done will ever reward them for the suffering and privation they underwent in the war between the States. I do not consider that they come here themselves, asking that they shall be exempt from the provisions of the civil service, or that they shall be foisted into office because they may have had some connection either with the naval or military service in the war. But, notwithstanding, they are entitled to the preference, in accordance with the suggestion made by Mr. Cochran and passed by the Convention, and because I consider the words "so far as practicable" cover and sufficiently safeguard the suggestion which occurred to my mind in respect to the fiduciary and confidential positions, and because I think the soldiers are entitled to exemption, I vote aye.

Mr. Lincoln — Mr. President, I am a member of the Select Committee on Civil Service, and believe generally in some of the principles of the so-called civil service reform. I listened very attentively to gentlemen before our committee, representing the Civil Service Association of the State, and came to the conclusion that the amendment which that association preferred would be a

safe provision to put into our Constitution. That provision is not before us, and I am opposed to this proposed amendment as it stands, especially with the additions made by the amendment suggested by the gentleman from New York (Mr. Nicoll).

I am astonished that so many members of the Convention have already voted in favor of it. It seems to me utterly absurd and indefensible to undertake to put into the Constitution this proposed amendment in the shape that it is now. I have nothing to say in regard to the old soldiers, because I am as friendly to them as anybody. It is on other grounds that I oppose the entire amendment. This amendment, as it reads, is imperative. It compels promotion and appointment in accordance with the rules laid down in this amendment, and simply imposes on the Legislature the duty of providing the machinery for carrying it out. Now, that means that you must have a civil service commission in every subdivision of the State, even in the highway districts where pathmasters or overseers of highways are appointed by the highway commission. There must be a civil service commission in every school district. There must be a civil service commission in every town, because there are certain town officers under the law, as it is now, who are appointed instead of elected. Then, again, suppose a vacancy occurs in one of the higher offices; for instance, in the Supreme Court, by the election of a Supreme Court judge to the Court of Appeals. Some person is appointed to fill that vacancy. Does it belong to the civil service or the State? Is the judiciary a part of the civil service of the State? Then, again, what means shall be devised to determine the fitness of an appointee to fill the vacancy on the Supreme Court bench when a Supreme Court justice has been elected to the Court of Appeals, or the judgeship becomes vacant by death or resignation? I say this is too sweeping. It goes too far. I am opposed to putting it in our Constitution. I vote no.

Mr. Maybee — Mr. President, I desire to explain my vote. The only proper place for this kind of civil service reform is in party platforms, which are made, "not to stand on, but to get in on." I vote no.

Mr. McClure — Mr. President, I rise to explain my vote, mainly because it appears in the suggestion made by Mr. Lincoln, and which has caused a great many to vote against this proposition, and I thought a suggestion from me might help to turn the tide. It seems to be so objectionable to many of our country friends because it is just and fair, and a great many suggestions are made. The men who hold these local offices might be subjected to a great

deal of trouble, but the trouble which will come to the officers in cities is of no account. I am not generally in favor of civil service reform when they give questions on ancient history to plumbers, but I want to emphasize and have placed in italics what has been brought out in this debate. It appears as a fact that the Democratic party alone of the two great parties elected a man to this Convention upon the distinct understanding that he was to act independently in this body, something that the party is entitled to glory in. I want to have it marked in letters of living light in the records of this Convention, and that the man so elected in this Convention had the courage to vote independently here and was not called to account by any caucus for so doing.

Mr. McIntyre — Mr. President, I do not think we need this amendment in the Constitution. You have on the statute books now a law in relation to civil service, and also in relation to the soldiers. You cannot have soldiers much longer, and I do not think we had better put them in the Constitution. I think it is better to leave this entirely out, and, therefore, I vote no.

Mr. McKinstry — Mr. President, I do not believe with my colleagues, Mr. Lincoln and Mr. McIntyre. I believe this amendment is necessary, since this Convention has already adopted an amendment that our village poundkeeper cannot take a free ride on a railroad, under penalty of a criminal prosecution, and I believe he should be immediately examined in regard to his moral and literary qualities, unless he be caught riding on a free pass, and thus disgrace our village. I vote aye.

Mr. Mereness — Mr. President, I desire to briefly explain my vote. I think the only standard for holding public office should be the old standard: is he competent, is he able, and is he honest? In addition to that, I live in a county where all the offices, commencing with the county judge and surrogate down to the minor offices, are held by veterans of the late war; in fact, every office in our county. Whenever a veteran has presented himself as a candidate, he has always received the nomination at the hands of the party to which I belong, and has been elected. I wish to say that I am in entire sympathy with that election.

I will add further, personally, that I have a brother sleeping in the South lands, killed by the guerrillas, and another we have never heard from, and a third one who is home with an honorable discharge. Notwithstanding that, I regard this as purely administrative and legislative. And further than that, I regard it as the veriest buncombe, and for that reason I vote against it. I vote no.

Mr. Nicoll — Mr. President, I would like to say a few words in explaining my vote, on account of the remarks made by Mr. Lincoln. It is very evident now that this salutary measure is about to be defeated by the votes of the majority of this Convention. The record of the roll-call down to my name in the middle of it, shows that for some reason or other they have changed front upon this measure, and are about to stab civil service reform and the cause of the old soldier to the heart. Now, Mr. President, as this matter stands now, it, undoubtedly, does express, or is supposed to express in the Constitution of the State, what I believe all good citizens desire, and that is, some method of appointment to office by ascertained merit and fitness, and it also provides that upon the roll of application the honorably discharged soldier and sailor shall have preference, for reasons I sympathize with. That being the situation, I arose and proposed an amendment to the amendment, and the proposition introduced by the committee, simply extending the wholesome and salutary provisions of this proposition to the towns and villages of this State, and, lo and behold, as soon as I do that, every man from a town or village gets up and votes against it; that is, we are willing that you should have civil service reform in the cities and that your appointments should be made on the ground of merit and fitness ascertained by examination, and that we are there willing that soldiers and sailors shall have preference, but if you touch our towns and villages or dare to apply that principle to us, we will vote you down, and that, I regret to say, is going to be the fate of this amendment. I regret, Mr. President, that I offered my amendment. If I could withdraw it now, I would withdraw it, but I am bound by it. Without it, I believe this measure would have passed and we would have got the benefit of it in the cities.

The President — How does Mr. Nicoll vote?

Mr. Nicoll — I vote aye.

Mr. O'Brien — Mr. President, I came here prepared to vote for a good straightforward declaration of fitness and merit, in appointment to public office, but this measure has been so kicked and buffeted about upon this floor that, notwithstanding I commiserate with my Democratic friend at his loss, I vote no.

Mr. Root — Mr. President, I wish to explain my vote. I am in favor of this amendment because I believe it puts into the Constitution a principle, one of the most salutary of recent advancements in government. I believe in regard to that principle just

what President Grant believed when, in his message to Congress in 1870, he recommended a provision for civil service reform, and said of civil service: "I would have it govern not the tenure but the manner of making all appointments." And said further: "The present system does not secure the best men and not even fit men for public office." I am not willing to stand, and I should regret to see my associates stand, upon any lower ground than that best and warmest of friends occupied twenty-four years ago. I believe, sir, that this principle ought to be incorporated in the Constitution because it is right, and because I do not regard the words of party platforms as being mere buncombe, to be disregarded at will. Whatever may be the practice of the gentlemen that have been amusing themselves by sneers to-day upon the other side of the chamber as to regard for their party platform, I believe, sir, in the civil service plank of the platforms to which I have given my adherence in years past, and shall vote accordingly to-day.

I think, sir, we should adopt this amendment for another and practical reason. As the matter stands to-day, the court of last resort has ruled that the principle of civil service cannot be applied to the important positions in the State Prisons and Public Works Department, and the effect of this amendment will be to extend this reform to State prisons and canals; and it will complete the adoption by this Convention of the recommendations of the Prison Commission, which were that by constitutional amendment the system of contract labor should be abolished and the State prisons be taken out of politics. For these reasons, Mr. President, I am for the amendment as it stands, and I vote aye.

Mr. Spencer — Mr. President, this proposition seems to have drawn to its favor from the clause inserted in reference to preference to be given to Union soldiers, and a vote against this proposition has been construed as a vote against the soldier. I do not so regard it. I am content with the preferences that have been given by existing law to the soldiers. And I suppose that each party, so far as partisanship is concerned, is willing to stand upon its record of what it has heretofore done for the soldiers, and the question of partisanship could have but little effect here upon this proposition. I am also favorably inclined toward civil service examination as helping certain departments of government, departments of the United States and State government where there are large number of appointees, and where the employments have some degree of permanency; but to apply it, as this proposition does, to every office in the State, whether it is a permanent one or not, to towns and villages where there are provisions now for such

examination, seems to me carrying a very laudable and proper reform to an absurd conclusion. Civil service examinations are proper in their proper place. We should not make them absurd and ridiculous by applying them to places where they have no just or proper application. I am also opposed to this proposition for the reason that I do not know what it means. I have sought diligently to understand its meaning, and it is beyond my comprehension, or, to speak more clearly, I do not understand just where and how it applies. I am content with the provisions of law as they exist, and if there is anything in the present Constitution in relation to canals and State prisons, it would have been very proper to have made the changes in the articles relating to those matters. I am sorry that that question comes up so late in the day, but in spite of the arguments that have been made in reference to this matter, I cannot bring myself to vote for a proposition of this character, and I, therefore, vote no.

Mr. A. B. Steele — Mr. President, hailing from the village rather than the city, I favor this amendment. I care not whether an important amendment has come from the minority or the majority. I believe the proposition is something that should extend throughout the whole State, and, therefore, I vote aye.

Mr. Storm — Mr. President, I somewhat regret that our distinguished friend, Mr. Root, has explained his vote for me, because I had concluded to vote no, and should vote no now notwithstanding his remarks; but after listening to the remarks of Mr. Nicoll, and in response to his remarks, and the high esteem in which I hold him as a friend and neighbor, I vote aye.

Mr. Tibbetts — Mr. President, the first thing I want to do is to correct my vote. I voted on Mr. Kimmey's name by mistake.

Now, on this proposition, speaking for the soldier and the friend of the soldier, I say we take no pride in this proposition. We shall lay up nothing against this Constitutional Convention, and it will not lose a vote if we defeat it. We are satisfied as matters are.

Mr. Nicoll — What?

Mr. Tibbetts — We are satisfied as matters now are. With the amendment which Mr. Nicoll has added to it, I feel that it has been so loaded down and so complicated the machinery for appointments in this State that you have gone too far. There is a good deal of good about it, more good than evil. I suppose, in doubt as I am, I must vote aye.

Mr. Vedder — Mr. President, I ask to be excused from voting and will briefly state my reasons. It was sublime to see Mr.

McClure from New York attempt to stop the tide, as he called it, against this bill, or if I may be allowed to borrow again from Mr. Jenks, he took the place of that Danish King Canute, and said to the waves: "Thus far thou shalt come and no further." He has also found some use for a Mugwump, because he said he desired to stop this tide by appealing to the only Mugwump in this Convention. It is the only use I have ever seen found for a Mugwump, to wit, to dam the rising tide, and for such purpose it is the best dam material I know of, for a Mugwump will damn anything. Mr. McClure is to be congratulated upon his discovery.

Mr. President, if this amendment simply ordained that there should be civil service in the State, I should vote for it, but it goes further and entrenches upon the domain of the Legislature, and says in what departments we shall have civil service in the State. So far as the old soldiers is concerned (and I am one of them), I am content and satisfied as the law now is in reference to the civil service of the State, as Mr. Tibbetts has stated. We have a civil service law in this State. It was experimental, and is experimental still, and to engraft upon the Constitution that we shall have it in every town and village of the State is impracticable, and I am against it. There has to be a great deal done to make this civil service law practicable. Under the manipulations of the senior Senator of this State it was made to suit partisan ends, and generally to defeat justice. We must have something better than that. Now, let this tentative law that we have upon the statute books remain as it is, and not fix upon the people of this State this impracticable provision which will last for twenty years. If the gentleman from New York (Mr. Nicoll) had desired to defeat this measure and all our work before the people (I do not know that he had), he builded much better than he knew when he had this amendment incorporated into the proposed constitutional amendment to-day. That will be the effect of it, whether he intended it or not. I withdraw my request to be excused from voting, and vote no.

Mr. Becker — Mr. President, this caps the climax, if this amendment is defeated. You allow the gentleman to come in here with his nickel-plated cheek and load it down with material which he comes forward again and tells you has very wide and far-reaching application, and you lose sight entirely of the fact that the words "so far as practicable" are in your amendment by which we have, put it in the power of the Legislature to do as they see fit, to extend as far as they see fit. I believe patronage is the curse of political parties in this State. I want to see this civil service law extended

so far as practicable, even to the towns and villages. For that reason I am in favor of the first principle.

As to the second principle, in regard to soldiers and sailors, it is the principle which every decent man pursues in his own business, no more nor no less. If I have a number of men come to me in my business and they are all competent, and one of them is a soldier, he is the one that is going to get the job. (Applause.) That is the principle which is in this amendment. It does not go as far as the provision that was introduced that they shall be preferred above all others, no matter whether they are competent or not. I hope this bill will pass. I do not see any trouble about it or any reference to poundmasters or judges. The Legislature will say how far it is practicable, and I think that Mr. Nicoll, in his effort to ball up this Convention, has got himself balled up.

Cries of "vote," "vote."

Mr. Becker — I vote, unhesitatingly, aye.

Mr. Cornwell — Mr. President, I certainly believe it would have been the part of wisdom on this side of the House to have stood by the traditions of the Republican party and voted as a unit for this measure. Without doubt, it could have been improved, especially in applying its provisions to villages and towns, which should not have been done; still, on account of the second section, which is in the interest of the Union soldier, we cannot afford, as Republicans, to go back on the record of the party, which has stood, under one and all circumstances, as the friend, not only of the Union, but also of its defenders.

I am in favor of civil service, so-called, and also in favor of almost any honorable proposition favoring the Union soldier. I consider this proposition in that line, and sincerely hope it will prevail. I vote aye.

Mr. Davies — Mr. President, I think there is a good deal of rot in this proposition. I think it is too broad and far-reaching in its effect. Notwithstanding, there are some features about it which strike me favorably, especially that feature regarding honorably discharged Union soldiers, and on that account, and on that account alone, I vote aye.

Mr. Lauterbach — Mr. President, I desire to explain my vote. When Mr. Nicoll announced last night that owing to the glorious home rule bill as passed he intended to change his residence from New York to some place in Suffolk county, it was natural enough to suppose that, with his intellect and ability sweeping down upon some village on Long Island, he would usurp all the offices in the

place at once. I think that he introduced this amendment simply on account of his modesty, so that before taking possession of the offices an examination could be had into his mental capacity. In behalf of regularity and order in the appointment of State prison officials and others, as to which our attention was called during the process of the investigation by the charities committee, I think it would be a serious error on the part of this Convention if, owing to any flippant spirit in which the matter has been considered, or on account of some local interest that might be prejudiced, we should go to the people from this Convention, while our party has announced itself in favor of civil service reform, admitting that, upon a trivial excuse that was presented, we voted it down. I, therefore, vote aye.

Mr. Putnam — Mr. President, I desire to explain my vote. The provision, as presented, does not meet my entire approval. Nevertheless, I believe that the question of what shall be practicable can be safely left to the Legislature. I think that the gentlemen from the rural districts, who fear that their pathmasters or their roadmasters shall have to pass a civil service examination if this proposition shall pass, err in their judgment of what the Legislature may deem practicable. The one great benefit that will be derived from the passage of this bill will be that it will prevent an unfriendly Legislature from repealing the present laws. I, therefore, vote aye.

Mr. Kellogg — Mr. President, inasmuch as I expect a hod-carrier in my office will want to take a civil service examination, and I come from a hayseed country, I change my vote from the negative to the affirmative.

Mr. Powell — Mr. President, my vote was cast in the negative under a misapprehension, and I desire to change it to the affirmative.

Mr. Porter — Mr. President, I desire to change my vote to the affirmative.

The President — This constitutional amendment, having received a majority of all the votes of the members elected to this Convention, is duly passed.

The vote in detail is as follows:

Ayes — Messrs. Acker, Arnold, Baker, Banks, Barhite, Barnum, Becker, Bigelow, Blake, Bowers, Brown, E. A., Brown, E. R., Burr, Cady, Campbell, Carter, Clark, G. W., Coleman, Cookinham, Cornwell, Davenport, Davies, Deady, Deyo, Dickey, Doty, Durfee,

Fitzgerald, Floyd, Foote, Francis, Frank, Augustus, Fraser, Fuller, C. A., Galinger, Gibney, Gilbert, Gilleran, Goeller, Goodelle, Green, J. I., Hamlin, Hedges, Herzberg, Hill, Hirschberg, Holcomb, Holls, Hotchkiss, Hottenroth, Jenks, Johnson, I. Sam, Kellogg, Kinkel, Kurth, Lauterbach, Lewis, M. E., Marks, Marshall, McClure, McKinstry, McLaughlin, J. W., McMillan, Meyenborg, Morton, Mulqueen, Nichols, Nicoll, Nostrand, Ohmeis, Parker, Parmenter, Platzek, Porter, Powell, Putnam, Roche, Rogers, Root, Schumaker, Smith, Springweiler, Steele, A. B., Steele, W. H., Storm, Sullivan, W., Tekulsky, Tibbetts, Titus, Truax, C. H., Truax, C. S., Veeder, Wellington, Whitmyer, Williams, Woodward, President — 97.

Noes — Messrs. Abbott, Ackerly, Alvord, Barrow, Cassidy, Chipp, Jr., Church, Cochran, Countryman, Crosby, Danforth, Dean, Deterling, Durnin, Emmet, Faber, Farrell, Frank, Andrew, Fuller, O. A., Green, A. H., Hawley, Hecker, Jacobs, Johnson, J., Lester, Lewis, C. H., Lincoln, Lyon, Manley, Mantanye, Maybee, McArthur, McCurdy, McDonough, McIntyre, McLaughlin, C. B., Mereness, Moore, O'Brien, Parkhurst, Pashley, Peabody, Peck, Phipps, Pool, Sandford, Spencer, Sullivan, T. A., Towns, Tucker, Turner, Vedder, Vogt, Wiggins — 56.

The President — The next amendment in order is third reading, No. 29, printed No. 417. The Secretary will read the title.

The Secretary read the title as follows (O., I. No. 327, P. No. 417):

"Proposed constitutional amendment to amend section 7 of article 1 of the Constitution, so as to include therein the right to construct and maintain the necessary drains and ditches for agricultural purposes across the lands of others."

Mr. E. R. Brown — Mr. President, at the time this matter was in Committee of the Whole I made a simple amendment by which dikes, as well as ditches and drains, be included in this amendment, It commended itself to the committee that reported it and to other gentlemen interested in agricultural affairs who considered it. Other amendments were offered at the same time, and it became so clogged with foreign matter that I withdrew my amendment. I do not offer it now with the purpose of awakening debate, because I do not think it should take up the time of the Convention, but I make the motion to recommit it with instructions to report forthwith as follows.

The President — Mr. Brown will send his amendment to the desk. The Secretary will read.

The Secretary read Mr. Brown's amendment as follows:

In place of lines 3, 4, 5, 6 and 7, insert as follows: "General laws may be passed permitting the owners or occupants of agricultural lands to construct and maintain for the drainage thereof necessary drains, ditches and dikes on the lands of others under proper restrictions and with just compensation, but no special law shall be enacted for such purpose.

Mr. A. H. Green — Mr. President, I desire to offer an amendment.

The President — The Secretary will read Mr. Green's amendment.

The Secretary read Mr. Green's amendment, as follows:

Strike out the words "as shall be prescribed by law," and insert the words "or by a jury at the option of the person whose property is taken, which compensation, together with the expenses of the proceedings, shall be paid before the property is taken."

Mr. Brown — Mr. President, I accept that as part of my motion to recommit. It is a proper precaution in the interest of those whose property is to be taken.

The President — The amendment of Mr. Green is accepted by Mr. Brown.

Mr. Brown — Mr. President, there seems to be a misunderstanding in reference to the amendment proposed by Mr. Green. Mr. Green's amendment places the right to take lands for the purposes of drains, ditches and dikes upon the same basis that it is now placed in regard to private roads, and it has no reference to anything outside of ditches, drains and dikes, and it is, therefore, not objectionable.

Mr. Schumaker — The law is so at the present time. You cannot take a foot of land in the country unless you pay for it. It is so now.

Mr. Brown — Mr. President, I withdraw my consent to accept Mr. Green's amendment, as I find it is not acceptable to the large majority of the members here who are in favor of this proposed constitutional amendment.

Mr. Hottenroth — Mr. President, I think Mr. Brown will accept my amendment, which is to insert in line 7, page 1, after the word "record," the words "at least one of whom shall be accepted by the property owner."

Mr. President, it seems to me that in cases of condemnation for drains or private roads, or in any case where a municipal corpora-

tion or any individual by a statutory provision obtains the right of eminent domain, that in any such case the owner should have the right to select at least one of the commissioners. That right has been exercised from time immemorial, but recently, in an enactment by the Legislature, probably by oversight, possibly not, that right, which was an existing right, was omitted, and the right was given to a corporation to select all three, or at least the court to select all three without the right of petition on the part of the property owner. Now, he might not exercise that right, but, at least, we should give it to him, so that in case an opportunity should be desired, it could be had by such property owner. I think, also, Mr. Chairman, this might be amended to advantage by providing that wherever these drains are to be built or property taken, payment should be first made by those who desire to obtain it. Now, there may be cases where this is inadvisable, or at least impracticable. In such case, it seems to me, that the court having jurisdiction of the proceedings should determine the advisability of requiring payment in advance. Some provision should be made to restrict the indiscriminate taking away of a man's property without compensation therefor, to be paid within a reasonable time.

The President — The Secretary will read Mr. Hottenroth's amendment to the amendment of Mr. Brown.

The Secretary read Mr. Hottenroth's amendment, as follows:

Add the following paragraph: "When private property shall be taken for public use for the construction of drains, the compensation and damages shall be first paid, unless the court having jurisdiction of the proceedings shall, upon a hearing of the persons interested, deem immediate acquisition necessary. If the necessity is established to the satisfaction of the court, it shall thereupon grant to the owner such immediate or partial relief as justice requires. Notice of all proceedings shall be given to the owners in the manner prescribed for the service of process in the Supreme Court of this State."

Mr. Parker — Mr. President, I firmly insist that I shall be heard upon this proposition. I did not ask it before, but I do ask it now in view of what happened in Committee of the Whole when this proposed amendment was under consideration. I do now ask, in the interest of the farmers of this State, to be heard with reference to this proposition. When it was before the Committee of the Whole, several gentlemen undertook to kill it entirely by adding amendments that wholly destroyed its usefulness, as applied to the

farmers, and destroyed its meaning and application in every instance. What I shall say will be in respect to the amendment as I offered it, the amendment which was reported unanimously favorably from the committee to which it was referred, and which was reported from the Committee of the Whole and ordered to a third reading. As I have always been very considerate of the time at the disposal of this Convention, and as that time has now become more limited and precious than ever before, I will only add a very few words to what I have already said regarding the merits of this proposed amendment.

I conceive there is no subject upon which this Convention has taken action of more practical importance, one which concerns and favorably affects the interests of a greater number of our rural citizens, than this proposition. The progressive farmers of this State have long labored under the disadvantage entailed by the deficiency in the present Constitution. It may possibly be said that no man would object to having his farm under-drained, or surface ditched at the expense of his neighbor, but, in fact, such is the perversity of human nature that in many instances, altogether too numerous, various persons do so object, and, by so doing, cause serious delays, and oft-times an utter failure of the desire and efforts of the enterprising farmer to properly improve his land. In many other instances the selfish land-owner, knowing his advantage, will make the most of the situation, by demanding damages altogether out of proportion to what could by any possibility be deemed equitable.

Now, it is to meet just such cases, and to allow the exercise of that right, under proper regulations, with just compensation in all instances, that this amendment is asked for by the earnest and progressive farmers of this State, and I do hope, and I appeal to the delegates here, not to lose sight of the merits of the original proposition, whatever may be the merits of the amendments proposed to it. I ask for it now, and the farmers of this State want nothing more or less. I happen to know something of what the farmers want, having been a farmer all my life and I am a practical farmer to-day.

Mr. Mulqueen — Mr. President, I desire simply to say one or two words in opposition to the amendment proposed by Mr. Green. Mr. Green's amendment is to the effect that no private property shall be taken until compensation is paid to the owner. Now, under that, it would prohibit the authorities of the city of New York from improving the northern part of the city ——

The President — Mr. Mulqueen will continue his remarks after recess. The hour of one o'clock having arrived, the Convention will stand in recess until three o'clock.

AFTERNOON SESSION.

Friday Afternoon, September 21, 1894.

The Constitutional Convention of the State of New York met pursuant to recess in the Capitol, Friday, September 21, at 3 P. M.

Vice-President Steele in the chair.

The President *pro tempore* — Mr. Mulqueen has the floor.

Mr. Mulqueen — Mr. President, I will yield the floor for a moment to Mr. Deady, who wishes to offer a resolution.

Mr. Deady — Mr. President, Mr. Mulqueen is willing to yield the floor to me for the purpose of allowing me to offer a resolution.

The President *pro tempore* — The Chair must hold that a resolution cannot be entertained until this business is disposed of.

Mr. Deady — Mr. President, I ask for a roll-call in order to ascertain if a quorum is present.

The President *pro tempore* — The Secretary will call the roll.

The Secretary called the roll, and the following delegates answered to their names:

Messrs. Abbott, Acker, Ackerly, Arnold, Baker, Banks, Bigelow, Blake, Bowers, Burr, Bush, Campbell, Carter, Chipp, Jr., Church, Cochran, Coleman, Cookinham, Countryman, Davenport, Davis, Deady, Deyo, Dickey, Doty, Durnin, Emmet, Faber, Farrell, Floyd, Foote, Forbes, Francis, Frank, Andrew, Fuller, C. A., Fuller, O. A., Galinger, Gilbert, Gilleran, Goeller, Goodelle, Green, A. H., Hamlin, Hawley, Hecker, Hedges, Hill, Hirschberg, Hottenroth, Johnson, I. Sam, Kimmey, Lewis, C. H., Lincoln, Marks, Marshall, Maybee, McClure, McCurdy, McIntyre, McKinstry, McMillan, Mereness, Moore, Morton, Mulqueen, Nichols, Nicoll, Nostrand, O'Brien, Ohmeis, Parker, Parkhurst, Parmenter, Peabody, Peck, Platzek, Pool, Porter, Redman, Roche, Rogers, Root, Sandford, Schumaker, Spencer, Springweiler, Steele, A. B., Steele, W. H., Storm, Sullivan, T. A., Tekulsky, Titus, Truax, C. H., Tucker, Turner, Vedder, Veeder, Vogt, Wellington, Whitmyer, Wiggins, Williams, President.

The President *pro tempore* — Mr. Mulqueen may now proceed.

Mr. Mulqueen — Mr. President, if the proposed amendments to this measure are adopted, they will, in my judgment, seriously retard the growth of the annexed district in the city of New York. The owners of property would have a right to demand a jury trial, and the city would not have the right to take property until compensation had first been made to the owner. Now, sir, within the next year there will be opened in the annexed district of the city of New York at least one hundred and fifty new streets, each two miles in length, and if you allow only one hundred owners to each street, you would have nearly fifteen thousand owners; but it would be a safe estimate to say that there are five hundred owners on a street two miles long. Now, gentlemen, just imagine going in court to try all those cases before a jury! Why, we would be obliged to have three or four more courts in the city. And then take the result of a jury trial. Suppose, if you please, that one jury should give to the owner of a piece of land, fifty by one hundred feet, one thousand dollars. Suppose the next jury should give to the adjoining owner of a similar piece of land three thousand dollars, and so on all the way along the street. Why, you would have confusion worse confounded. Besides, under the present law, the commissioners who are appointed to assess the damages are not bound by the evidence that is presented to them. They have the right, and it is their duty, to examine the property, and they generally do examine it more than once before coming to their conclusion. They go to men living in the locality and talk with them about the value of property there, and they consult real estate men. Imagine a jury of tradesmen, if you please, who live in the lower section of the city, and who have no knowledge of property in the annexed district, trying those cases. They cannot leave the jury-box and go and examine the property. They are bound by the evidence presented to them. The judge will be compelled to charge that they must not go outside of the record of the case in making up their conclusions. In respect to this amendment of Mr. Green I have this to say: first, however, stating that any amendment proposed by Mr. Green deserves consideration at the hands of this Convention. I know it is prompted by the best of motives, and I know he believes that, if adopted, it will benefit the people of the city of New York. But, sir, will it have that effect? To-day the law is, that when a city seeks to open a street it acquires title to that property ten days after the filing of the oaths of the commissioners. Of what benefit, you may ask, is that to the owner? I will tell you. We know from experience in the city of New York that just so soon as it is stated

that the city intends to condemn certain property, that property is under a cloud, and it cannot be sold in the open market to advantage, because no man will buy into a litigation. It cannot be leased, because no one can tell whether the commissioners will make their report in a month, or in a year, or in two years. Meanwhile, the owner must pay the taxes; he must pay the interest on the mortgage, if there is one, and he receives no income from his property. Under the present law, ten days after the filing of the oaths of the commissioners, the city acquires the title to the property, and from that day the owner receives six per cent interest on the amount that may be fixed by the commissioners as the value of his property. This interest runs, remember, not from the time the award is fixed, but from ten days after the filing of the commissioners' oaths of office. As to land upon which there are buildings, the title becomes vested in the city six months after the filing of the oaths of office, and the man's interest runs right along. I have known of cases in the city of New York where the city, in order to make necessary improvements, has decided to take certain buildings along a street so as to carry out those improvements, and at once that property became under a cloud; it could not be sold, and it could not be leased. The owner had to pay the taxes; he had to pay the interest on the mortgages, and he received no income from the property. Now, it was because of that evil that the present act under which condemnation proceedings are regulated in the city of New York was passed. Under the present act it is within the authority of the board of estimate and apportionment, as soon as an award is made, to decide that the owner shall receive his money. Under the amendment as proposed by Mr. Green, and also under the amendment of Mr. Hottenroth, these men could not get their money until the condemnation proceedings were at an end.

Mr. Marks — Mr. President, this section, as it is now proposed to amend it by the addition of a clause that the construction and maintenance of drains and ditches for agricultural purposes is a taking of property for public use, does not contain the principle stated in my proposed amendment, No. 49, in general orders. My amendment introduces no new principle into our Constitution, and it cannot be styled an untried experiment. It proposes only to extend to those proceedings for taking property by private corporations, for what is alleged to be a public use, one of the principles which lies at the very foundation of our government, that the right to a trial by jury shall be preserved, shall remain inviolate, and that no person shall be deprived of his property but by the

judgment of his peers. In the march of progress of this State, whereby corporations continue to increase, in view of the changed condition of affairs as compared to the year 1846, when this section was adopted, and the very many corporations which are now created by general laws, in view of their seizure and enjoyment of powers and privileges without right, and the schemes constantly devised by them to evade and violate the laws, I think we are justified in placing a stumbling block in their path, which, while it will have no disastrous effect upon the assistance which they render to the people in their onward march to greater improvements and greater prosperity, will have the effect of keeping private corporations in the path of rectitude so far as paying for property which they take is concerned. That amendment will have the effect of securing the rights of the people, and will place corporations on the same level and make them subject to the same laws for the ascertainment of damages which govern the people, and will have the effect of preventing corporations from circumventing their neighbors in these proceedings.

The objections thus far made are not such as can be considered sufficient for rejecting that proposed amendment. We are dealing with the rights and liberties of the people, and the objections made should not be permitted to stand in the way of giving to the people liberty, right and justice.

The objections made to the adoption of that amendment, that it might delay the building of the rapid transit road in New York city, and all other possible objections that can be urged, must be treated as trivial and insignificant, when we keep in view that well-recognized and well-established elementary proposition, that the right to a trial by jury is a substantial right affecting the individual, upon which he must rely for the protection of his property and the enjoyment of those other personal and property rights guaranteed to him by the Constitution. As to the possible disastrous effect of that amendment upon the building of the rapid transit road in New York, given as a reason by some delegates for refusing to support it, I will, in a few words, state my reasons for believing those objections to be utterly and entirely without the least foundation to support them.

The Rapid Transit Act, chapter 752, Laws of 1894, sections 40 and 47, gives the city the right to enter and take possession of the property along the proposed route before compensation is made. The amendment would not be retroactive and would not affect the said right acquired by the city under that act, to enter into possession of the property before compensation is made, and to ascertain

the compensation in the same manner provided by that act, and by the commissioners, as provided in section 45 of the act.

The act, section 60, gives the city the right to take property for the public use mentioned in the said act; namely, for the purposes of a rapid transit road, and my amendment expressly excepts all property taken for public use by all civil divisions of the State, and leaves the compensation to be made as the Constitution at present provides. The amendment makes no change as to the manner of ascertaining compensation when property is taken for public use by any city, town, county or village, so that all vested rights of the city of New York under that act, and all rights which might hereafter be given to the city by the Legislature as to acquiring property for such use at once, and to make compensation by commissioners afterward, cannot be affected by that proposed amendment.

The Evening Post, of New York, with which we may differ in politics, but whose able editorials command the respect of the community, on August 18, 1894, in speaking of what a Constitution ought to contain, says: "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. The right of trial by jury is a right affecting the individual. It is organic, and it is intended to be immutable as much so as that the United States shall guarantee to every State in this Union a republican form of government. Its abiding purpose is to guard the minority and the individual and to assure to all men a constitutional right and liberty which a transitory majority cannot evade."

As section 7 now exists it is no guarantee to the people of the State that they shall have a jury trial. Governor Russell, in his address to the Yale Law School, in June last, said: "Popular rights" (of which I claim a jury trial is one) "as against the ruling power can only be intrusted to established written guarantees." I feel that many delegates who do not support that amendment, upon calm and deliberate reflection, when this Convention is a thing of the past, when their votes are beyond recall and reconsideration, when the heat of debate and the excitement attending the close of our work, and the anxiety to finish our arduous labors has given place to calm, sober and deliberate reflection and deliberation, will feel that the reliable system of a jury trial should have been extended to these proceedings, and that the principle contained in my amendment, so firmly rooted and implanted in the hearts of the people, should have received their hearty approval.

Mr. E. R. Brown — Mr. President, I do not wish to take up the time of the Convention, but let us see the situation in relation to this amendment. The Committee on Preamble unanimously reported an amendment which would enable people to drain agricultural land. It came into Committee of the Whole, and it had to be ridden there with the amendment which Mr. Marks had introduced at the opening of this Convention, and which he has not failed to pursue every time any matter came before this Convention that would enable him to discuss it. I do not propose to discuss his amendment, but I do say that, in common fairness, having had his day in court, this matter ought to have its day in court, and that it ought not to be loaded down with a series of amendments which are not germane to what this Convention is now considering. I was mistaken in relation to the amendment of Mr. Green when I accepted it. It is not germane. It purports to make a change in the old Constitution. This amendment is intended to make no such change, but simply to provide for another case by additional language. It is also true of the amendment offered by Mr. Hottenroth, that it is an amendment to the old provisions of the Constitution which this amendment does not seek to touch, but because by accident this proposed amendment in relation to the drainage of agricultural lands is attached to the old provisions, in relation to the taking of private property and private roads, this occasion is seized upon to make another proposed amendment entirely foreign to the subject. I think this matter has been discussed enough. I think the amendments which have had their day in this Convention and have been rejected should be rejected again, and that the amendment which was offered by me, simply for the purpose of perfecting the measure which the committee intended to put before the Convention, should be adopted.

Mr. Marks — Mr. President, I offer this amendment.

The President *pro tempore* — The gentleman will send his amendment to the desk.

Mr. Hottenroth — Mr. President, in reply to the gentleman from Jefferson, I would say that this amendment and also the amendment proposed by Mr. Green, are germane. It is here intended to put into the Constitution a provision allowing condemnation proceedings in cases where they were never allowed before. If this Convention does pass upon that measure favorably, we ought to have added to it two additional safeguards to those people whose property it is proposed to take. In reply to the statement made by Mr. Mulqueen, as to the interference with the new streets in the

annexed district of New York, let us assume that a street two miles in length is to be opened, involving the taking of a thousand pieces of property. Is not a jury just as competent to pass upon the value of that property as three commissioners selected by the court? The plan that will be adopted in this place will not be one where there is a jury in respect to every particular piece of property that is taken, but some law will be devised to conform to the provisions of this Constitution, when it shall have been adopted. There has been a disposition on the part of many members of this Convention to provide against the taking of property without giving compensation, and that is practically what is done under the statutes of this State to-day. A man is deprived of his property, not within ten days, as the gentleman from New York has stated, but within thirty days, in case there are no buildings upon it, and in three months in case there are buildings upon it; he is deprived of the use of his property as soon as the municipality determines to come in and take possession. Now, that is an evil, and it works a great hardship upon the people who are able simply to have their own little home. The corporation steps in and takes the place from them, and they are thrust forth upon the street, with the promise that some day in the future the city will return to them adequate compensation. In answer to that, we have the statement made that the owner will get six per cent interest. Well, suppose he does. What good does it do him when he does get his compensation? I believe there are cases where a city or a corporation should have the right to enter upon and take possession of property. Public health might demand it. State policy might demand it. But we should fix upon some means of giving to those who are deprived of their property, something in lieu of it.

Mr. Peck — Mr. President, I have sent to the Secretary's desk an amendment which provides that the effect of this section shall be extended to the necessary use of lands for the construction and operation of works serving to retain, exclude or convey water for agricultural, mining, manufacturing or sanitary purposes, hereby declared to be a public use. In other words, it is to enable the Legislature to have control of this matter so that if the prospect of the present development of water power to the generating of electricity shall be realized this State can reap the benefit of it. It does not require a Legislature to do any such thing, but it puts it within the power of the Legislature to meet the very probable necessities of the future, because, as I have said before, the generation of electricity by the burning of coal as fuel is so expensive that

we will not be able to compete with other States that do allow of the development of water powers for that purpose. I think, therefore, it is a very just and proper power to grant to the Legislature, which they may exercise if it shall become what it promises to be. I am sure that this amendment ought to be engrafted in the Constitution. The Legislature ought, in this end of the nineteenth century, to have that power, at least.

Mr. Schumaker — Mr. President, for two months this summer, Mr. Green, Mr. Hottenroth and Mr. Marks, in the Committee on Preamble and Bill of Rights, were after the various amendments which they have introduced into this Convention in this innocent little bill of Mr. Parker's relative to the drainage of farm lands, mostly called for in the county of Jefferson. Now, sir, this Constitutional Convention has nothing to do with the laying out of streets and boulevards and parks. It is not thrusting at New York or at Brooklyn — the two targets which have been used here in this Convention all summer long; but it is all over the State, in every town and village of the State; and the cry has been, in our committee, that they want a jury to fix the compensation in these cases. Why, the Erie canal and the adjacent canals would never have been built, and many of the great State improvements never would have been made if the Constitutional Convention away back in 1821 had not abandoned the system of having juries entirely, and simply took commissions appointed by the courts. What is the law now? A great many men in this Convention have come to me and to my friend, Mr. Mulqueen, and asked us to explain to them the process of laying out a street. Why, a street is petitioned for in a certain locality by the property owners. They petition to the municipal authorities in the city, the common council. The common council hear them, and they consider the petition in committee of the whole sometimes, and sometimes the committee of the whole does not report favorably, and then they dismiss the petition, and sometimes they do report favorably, and then the petitioners apply to the court for the appointment of commissioners. In Brooklyn, the General Term of the Supreme Court appoints the commissioners. Then the commissioners take into consideration what the damage is that will be done to the property through which the street or boulevard runs, or wherein the park is located, and they lay an assessment, by direction of the Common Council, for the payment of these awards for damages, whatever they may be, and they also lay out a district in which the city shall pay for certain damages done to the property through which the street passes. Now, all that takes some time. The city of Brooklyn gives its credit to it, but

the money for the improvement has to come from the assessment district, and usually the city issues what is called assessment bonds, to pay the people along the line of the street or the boulevard or the park, and the city has the right of inspection of every piece of property. There is no such thing as poor families being ejected immediately into the cold. In the city of Brooklyn I know property that was condemned where the people lived on it right along for years and paid no rent. There are isolated cases of that sort, and there are, I suppose, isolated cases of damage done to the furniture in people's houses where they did not move and did not choose to be law-abiding. I must say that there is not a single improvement in the State that the amendment of Mr. Green would not block. There is not a boulevard or a park in the State that would ever have been built if it had had to wait to be adjudged upon by a jury. Why, there would be hundreds of jury cases on the docket, and there would be great delay, and sometimes a juror would be taken sick, and then the whole thing would have to be tried over again. Besides, there is no report to the court on the matter, as there is in the case of commissioners. They report to the court, and then the lawyers argue, and if there is any disagreement which is to the injury of the owner, the court assigns a new commission for the purpose of trying it again.

Mr. McMillan — I sincerely hope that this Convention will not load down this proposition as it did the civil service amendment this morning. It is a simple, plain one, to afford facilities by which the people in agricultural districts can get rid of their surface water. It has not anything to do with storing water for electrical purposes. It has not anything to do with the Manhattan railway cases in the city of New York. It has not anything to do with reference to the laying out of streets in the annexed district of New York, and it ought not to be loaded down with these extraneous matters, and I hope that every one of these proposed amendments will be beaten.

Mr. Foote — Mr. President, I desire to call attention to what I suppose to be a printer's error in this bill, third reading number 29, consisting of the omission of the word "first" before the word "determine," in line 10. In the Constitution, as it stands to-day, the word "first" is found before "determine," and it may be a word of considerable significance in connection with that part of this proposition which relates to the laying out of private roads. Therefore, for the purpose of correcting that error, and to conform that part of the section to the Constitution as it stands to-day, I offer an amendment which consists of inserting that word "first" before "determine," in line 10.

The President *pro tempore* — Mr. Foote asks unanimous consent to make his amendment. If there are no objections it will be made. There being none, it is so amended.

Mr. A. H. Green — I do not propose to detain this Convention but a moment. The assertion that these amendments are not germane to the main proposition here is ridiculous. "When private property is to be taken for any public use, the compensation to be made therefor shall be ascertained by a jury, or by not less than three commissioners, as shall be prescribed by law." Now, is not private property to be taken for public streets, as well as for the purposes of drainage? To say that it is not germane is to show that the man who makes the statement has no comprehension of what language means. Now, my desire is simply this: when a man's property is taken away from him by force, he should be paid for it before he loses the title. I have a case now in mind that has been running nearly three years in the hands of commissioners, and they have not reported yet. I know something about that. The delays in getting these compensations are very great. Until within the last eight or ten years, it has always been deemed unconstitutional to let the title pass before a man has got his money for his property, and I understand that there is now a case in the United States Supreme Court to see whether it is constitutional.

The President *pro tempore* — The question before the Convention is upon the amendment offered by Mr. A. H. Green to the proposed amendment of Mr. E. R. Brown. The Secretary will read Mr. Green's amendment.

The Secretary read the same, as follows:

Strike out on page 1, section 7, in line 7, the words "as shall be prescribed by law," and insert the words "or by a jury, at the option of the person whose property is taken, which compensation, together with the expense of the proceedings, shall be paid before the property is taken."

The President *pro tempore* put the question upon the amendment of Mr. Green, and it was determined in the negative.

The President *pro tempore* — The amendment next before the Convention is the first part of the amendment of Mr. Hottenroth.

The Secretary read the same, as follows:

In line 7, page 1, insert after the word "record," the words "at least one of whom shall be selected by the property owner."

The President *pro tempore* put the question on the amendment of Mr. Hottenroth, and it was determined in the negative.

The President *pro tempore* — The question now is upon the motion of Mr. E. R. Brown to recommit the proposed constitutional amendment to the committee, with instructions to amend and report forthwith as follows:

Strike out lines 3 to 7, on page 2, and insert in lieu thereof the following:

"General laws may be passed permitting the owners or occupants of agricultural lands to construct and maintain for the drainage thereof necessary drains, ditches and dikes on the lands of others, under proper restrictions, and with just compensation; but no special law shall be enacted for such purpose."

The President *pro tempore* put the question on Mr. Brown's amendment; a count was called for, and it was determined in the affirmative, by a vote of 63 ayes to 43 noes.

The President *pro tempore* — The question now before the Convention is upon the second amendment offered by Mr. Hottenroth, which the Secretary will read.

The Secretary read the same as follows:

Mr. Hottenroth moves to further instruct said committee to amend as follows: Add the following paragraph:

"When private property shall be taken for public use, or the construction of drains, the compensation in damages shall be first paid, unless the court having jurisdiction of the proceedings shall, upon a hearing of the persons interested, deem an immediate acquisition necessary. If the necessity is established to the satisfaction of the court, it shall thereupon grant to the owner such immediate or partial relief as justice requires. Notice of all proceedings shall be given to the owners in the manner prescribed for the service of process in the Supreme Court of this State."

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

The President *pro tempore* — The amendment of Mr. Marks will now be read:

The Secretary read the same as follows:

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

by law. But the compensation to be made for property taken for any public use by any civil division of the State shall be ascertained by a jury or by not less than three commissioners appointed by a court of record, as shall be prescribed by law. Private roads may be opened in the manner to be prescribed by law; but in every case the necessity of the road and the amount of all damage to be sustained by the opening shall be first determined by a jury of freeholders, and such amount, together with the expense of the proceeding, shall be paid by the person to be benefited."

The President *pro tempore* put the question on Mr. Marks's amendment, and it was determined in the negative.

The President *pro tempore* — The next amendment is that of Mr. Peck.

The Secretary read the same as follows:

Add at the end of the section: "The necessary use of lands for the construction and operation of works serving to retain, exclude or convey water for agricultural, mining, manufacturing or sanitary purposes, is hereby declared to be a public use."

The President *pro tempore* put the question on the amendment of Mr. Peck, and it was determined in the negative.

The President *pro tempore* — The Secretary will now read the proposed constitutional amendment through for the third time.

The Secretary read the proposed constitutional amendment the third time.

The President *pro tempore* — This proposed constitutional amendment having had three several readings, the question is now on its final passage. The Clerk will call the roll; those in favor of its passage will say aye, and those opposed, no.

The Secretary called the roll, and the proposed constitutional amendment was passed by the following vote — ayes, 105; noes, 17.

Ayes — Messrs. Abbott, Acker, Ackerly, Arnold, Baker, Banks, Barhite, Barnum, Bigelow, Blake, Brown, E. R., Burr, Cady, Carter, Cassidy, Church, Clark, G. W., Cochran, Cookinham, Cornwell, Countryman, Crosby, Davenport, Deady, Deterling, Deyo, Dickey, Durfee, Emmet, Faber, Farrell, Floyd, Foote, Forbes, Francis, Frank, Augustus, Fuller, C. A., Fuller, O. A., Galinger, Gibney, Giegerich, Gilbert, Gilleran, Goeller, Goodelle, Green, A. H., Hamlin, Hawley, Hedges, Herzberg, Hill, Holls, Hotchkiss, Jacobs, Johnson, J., Kellogg, Kimmey, Kinkel, Lauterbach, Lester, Lewis, C. H., Lyon, Mantanye, Marshall, Maybee, McArthur, McDonough, McIntyre, McKinstry, McLaughlin,

C. B., McMillan, Mereness, Moore, Morton, Mulqueen, Nichols, Nicoll, O'Brien, Parker, Parkhurst, Parmenter, Peck, Platzek, Pool, Powell, Putnam, Rogers, Root, Sandford, Schumaker, Spencer, Springweiler, Steele, A. B., Steele, W. H., Storm, Sullivan, T. A., Sullivan, W., Tekulsky, Truax, C. H., Vedder, Vogt, Wellington, Williams, Woodward, President — 105.

Noes — Messrs. Barrow, Bowers, Campbell, Chipp, Jr., Dean, Doty, Green, J. I., Hottenroth, Johnson, I. Sam, Manley, Marks, McCurdy, Meyenborg, Peabody, Titus, Tucker, Veeder, Wiggins — 17.

President Choate resumed the chair.

The President — I believe there was a motion offered by Mr. Deady, and ruled out because it interrupted the order of third reading. Mr. Deady may present it now.

Mr. Deady — Mr. President, I now offer the resolution as follows:

R. 227.—"Whereas, The Committee of Privileges and Elections, and the Committee on Contingent Expenses, have reported that the claim of delegates Harvey W. Putnam and Thomas A. Sullivan, for expenses and counsel fee in their contest for the seats awarded to them in this Convention, is a just and reasonable one; and

"Whereas, It is the sense of this Convention that said claims should be paid; and

"Whereas, The Convention questions its power to make an appropriation to pay said claim out of the present funds appropriated to the use of this Convention;

"Resolved, That the matter be respectfully referred to the Legislature of the State with a recommendation that it provide for the payment of said claim."

I think this recommendation is eminently fit and proper, for if we take no action at all, except the action refusing to pay, after we have audited it, it might place these gentlemen in a very embarrassing position before the Legislature. We simply recommend now to the Legislature that it shall provide for payment. The joint committee audited the bill and considered it very fair and reasonable. I think it is one of the most reasonable bills in a case of this kind that has ever been presented, and I thing the least we can do is to recommend to the Legislature its payment.

The President — Was not some action taken upon this at the morning session?

Mr. Deady — The action this morning was, simply, that this Convention could not pay it.

Mr. Moore — Mr. President, if that resolution gives rise to debate, I would like to debate it, and, therefore, I would like to have it lay over.

Mr. Deady — I hope the gentleman will debate it now, if he wants to debate it at all.

The President — There seems to be no objection to your debating it now, Mr. Moore. I think, if it is laid over, it will be apt to be overlaid.

Mr. Moore — Well, sir, I have simply this to say: that I feel, if this is a just claim, and if it is proper and right to pay the salaries of those members, we should also pay the expenses of their contest. I do not presume to set up my opinion against that of Mr. Deady and the members of the Committee on Contingent Expenses, but it seems to me very singular to pay these gentlemen their salaries and at the same time refuse to pay the legal expenses they have incurred in getting their seats in this Convention. If this matter is to be referred to the Legislature for its determination, then I think the matter of their salaries ought also to be left there.

Mr. Deady — I would inquire whether the gentleman voted this morning against the resolution to pay those men?

Mr. Moore — I do not remember about that now, sir. The most of the Convention this morning was in a state of mind unfavorable for reflection, and we have had an opportunity to reflect upon some things since.

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

Mr. Lyon — Mr. President, I have several reports from the Committee on Contingent Expenses to present.

The President — The gentleman will send them to the Secretary's desk and they will be read.

The Secretary read the same, as follows:

Mr. Lyon, from the Committee on Contingent Expenses, presents the following report:

"The Committee on Contingent Expenses, to which was referred the annexed claim of Edward M. Secor, a messenger of the Convention, for additional compensation of three dollars per day from May 23, 1894, on account of services performed by him in clerical work as committee clerk, would respectfully report: that, in the opinion of three of the members of said committee, Messrs. Faber, Green and Tekulsky, the charge is reasonable and proper, and

should be allowed and paid by the Convention, and that in the opinion of four of the members of said committee, Messrs. Brown, Whitmyer, Pashley and Lyon, the said charge is not a proper charge and that the Convention has not the power to allow or pay said claim."

The President — What action will the Convention take upon this extraordinary claim?

Mr. Goodelle — Mr. President, I desire that that should lie upon the table, and I will call it up to-morrow morning. I make that motion.

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

The Secretary read the following report from the Committee on Contingent Expenses:

"The Committee on Contingent Expenses, to which was referred the annexed claim of Albert B. Crumb, a messenger of the Convention, for additional compensation of three dollars per day from May 21, 1894, amounting to the sum of $351, on account of services performed by him in the Convention post-office, would respectfully report: that, in the opinion of three of the members of said committee, Messrs. Faber, Green and Tekulsky, the charge is reasonable and proper and should be allowed and paid by the Convention; and that in the opinion of four of the members of said committee, Messrs. Brown, Whitmyer, Pashley and Lyon, the said charge is not a proper charge and that the Convention has not the power to allow or pay said claim."

The President—What action will the Convention take in regard to this extraordinary claim?

Mr. A. B. Steele — Mr. President, I ask that that lie over and be disposed of to-morrow morning.

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

The Secretary read the following report from the Committee on Contingent Expenses:

"That the Committee on Contingent Expenses, to which was referred the annexed claim of James W. Riggs, Eugene A. Curran, George W. Roderick, William M. Mullin and Thomas W. Fitzgerald, in the matter of the contest in the Sixth Senatorial District, being for the sum of $3,000, counsel fee and $100 disbursements, would respectfully report: that, in the opinion of three members of said committee, Messrs. Faber, Green and Tekulsky, said claim is

fair and reasonable to the amount of $1,500 of counsel fee and $100 costs and disbursements; and that in the opinion of three members of said committee, Messrs. Brown, Whitmyer and Lyon, said claim is fair and reasonable to the amount of $1,000 and $100 costs and disbursements; that Mr. Pashley, of the committee, was one of the contestees, and at his request was excused from voting."

The President — What action will the Convention take upon this likewise extraordinary claim?

Mr. Dean — Mr. President, I move that that lie upon the table.

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

The Secretary read the following report from the Committee on Contingent Expenses:

"The Committee on Contingent Expenses, to which was referred the annexed claim of William H. Davis, William M. Wimans and Albert Winterson, for services and disbursements in connection with procuring witnesses before the Committee on Privileges and Elections in the Second District contest, would respectfully report: that said claims are presented on behalf of the unsuccessful contestants in said contest, and ought not, in the opinion of the committee, to be allowed."

The President — What action will the Convention take upon this report?

Mr. Hedges — Mr. President, I move that the report be agreed to.

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

Mr. C. H. Truax — Mr. President, I ask to be excused for this evening and to-morrow without pay.

The President put the question on granting the request of Mr. Truax, and it was determined in the affirmative.

Mr. Deady — Has the President forgotten the rule that a member cannot be excused except because of personal illness or that of some member of his family?

The President — The Chair assumes that the gentleman would not ask to be excused otherwise.

Mr. C. B. McLaughlin — Mr. President, I desire to move a reconsideration of the vote which was taken last night looking to the final adjournment of this Convention, and I do so for the purpose of offering a substitute. I have information from the Committee on Revision that it is not possible for them to engross and get the

proposed amendments ready by Saturday night. The substitute which I propose to offer looks to an adjournment of this Convention to-morrow until such day as the Committee on Revision will be ready to finally submit to this body the Constitution as a whole, ready for submission to the people and simply adds two general orders to be considered in Committee of the Whole and no others. So that we can complete our work to-morrow, and adjourn to such day next week as this Convention may think proper, and then come back here and simply prepare that instrument for proper submission. I, therefore, move a reconsideration of the vote taken last night in reference to the adjournment of this Convention to-morrow.

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

Mr. C. B. McLaughlin — Mr. President, I now offer the following substitute:

R. 226.— "Resolved, That the Convention consider and dispose of all the proposed constitutional amendments now on the order of third reading, and also general orders Nos. 48 and 73, and that no other proposed constitutional amendments be considered, and that the Committee on Rules be instructed forthwith to report a rule limiting the time of debate to thirty minutes on such amendments in Committee of the Whole. Also, a rule abolishing the rule permitting a delegate to explain his vote; and that such business be disposed of before adjournment on Saturday, September twenty-second, and that a session of the Convention be held on Saturday evening, if necessary, and that the Convention adjourn *sine die* as soon thereafter as the amended Constitution can be engrossed and prepared for submission to the people."

I will say, for the information of the Convention, that the general orders which it is proposed to consider have reference, first, to the poor bill, so-called, and next to the State militia; the substance of the latter bill is that all able-bodied male citizens between the ages of eighteen and forty-five shall be included in and constitute the militia of the State.

Mr. Burr — Mr. President, I desire to offer as an amendment to the substitute offered by Mr. McLaughlin, that general order No. 27, relating to trusts, shall be added to the other two. Some weeks ago I took occasion to present to the Committee on Rules, a resolution which provided that this Convention should remain in continuous session until all the matters then on order of third reading were disposed of. That resolution was cast out of the Committee on Rules without any consideration whatever. Now, I cannot see

that there is any fairness in moving away out of its regular order this anti-trust amendment. Sir, I have met before the individual known as King Caucus, and I recognize the strong lineaments which he bears just at the present time in this Convention, and I know it is not the order of the day that this amendment shall be reached or discussed; but, gentlemen, I beg leave to assure you that there is an omnipotent power higher than he that we will appeal to in November next.

The amendment proposed is a protest against the merciless power of concentrated capital; it raises a question of supreme importance to the people of the State, a question of intense interest to the great masses of the people who are least able to bear the exactions pressed upon them by monopoly in the form of trusts, or in whatever other form this ancient grievance may assume to hide its real nature.

These exactions press most heavily upon those least able to bear them, the farmer, the mechanic, the laborer and all the toiling millions who work for their daily bread, and who have grown restless and uneasy under the burdens they bear. The modern trust is as hateful as the old legal trust is gratifying, exemplifying, as it does, one of the noblest faculties of the heart. Combinations of capital in the form of trusts threaten the welfare of the republic to-day. They have grown superior to the law. How best to cope with them is a serious problem, which the wise and patriotic statesmen of the country are called upon to solve.

The trust has come determined to stay. It has determined to accomplish its selfish ends no matter what the cost. It controls the great staples of the country. It is born of rapacity and maintained by tyranny. It stretches out its tentacles — quietly and stealthily — until whole industries are in its grasp. It creates a monopoly by throttling all competitors. It grinds down those who furnish the raw material and supply the labor, and exacts the highest possible price from the consumer. It has become an impregnable citadel of capital. It employs the highest legal and business capacity to perfect and maintain its organization. It laughs at public opinion, rides roughshod over legislative enactments, and baffles the law courts. It bridles newspapers with subsidies, and sends members to the Legislature and to Congress. It has agents in every Legislature, and legislative bodies become as pliable as wax in the hands of the modeler, under its powerful manipulation. It tampers with judges. It makes alliances with political leaders, and hires professors of political economy to defend its formation and its objects. We have seen it within the past month stalk into the Senate of the United States and prevent the passage of laws needed

by the people, until it forced the highest legislative body in the land to yield to its imperative demands. It is no longer an interference with trade, it is a menace to political liberty. It is no wonder, then, as President Cleveland stated to Mr. Wilson, in his now famous letter of July second, on the tariff: "There is a natural democratic animosity to the methods of trusts and combinations." What a disgraceful state of affairs is revealed by the sugar inquiry report, recently submitted to the Senate, in which it is stated: "It is a matter of complete indifference to the trust what duties are levied on sugar, so long as the form is ad valorem, and a sufficient differential is given in favor of refined sugar. The sugar trust, by the evidence of its president and treasurer, has contributed freely to the State and city campaign funds of both parties, and its contributions have been made in years when national elections were held. This is a thoroughly corrupt form of campaign contributions, for such contributions, being given to two opposing parties, are not for the purpose of promoting certain political principles, but to establish an obligation to the giver on the part of whichever party comes into power. The trust does not give to political parties for the promotion of political principles in which it believes, but for the protection of its own interests as appears by the same testimony. The fact that it gives to both political parties is sufficient proof of the purposes of its contributions and of their dangerous nature. For these reasons, the undersigned have felt it important to lay before the Senate and the country the fact that the sugar schedule as it now stands is, according to the testimony, in the form desired by the trust, and to point out, also, the methods by which the sugar trust reached what it desired and obtained, a substantial victory."

Combinations of capital, in the form of trusts or otherwise, have been repeatedly condemned by the best legal minds and the ablest thinkers in the country. It may be well to hear what some of them have said. In the opinion rendered by Judge Gibbons in the case of the Whisky Trust, April, 1894, he said: "Trusts and combines should not exist. They and our republican institutions cannot in their true force and virtue co-exist, because the excellence of our institutions depends upon the opportunity, influence and prosperity of the individual citizens, and the more widespread these opportunities and influences, and the more general this prosperity, the more perfect and stable is the government itself."

"A few things," says Judge Cooley, "can be said of trusts without danger of mistakes. They are things to be feared. They antagonize a leading and most valuable principle of industrial life in their attempt not to curb competition merely, but to put an end to it.

The course of the leading trusts of the country has been such as to emphasize the fear of them, and the benefits that have come from its cheapening of an article of commerce are insignificant when contrasted with the mischiefs that have followed the exhibitions in many forms of the merciless power of concentrated capital. And when we witness the utterly heartless manner in which trusts sometimes have closed manufactories and turned men willing to be industrious into the streets in order that they may increase profits already reasonably large, we cannot help asking ourselves the question whether the trust as we see it is not a public enemy; whether it is not teaching the laborer dangerous lessons; whether it is not helping to breed anarchy."

Says Sherwood, C. J., in Richardson v. Buhl (77 Mich., 632): "The sole object of the corporation is to make money by having it in its power to raise the price of the article or diminish the quantity to be made and used, at his pleasure. Thus both the supply of the article and the price thereof are made to depend upon the action of a half dozen individuals, governed by a single motive or purpose, which is to accumulate money regardless of the wants or necessities of over 60,000,000 of people. Monopoly in trade or in any kind of business in this country is odious to our form of government.

"Its tendency is destructive of free institutions and repugnant to the instincts of a free people, and contrary to the whole scope and spirit of the federal Constitution, and is not allowed to exist under express provision in several of our State Constitutions.

"Indeed, it is doubtful if free government can long exist in a country where such enormous amounts of money are allowed to be accumulated in the vaults of corporations, to be used at discretion in controlling the property and business of the country against the interest of the public and the policy of the law for the personal gain and aggrandizement of a few individuals. It is always destructive of individual rights, and of that free competition which is the life of the business, and it revives and perpetuates one of the great evils which it was the object of the framers of our form of government to eradicate and prevent. It is alike destructive to both individual enterprise and individual prosperity, whether conferred upon corporations or individuals, and, therefore, public policy is and ought to be, as well as public sentiment, against it. All combinations among persons or corporations for the purpose of raising or controlling the prices of merchandise or any of the necessaries of life, are monopolies and intolerable, and ought to receive condemnation of all courts."

Chauncey M. Depew, in an address before the International Brotherhood of Engineers in Pittsburg, Pa., in October, 1890, said: "In the United States our pace is so rapid, and our development so phenomenal, that without due consideration we rush rapidly to extremes. This is true both of capital and labor. The money required to construct telegraphs, to build railroads, to establish banks was beyond the power of the individual, and so the State permitted aggregated capital, representing the contributions of many to perform these works. At the same time, through commissions, departments, and State officers, the hand of the government was constantly upon them for the protection of the public against extortion or discrimination. But within a few years everything from pine lands to peanuts, from steel rails to sardines, has been organized into some form of corporation or trust. This universal effort to absorb the individual, to divide the people into employing companies, and employes, and to destroy competition, will inevitably end in disaster. Hostile legislation and the laws of trade will leave only the legitimate enterprises surviving."

Spelling, "Trust and Monopolies," page 226:

"Harsh legislation against trusts is fully warranted as a police regulation. The subordination of all private interest to the purposes of good government, subject only to the condition that the object to be accomplished shall be one in which the public has an interest is no longer an open question. In its general bearing the principle is too well settled and uniformly recognized (underlying the adjudications by courts of all cases involving constitutional provisions) to require more than a mere statement. But whether justified upon the ground of being a police regulation, or general legislation for securing the welfare of society, it is evident that Congress has the power to make all laws necessary to protect the great community of the Union from all forms of injustice and oppression as fully as it may provide for the abatement of nuisances and regulate the administration of justice.

The State reserves at all times, and under all circumstances, the plenary power to prohibit all things hurtful to the comfort, safety and welfare of society. It may be exercised to control the use of the property of corporations and individuals. Laws passed for the common good and necessary for the protection of the public cannot be said to impair any right, or the obligation of any contract, or to do any injury, in the proper and legal sense of the term.

Congress has power to prevent persons, whether natural or artificial, from taking for private use, without adequate compensa-

tion, indirectly through conspiracy and secret combination, and by means of extortion, that which the government cannot itself take except upon the return of its just value."

Many different plans for effecting these combinations have been tried. Resort was originally had to contracts made and entered into between the parties by which they bound themselves to sell at a certain price, or through a particular agent. Of this character were the pools entered into by competing railroad companies. But these contracts were found to be of no avail. They were openly repudiated or secretly disregarded and the courts would not enforce them. As long as the contracting parties profited by the arrangement, they lived up to their contracts, but if the contract resulted in loss, it was at once abandoned. But the modern up-to-date trust is of more ingenious construction. It is a most unique piece of legal work to further its illegal objects. It has been described as "well-fitted to baffle investigation and work out its schemes secretly, silently and effectively, a labyrinth that is a puzzle to the investor, and a peril to the public." The latest and most efficient method of organizing a trust is for each of the parties to incorporate its own establishment. The stock of the various corporations is then turned over to certain persons called trustees. In payment for this stock the trustees issue to each party trust certificates. Thus the trustees hold the majority of the stock of each of the separate corporations. The trustees elect the directors, place their agents in charge, prevent all clashing of interest and so control the market. They have the power to cause one concern to close, limit the production of another, consolidate all the different establishments, or centralize all the production at one point. The various parties are not injured since they receive their profits from the whole trust, and not from their particular establishment. The trust certificates themselves are watered up to a point where the vast profits of the trust will make only a reasonable dividend on all the trust certificates which have been issued. These certificates are bought and sold on the market like shares of stock. Many an innocent lamb has been fleeced in Wall street through their manipulation by the gamblers of the Stock Exchange.

The trust is now in a position to do what it pleases, raise its prices, persecute those who refuse to come into the combination, crush out competition, punish or ruin single independent producers, lower the price paid for raw material, restrict production, and render fair competition unprofitable. It controls sugar, oil, coal, and many articles of daily consumption.

The following is a partial list of the trusts which have been formed in a manner little different from the *modus operandi* I have just described: match trust, steel rail trust, jute bag trust, cordage trust, kerosene (Standard) oil trust, borax trust, cottonseed oil trust, linseed trust, paper envelope trust, nail trust, barb fence trust, lead trust, nickel trust, sugar trust, school book trust, gutta-percha trust, copper trust, zinc trust, slate pencil trust, iron nut and washer trust, oil cloth trust, gas trust, dressed beef trust, distillers and cattle feeders' trust, starch trust, cigarette trust, straw braid trust, umbrella trust, stove trust, castor oil trust, paving pitch, glass and water works.

So threatening has been the attitude of these great combinations of corporate capital towards the welfare of the people, so powerful and far-reaching their influence for evil, that many of the States of the Union have embodied in their Constitution, and made part of their statutes, prohibitions against their formation, and in a number of instances have made their existence criminal.

Such laws have been passed or constitutional provisions adopted in the States of Alabama, Arizona, Arkansas, California, Colorado, Georgia, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Washington, West Virginia, Wisconsin, Wyoming.

Judge Barrett:

"The monopoly with which the law deals is not limited to the strict equivalent of royal grants or people's patents. Any combination, the tendency of which is to prevent competition in its broad and general sense, and to control, and thus, at will, enhance prices to the detriment of the public, is a legal monopoly. (People v. V. U. R. S. R. Co., 22 Abbott N. C., 207.) Where combination is possible competition is impossible."

A society in which a few men are the employers and the great body are merely employes or servants, is not the most desirable in a republic, and it should be as much the policy of the laws to multiply the numbers engaged in independent pursuits, or in the profits of production, as to cheapen the price to the consumer. Such policy would tend to an equality of fortunes among its citizens, thought to be so desirable in a republic, and lessen the amount of pauperism and crime. The objections lie not to the manner in which the monopoly is created. The effect upon industrial liberty and the price of commodities will be the same whether

created by patent or by an extensive combination among those engaged in similar industries controlled by one management. By the invariable laws of human nature, competition will be excluded and prices controlled in the interest of those connected with the monopoly or trust.

The effect of trust methods — the suppression of competition in prices and sales, the over-capitalization of idle and antiquated factories in practical consolidation with those that are active and well equipped, and the discouragement by intimidation or otherwise of new and independent enterprises — is frequently to retard the natural growth and improvement of an industry, in order that rubbish may be made valuable, while the people are taxed for the support and enrichment of producers, who are incompetent, and who would be forced under the working of competition to show new proof of ability and good management or make way for better men. It is true that the results of free competition are not always satisfactory to all the producers concerned. Some will suffer loss, and when over-production has been caused by laws that interfere with the natural course of trade, the readjustment may cause serious disturbances. But, while there are hardships for some in the ceaseless contest, competition is far better for the people and the world, and the good of the race when absolute or qualified monopoly caused by a suppression of it.

The rule that contracts in restraint of trade shall be void as against public policy is among our most ancient common-law inheritances. As early as the second year of Henry V (1415), we find by the Year Books that this was considered to be an old and settled law.

In the famous case of the monopolies Lord Coke said that there were three inevitable results of monopoly: (1) that the price of the same commodity will be raised; (2) that the commodity is not so good as before; (3) that it tends to the impoverishment of divers artisans, artificers and others.

Monopolies cannot long exist among a free people. The people of England have never submitted to their imposition for any great length of time. They resisted them in the time of Elizabeth and again in the reign of Charles I. It was the granting of unjust monopolies, as well as the imposition of urgent taxation, which first roused the patriotic spirit of John Hampden and his countrymen, brought Charles to the block and made Oliver Cromwell Protector of England. What will the people of the State of New York what will the people of the United States do to arrest the dangers of plutocracy? Why should not this Constitutional Con-

vention frame those fundamental laws which are best calculated to serve and protect the best interests of the whole people of the State — place as a cardinal principle in that august document a prohibition against combinations of capital to create a monopoly in the form of trusts or otherwise?

As we have seen, other States have adopted such provisions. Why should not the State of New York? We should remember that industrial society is the bedrock of our government. Upon that rests social society, and upon that political society. The condition of affairs described, the institutions against which this amendment is aimed, have, more than any other cause, produced that general feeling of unrest and dissatisfaction we cannot fail to recognize among the working classes to-day.

Leo the XIII, in his recent encyclical on labor, says: "The elements of conflict to-day are unmistakable. The growth of industry and the surprising discoveries of science; changed relations of masters and workmen; the enormous fortunes of individuals and the poverty of the masses, and the general moral deterioration, cause great fear to every honest and thoughtful man. The momentous seriousness of the present state of things fills every mind with painful apprehension. * * * All agree, and there can be no question whatever, that some remedy must be found for the misery and wretchedness which press so heavily at this moment on the large majority of the very poor. * * *

"The concentration of so many branches of trade in the hands of a few individuals, so that a small number of very rich men have been able to lay upon the masses of the poor a yoke little better than slavery itself."

The contest between democracy and plutocracy is the coming trial of our country. The combatants stand at death grips. One of them must go to the ground. Why not do what we can to eradicate the cause for any such conflict in our fair State?

It may be said you are fighting a windmill; no such danger can exist here as you would fain convince us. The common law would nullify it, and even that failing, have we not on our statute book a positive prohibition against such trusts as you fear in the following words: "No stock corporation shall combine with any other corporation or person for the creation of a monopoly or the unlawful restraint of trade or for the prevention of competition in any necessary of life?"

See, also, Laws 1893, chap. 716, sec. 1: "Every contract or combination in the form of trust or otherwise, made after the passage of this act, whereby competition in the State of New York in the

supply or price of any article or commodity of common use in said State for the support of life and health may be restrained or prevented, for the purpose of advancing prices, is hereby declared illegal.

"Sec. 2. Every person who shall, after the passage of this act, make any such contract or engage in any such combination shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not exceeding five thousand dollars or by imprisonment not longer than one year, or by both such fine and imprisonment."

It is undoubtedly true that the common law abhorred contracts in restraint of trade as being against public policy. But what is good for the public good, what is against public policy, has been variously viewed and many times differently decided. Upon that subject there may be, and there has been, every variety of opinion, according to the education, habits, talents and disposition of each person called upon to decide whether an act is against public policy or not. It is the province of the statesman, and not the lawyer, to discuss, and of the Legislature to determine, what is best for the public good, and to provide for it by proper enactments. It is the province of the judge to expound the law only, not to speculate upon what is best, in his opinion, for the advantage of the community.

There have been many modifications made, many subtle distinctions drawn in the common-law doctrine and its application to existing conditions; but the people are unalterably opposed to monopolies, and no important modification, no subtle distinction, no covert permission to evade the principles of the old common-law doctrine would be tolerated by them, and hence we find the common law assuming the form of legislative enactment on our statute books to-day. Why should not that statute, broadened and enlarged to meet the requirements of to-day, be made a part of our Constitution?

Every considerable change in the English Constitution, from Magna Charta down to our day, says Mr. Jameson in his work on Constitutional Conventions, has been achieved by conflict outside the wall of parliament — often by the blood of the English people — when victory has declared itself, the principle established by it has, by parliament, been written down as part of the fundamental law.

It cannot be urged against this measure that it is properly legislative business. The Legislature has passed on it and approved the principle laid down in this amendment. It is because the

matter is of such vital importance that we desire to crystallize it into a constitutional provision; if it works well as a law, it cannot do otherwise as a part of the Constitution. We do not want to run the risk of having this good law repealed by a bad Legislature. We are, I must confess, somewhat suspicious of our Legislatures, and I believe the unmistakable presence of corporation influence in those bodies has done more to weaken our confidence and respect than any other cause. We have corporate influences running up and down and across this State, which are stronger than faith and accomplish far more. Consequently, matters which were once left to the Legislature are now dealt with in the Constitution. To illustrate, the following are now deemed suitable subjects to be treated in State Constitutions; the prohibition of chartering of lotteries, the prohibition or regulation of the liquor traffic, the establishment of State taxes, the founding and location of schools and asylums, regulations relating to the rights and duties of railroads and other corporations, and defining the relation of husband and wife, debtors and creditors, the establishment of the legal rate of interest, the salaries of public officials, etc.

We may, in our profession as lawyers, represent these very corporations and corporative influences against which this amendment is aimed; but here we hold no briefs for their protection. We represent the people of the State, and we should be recreant to our duty towards them, should we fail to do all that lies in our power to serve their interest and see that the commonwealth suffers no harm which it is in our power to prevent.

This amendment is not presented to affect the working classes or organized labor; it is aimed solely, as its terms indicate, at combinations of concentrated capital to control the productions, prices or transportation of merchandise. The workman of to-day would have absolutely no relief against the combinations and trusts formed to reduce the price of his labor were it not for the magnificent organization he has perfected and against which the laws are quickly invoked by the monopolists when the workmen transgress the rule of conduct laid down for him to follow.

The general cause of justice has been aided by the influence of the trade unions.

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

Mr. Cochran — I desire to offer an amendment.

The President — You are too late, unless Mr. Parkhurst will withdraw his call for the previous question. Will Mr. Parkhurst give way for Mr. Cochran to offer an amendment?

Mr. Parkhurst — No, sir; I press the call for the previous question.

The President put the question on the motion of Mr. Parkhurst, and the call for the previous question was sustained.

The President — The question is on Mr. Burr's amendment to add general order No. 27, printed No. 395, relating to "trusts or combinations."

Mr. Veeder — Mr. President, can we have the ayes and noes?

The President — The ayes and noes, under the rules amended September thirteenth, cannot be demanded on calls for the previous question, or upon matters relating to procedure of business. The question is on Mr. Burr's amendment.

Mr. Veeder — Mr. President, I call for the ayes and noes, and I demand that my request be entered on the Journal.

The President — Mr. Veeder may have it entered on the Journal, that in spite of the rules he asks for the ayes and noes.

Mr. Veeder — Mr. President, I prefer to have my own expression go upon the Journal, and not the President's interpretation of it. I ask for the ayes and noes.

The President — The Chair rules that the gentleman's application is out of order, being forbidden by the rules.

Mr. Blake — Mr. President, I submit for the consideration of the Chair that this is not now a question of the order of business. This is simply a question whether certain business shall be done at all, and, therefore, it does not fall within the purview of that rule, and accordingly the Convention is entitled to the ayes and noes upon this question. I submit that for the further consideration of the Chair.

The President — The Chair thinks the point is rather too fine, and is not well taken. Mr. Burr's amendment will now be put.

Mr. Veeder — I call for a count.

The President — You are entitled to have that.

Mr. Veeder — I thank the Chair for that one privilege.

The President — Mr. McDonough and Mr. Cochran will act as tellers.

The President put the question on the amendment of Mr. Burr, and it was determined in the negative — ayes, 48; noes, 67.

The President — The question is now on Mr. C. B. McLaughlin's substitute.

Mr. I. S. Johnson — Mr. President, I desire to offer a substitute for that.

The President — It is too late, the previous question having been ordered.

Mr. I. S. Johnson — I supposed the previous question was only as to Mr. Burr's amendment.

The President — The previous question goes to the bottom every time.

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

Mr. Cookinham — Mr. President, I now move that we go into Committee of the Whole upon the amendment, for the reason that if we pass those two amendments they must go to the Revision Committee and be reported back before we can vote upon them, and go to third reading, and then we may vote upon all four that may then be on the order of third reading.

Mr. Mulqueen — Mr. President, I would move, before that motion is put, that the session be extended until six o'clock.

The President put the question on the motion of Mr. Mulqueen, to extend the session until six o'clock, and it was determined in the affirmative.

The President — Now, Mr. Cookinham's motion will be put.

Mr. Holcomb — Mr. President, we are on the order of third reading, and it cannot be interrupted.

The President — The Chair has repeatedly held that it has never been questioned that the matter is in the control of the Convention.

The President put the question on the motion of Mr. Cookinham to go into Committee of the Whole, and it was determined in the affirmative.

The Convention then resolved itself into Committee of the Whole on (O., I. No. 384, P. 425) general order No. 48, and Mr. E. A. Brown took the chair.

The Chairman — Gentlemen, the House is now in Committee of the Whole upon general order No. 48. The Secretary will read.

The Secretary read general order No. 48, printed No. 425, entitled "Proposed constitutional amendment to amend section 10, article 1 of the Constitution, in relation to the suppression of gambling."

Mr. Storm — Mr. Chairman, in order to bring this before the committee, and also to answer some objections that were made to

the wording of part of it, I move to amend by striking out the word "other" and insert in place thereof the word "similar," in line 5; so that it will read: "Or any other similar kind of gambling hereafter to be allowed."

This amendment proposed is the outcome of several which have been introduced and considered by the Committee on Preamble and Bill of Rights, and is partly in response to a memorial presented by me from the citizens of the village of Flushing. The design of this amendment is to extend or define the prohibition already contained in the present Constitution, and which is against public gambling in the form of lotteries. This amendment is framed so as to explicitly prohibit the equally pernicious form of public gambling known as pool selling, which has come into existence since the present Constitution was framed, and the manifest and enormous evils of which are notorious. We are actuated by no narrow-minded hostility to horse speeding as a public pastime, but are aware that pool selling is not a necessary accompaniment. It is not the intention of this amendment to improve people's morals. The existing code of ethics supplemented by the force of public opinion will attend to that; but it is desired by it to prevent the public invitation to gamble, an invitation which is specially enticing and seductive. This form of gambling was formerly carried on in the city of New York, but was so pernicious, so enormous an evil, that it was driven out. Now, it has been transferred to the country, and is practiced there under the "Ives Pool Law," which law allows pool selling at specified times and places.

Now, Mr. Chairman, I contend that if gambling is wrong at certain times of the year, and in all but certain places, it is wrong all the time and everywhere. It is an absurd anomaly to have an open and a close season for a practice which the best thought declares an evil and which is legally a crime.

The agents of the pool selling interests are many and powerful, and they will leave unused no influence, open or secret, to defeat any attempt to deprive them of their opportunities. So anxious are they to get people within their inclosure that they are mostly admitted free, and every inducement to gamble spread before them. This form of gambling has ruined many young men, as we all know. And, Mr. Chairman, in order to catch the working people, horse racing and pool selling is now carried on at night by electric light. All the worst features of modern racing are embodied in this enterprise. The horses are purely of secondary consideration;

the interest centers in the betting stand, and goats would do just as well as horses to scramble around the track for a decision.

Now, Mr. Chairman, I hope this amendment will be adopted. We cannot be met by its opponents, if there be any, with the objection that this is legislation, because it is already in the fundamental law, and this is an endeavor to perfect that law up to date, and to carry out in legal form what is evidently the will of the people of the State.

Mr. Durfee — Mr. Chairman, I hope the amendment proposed by Mr. Storm to strike out the word "other" and insert "similar" will not prevail. It would, impliedly, at least, authorize in the fundamental law of the State other kinds of gambling that were not similar to book-making and pool selling, whereas the statute books already contain provisions denouncing betting and imposing penalties. It seems to me that the proposed amendment is better as it stands. On the general proposition, the evils resulting from the practices which are declared to be unlawful I suppose are well known to all the delegates here. In many localities of the State they have assumed a magnitude that certainly demands action. Even at our country fairs we have been annoyed from time to time by people who undertook to set up betting stands and sell pools, and the lads that came in from the country have been in that way led to form a taste for gambling which has resulted disastrously in many instances.

Mr. Dean — Mr. Chairman, this Convention in passing the bi-partisan proposition has put into the Constitution of the State the statute of 1894, which provides that in the city of New York, in the event of a failure on the part of election officers to come to an agreement as to a chairman, that the chairman shall be decided by lot. That is purely and simply a lottery, and now you propose to declare that lotteries shall be unconstitutional. I do not believe that any good was ever accomplished by putting into the Constitution or into the statutes of the State laws which the public sentiment did not support. It simply breeds contempt for law on the part of the people, and there is nothing more dangerous than public disregard for the law. This proposition undertakes to regulate the consciences and the morality of the people. Many of us gamble in some way. We may not buy pools on the races, but we buy lottery tickets in church fairs, and we buy all kinds of chances and in fact we are taking chances daily. It is an absurdity to introduce into the Constitution this provision. It is a continuation of the foolish policy of the Republican party in

attempting sumptuary legislation, and it ought not to receive the respectful consideration of this body.

Mr. Augustus Frank — Mr. Chairman, the amendment now before us is reported from the Committee on Preamble and Bill of Rights. It was before that committee at various times, and received a great deal of consideration. It was first introduced in an amendment brought before us by Mr. Tekulsky, of New York. That amendment was laid aside and never reported. After considerable discussion, the matter was referred to a special committee, consisting of Mr. Green, of New York; Mr. Veeder, of Kings, and Mr. Parker, of Orleans.

The special committee made its report and the only difference there seemed to be in the committee as a whole was as to how strong they could make the report in order to cover the whole ground and prevent the species of gambling now going on in various parts of the State, particularly in the lower sections of the State. The present Constitution prohibits lotteries. Previous to 1821 lotteries were carried on to such an extent that it became necessary to make an amendment to the Constitution to prohibit them. Lotteries were previously allowed to build the old State capitol in Albany, and also to build a college at Schenectady, and for other purposes over the State. They were legalized by the Legislature. Finally, it became so great an evil that they had to be prohibited by the Constitution of 1821. In 1846, the Constitution again prohibited lotteries by constitutional amendment. In 1867 they were again prohibited, and by this proposed amendment they are once more to be prohibited. Now, what are the facts in regard to this matter of pool selling carried on so largely at present? All know the State of Louisiana was almost ruined, politically and morally, by the existence of the hydra-headed monster of lotteries. The men who were at the head of the great lottery business in that State, many of them after being driven from there, moved to New York and established themselves as racing men, and set up pool selling and bookmaking, far worse and more dangerous than lotteries. They offered the State of Louisiana thirty millions of dollars to be allowed to continue the lottery business in that State. Public sentiment was aroused and their offer was spurned, and the good people of that State finally drove them out entirely. Since then the United States government has taken the matter up, and it has been for some time past engaged in driving it out of the country. Now, many of the same men driven from Louisiana have settled themselves in the State of New York, and we are to decide whether this system of gambling,

in its worst aspect, shall thrive in this State. We may be told by some who may speak this afternoon on this subject that it is a matter of legislation. It is not a matter of legislation. The Legislature is powerless in the matter. A few years ago what was called the Ives Pool Bill was passed by the Legislature of New York. Previous to that the statute had said:

"Section 351. Bets on Horse Races.— A person who keeps any room, shed, tenement, tent, booth or building or any part thereof, or who occupies any place upon any public or private grounds within this State, with books, apparatus or paraphernalia, for the purpose of recording or registering bets or wagers or of selling pools, or any person who records or registers bets or wagers, or sells pools upon the results of any trial or contest of skill, speed or power of endurance, of man or beast, or upon the result of any political nomination, appointment or election; or who, being the owner, lessee or occupant of any room or shed, tenement, tent, booth or building, or part thereof, knowingly permits the same to be used or occupied for any of these purposes, or therein keeps, exhibits or employs any device or apparatus for the purpose of recording or registering such bets or wagers, or the selling of such pools, or becomes the custodian or depository for hire or reward, of any money, property or thing, of value staked, wagered or pledged upon any such result is punishable by imprisonment for 'one' year or by fine not exceeding two thousand dollars, or both."

Then again the statutes of New York say:

"Section 352. Racing of Animals for Stakes.— All racing or trials of speed between horses or other animals for any bet, stake or reward, except such as is allowed by special laws, is a public nuisance; and every person acting or aiding therein, or making or being interested in such bet, or stake or reward, is guilty of a misdemeanor; and in addition to the penalty prescribed therefor, he forfeits to the people of this State all title or interest in any animal used with his privity in such race or trial of speed, and in any sum of money or other property betted or staked upon the result thereof."

Now, it is said — and I read this from a pamphlet prepared by the people of the village of Flushing, where this evil has been going on to the demoralization of the village and the people:

"How could gambling flourish with such a law in force? It could not. Hence the iniquitous 'Ives pool law.' This law was passed by the Legislature of the State of New York May 26, 1887,

and it became a law without the approval of the Governor, because he did not return it to the Legislature within ten days after it was presented to him. Under section 9 of article 4 of the Constitution of New York, as he neither signed it nor vetoed it within the ten days, he allowed it to become a law without his signature.

I may remark that all over the State petitions poured in upon the Governor asking him to veto that law. In my own village a public meeting was held in the largest church, and resolutions were adopted asking the Governor not to sign the "Ives pool bill." He did not sign it, but allowed it to become a law without his signature.

Now, what is this Ives pool law? The law is chapter 479 of the laws of that year, and it is innocently entitled "An act prescribing the period in each year during which, and the terms under which, racing may take place upon the grounds of associations incorporated for the purpose of improving the breed of horses, and suspending the operation of certain sections of the Penal Code."

Section 1 imposes a tax of five per cent upon the gross receipts for admission on race days, payable annually to the Comptroller of the State of New York.

Section 2 requires officers of the association to report in writing to the Comptroller a statement, under oath of the treasurer, of the amount of such receipts for admission.

Section 3 provides penalties for neglect or refusal to make such report or pay the tax.

Section 4, which, it is quite apparent on examination, contains the real purpose of this extraordinary legislation, and is as follows:

"Sec. 4. The number of days upon which racing may be conducted upon any race track or grounds is limited to thirty days in each year, and during that number of days only races shall be authorized and allowed upon such tracks or grounds, during which time the same may be kept open for the admission of the public, subject to the conditions and limitations prescribed by the acts or the several amendments thereto, under which the said associations were incorporated. And the provisions of sections three hundred and fifty-one and three hundred and fifty-two of the Penal Code shall not apply to the grounds of such associations during the number of days in each year during which the said races are hereby authorized; that such racing and all pool selling in this State shall be confined to the period between the fifteenth day of May and the fifteenth day of October in each year. And all pool selling shall be confined to the tracks where the races take place, and on the days when the races take place."

Section 5 merely provides as to a receipt for the payment of the tax.

Section 6, as amended in 1893 by chapter 455, shrewdly attempts to buy, as widely as possible, friends for this crime-permitting law, by providing that the fund thus gathered from the race tracks shall be annually distributed for prizes for improving the breed of cattle, sheep and horses, and for prizes in any other regular classes at the various county fairs held throughout the State, by the State Agricultural Society.

In conversation recently with one of the most prominent members of the Convention, he remarked he was decidedly for this proposed amendment now under consideration. He had been obliged to remove from his office one of the brightest men ever in it, because he was addicted to this form of gambling, bookmaking and pool selling, and had stolen his money for the purpose of continuing it. I might read you at length numerous extracts from the daily papers telling of men who have been ruined by the gambling carried on upon the race tracks of this State, but it is unnecessary.

I do not see how any delegate in this Convention can vote against this amendment, which simply provides that this infamous business shall not be carried on longer in this State, demoralizing and ruining thousands of young men, and older men, and even women. Every parent, every employer, every well-wisher of our people, and every good citizen of the State of New York will be pleased to have the proposed amendment become a part of the Constitution.

We can do no better work than to place it before the people for their adoption. Now is the time to act and not allow the wicked business to gather strength from year to year, until its deadly influence spreads over every part of our fair commonwealth. Again, allow me to hope and trust that not a vote in this Convention will be cast against the amendment.

Mr. Nicoll — Mr. Chairman, I have had more or less experience as a public officer, with the operation of the Ives pool law. Shortly after that law was passed the pool selling, of course, commenced upon the race tracks under it. But that did not seem to give large enough scope to the operations of the gamblers, and they undertook to institute pool selling in the city of New York, upon the theory that it having been legalized on the race tracks, it could not be said to be illegal in the city of New York. That is, they could receive commissions and place them by telegraph at the race tracks. The business was conducted in that way as a cover for genuine

pool selling. When I was district attorney for New York, we undertook to wipe the New York pool sellers out, and I had the honor of drawing the present law, which is to be found in the Penal Code, which prevented that pool selling in New York, so that since that time we have had practically no pool selling in this State, except upon the various race tracks, because the law is now so stringent and the penalty so severe that it is too dangerous for any man to undertake its violation in the cities of this State. That is the way the matter stands to-day.

Now, the question is, ought we not now, in this Constitutional Convention, put the seal of our condemnation upon all kinds of gambling, and I say we should. (Applause.) We ought not for one moment to accept the suggestion of my friend, Mr. Storm ——

Mr. Storm — It is not sincere.

Mr. Nicoll — We ought not for one moment think of accepting that suggestion, and say all similar kinds of gambling ——

Mr. Storm — I withdraw that.

Mr. Nicoll — What we want to-day is to condemn all kinds of gambling, bookmaking and everything else. Now, of course, the Ives pool bill passed and under it race tracks grew. The Coney Island Jockey Club, Morris Park, in which millions and millions of dollars are invested, and various other race tracks, and it is true, undoubtedly true, that in those great establishments millions and millions, perhaps, twenty millions of dollars are invested to-day, and, of course, it is true that there are a hundred thousand men to-day who are engaged in owning, managing or caring for horses, and it is undoubtedly true that the effect of this amendment, if it goes into our Constitution, will be to wipe out those twenty millions of dollars and take away their occupations from one hundred thousand men. But why should we consider that? Why should we consider that? Of course, men who go into a business which is *quasi*-legal take these risks. I do not think it amounts to a question of breaking faith or repudiation. Men get the benefit of an act which offends the public morals. It is one of the risks of the trade and they are taking their chances; and while I do not quite agree with the statement of Mr. Frank, that there is no conceivable reason for any one voting against this amendment, upon the faith of the act of the Legislature of the State at least twenty millions of dollars has been invested and one hundred thousand men have found employment. It might, indeed, make us pause, and it has made me hesitate, but upon going over the thing in my own mind I have thought that while it is true that this act was passed, it

was an act dangerous to public morals, and, therefore, I am determined to put myself on record and vote against all kinds of gambling; not against pool selling or bookmaking, but against it all. (Applause.)

Mr. Veeder — Mr. Chairman, may I ask the attention of the committee for a moment? In my judgment the amendment offered by the gentleman from Queens should not prevail. As has already been said, it would look as though we were willing to encourage other species of gambling. Now, while every one admits that bookmaking and pool selling are prevailing crimes to-day and very injurious to the young men of the State, as well as the old men, we should not limit it, and while we are about it we should prohibit in the Constitution all forms of gambling, and I, therefore, hope the amendment of Mr. Storm will not prevail.

Mr. Storm — I withdraw the amendment, Mr. Chairman.

The Chairman — The gentleman withdraws the amendment.

Mr. Marshall — Mr. Chairman, I desire to offer an amendment merely for the purpose of making the form of the amendment a little better.

The Chairman — The question is on the amendment of Mr. Marshall. The Secretary will read the amendment.

The Secretary read the amendment as follows:

After the word "tickets" in line 4, insert the word "or." Insert lines 4 and 7, inclusive, after the word "lottery" where it first occurs in section 10 of article 1 of the Constitution, and strike out the remainder of the section.

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

Mr. Storm — Mr. Chairman, I move that the committee now rise, report this amendment favorably, and recommend its passage.

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

The President resumed the chair.

Chairman E. A. Brown — Mr. President, the Committee of the Whole have had under consideration printed No. 425, entitled, "Proposed constitutional amendment, to amend section 10, article 1 of the Constitution, in relation to the suppression of gambling," have gone through with the same, made some amendment thereto, and have instructed the chairman to report the same to the Convention, and recommend its passage.

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

The report of the committee was agreed to.

The President — It will go on the order of third reading by way of the Committee on Revision.

Mr. Hedges — Mr. President, I move that we go into Committee of the Whole on general order No. 73.

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

The Convention resolved itself into Committee of the Whole. Mr. Hotchkiss in the chair.

The Chairman — The Convention is now in Committee of the Whole on general order No. 73 (printed No. 453), and the Secretary will read.

The Secretary read the proposed constitutional amendment as follows (O., I. No. 333, printed No. 453):

"Article 11 of the Constitution is hereby amended by striking out all of this article and inserting in lieu thereof the following:

"Section 1. All able-bodied male citizens between the ages of eighteen and forty-five years, who are residents of the State, shall constitute the militia, subject, however, to such exemptions as are now, or may be hereafter created by the laws of the United States, or by the Legislature of this State.

"Sec. 2. The Legislature may provide for the enlistment into the active force of all such other persons as may make application to be so enlisted.

"Sec. 3. The militia shall be organized and divided into such land and naval, and active and reserve forces as the Legislature may deem proper, provided, however, that there shall be maintained at all times a force of not less than ten thousand enlisted men, fully uniformed, armed, equipped, disciplined and ready for active service. And it shall be the duty of the Legislature at each session to make sufficient appropriations for the maintenance thereof.

"Sec. 4. The Governor shall appoint the chiefs of the several staff departments, his aides-de-camp and military secretary, any of whom shall hold office during his pleasure, their commissions to expire with the term for which the Governor shall have been elected; he shall also nominate, and, with the consent of the Senate, appoint all major-generals.

"Sec. 5. All other commissioned and non-commissioned officers shall be chosen or appointed in such manner as the Legislature may deem most conducive to the improvement of the militia, provided, however, that no law shall be passed changing the existing mode of election and appointment, except two-thirds of the members present in each House shall concur therein.

"Sec. 6. The commissioned officers shall be commissioned by the Governor as commander-in-chief. And no commissioned officer shall be removed from office during the term for which he shall have been appointed or elected, unless by the Senate on the recommendation of the Governor, stating the grounds on which such removal is recommended, or by the sentence of a court-martial, or upon the findings of an examining board organized pursuant to law, or for absence without leave for a period of six months or more."

Mr. Hedges — Mr. Chairman, I shall occupy the attention of the committee but for a few minutes. In the first place, as printed in the bill on line 10 or page 2 of section 4, there is a clerical error. The word "an" should read "all."

The Chairman — Is there any objection to correcting the typographical error referred to by Mr. Hedges? If not, it is so ordered.

Mr. Hedges — Mr. Chairman, I shall preface my remarks by stating that your committee has had correspondence with all the leading officers of the National Guard during the sitting of the committee, and had submitted this admendment in advance to them. It has received the approval of every National Guard officer. The National Guard to-day is unanimous in support of this article. The main change that we have made in it is this, as you will observe, that we recognize the naval branch, which has not really any constitutional standing. We make it constitutional in this article. We also insert here that there shall at no time be less than ten thousand men uniformed, armed and equipped. We also provide in this article that it shall be the duty of the Legislature at each session to make sufficient appropriation for the maintenance thereof. We do that with the idea that there might some time arise a condition where no appropriation might be voted. We thus make it incumbent upon our legislators to provide for the National Guard. It is useless for me here to say, as every member of this Convention knows of the importance and of the high esteem in which the National Guard of the State of New York now stands. There are

in the militia now upwards of eleven thousand men. We make a minimum here. We do not fix the maximum.

There is one other change that we make here in section 1. "All able-bodied male citizens between the ages of eighteen and forty-five years, who are residents of the State, shall constitute the militia." In the old Constitution it was required that they be armed and equipped. That is obsolete and is stricken out entirely.

Mr. McDonough — Mr. Chairman, I would like to ask the gentleman a question. I find in the present Constitution that certain inhabitants of this State, with religious scruples of conscience adverse to bearing arms, are exempt from military service.

Mr. Hedges — In lieu of that we have here inserted in section 1, "subject, however, to such exemptions as are now, or may be hereafter, created by the laws of the United States, or by the Legislature of this State."

Mr. McDonough — But the Legislature may not necessarily exempt this class of people?

Mr. Hedges — They are exempt now.

Mr. McDonough — But they will not be, if your amendment passes.

Mr. Hedges — It says such as are now exempt. Mr. Chairman, those are the material changes that have been made.

Mr. Cochran — Mr. Chairman, if the opportunity is afforded me, I would believe this was a most excellent time and place to have the people of this State understand really what the militia of the State is; to understand the relationship which the State bears to the militia and what the militia bears to the State; to understand the important duty which the militia of this State is now performing for the State; and that although the State is annually making large expenditures for the support of its militia, it is maintaining that militia for its own good, and the individual members of the militia are making many sacrifices of time and of financial interests in order to serve the State faithfully and well. But I believe, sir, that the time is too short for us to go into any such treatment of this subject, and I will endeavor, in a few words, to explain where the changes have been made from the present Constitution, what parts of the present Constitution have been obliterated, what changes have been made, and why we have made those changes. I believe, sir, as I have had occasion to say before, that we should not make any changes in the present Constitution unless some necessity exists therefor. I am confident that a necessity exists for changing the present Constitution so far as it relates to the

militia. The present article relative to the militia is known as article 11, and if you will examine that article you will find that it is far from a complete one. It fails at the very outset to put into the fundamental law of the State what is the militia. There is nothing in the present article which says who does or who does not belong to the militia, and we are left to search in some other places for some answer to that question. That was the first thing to which this amendment was directed — to put into the Constitution who constituted the militia. That we have embodied in section 1.

Now, as far as that provision is concerned, I would say that we are bound by the federal Constitution and the statutes of the United States, and that is not a mere arbitrary selection by the committee, but we are governed entirely by the limits of the federal Constitution, which provides that all able-bodied male citizens, residents of the respective States, between the ages of eighteen and forty-five, shall constitute the militia of the respective States. That we have embodied in section 1.

Now, we have also added in section 1 a clause as to exemption. The only exemption provided for in the present Constitution is in section 1, which provides that the inhabitants of any religious denomination whatever, as, from scruples of conscience, are adverse to bearing arms, shall be excused therefrom, as provided by law. We have limited that, allowing the Legislature and the federal Congress to make such limitations as from time to time they may see fit. There is now embodied in the Military Code all the exemptions, and they meet fully with all our requirements.

I might say here that the term militia is very generally misunderstood, and that may account for the misunderstanding of some of the committee of section 2 of this amendment. The ordinary term, militia, applies to all citizens of the State between the ages of eighteen and forty-five years, but those of the militia who are doing active duty, volunteer for active duty and become part of what is known as the National Guard of Uniformed Militia. In other words, there is a distinction between the uniformed and ununiformed militia. Now, every man, as I said before, between the ages of eighteen and forty-five, must belong to the militia whenever the State desires to enroll him; but if they desire to volunteer, the State uniforms them, and they become members of the uniformed National Guard. We have in this State a number of good duty-doing militiamen, or rather National Guardsmen, who would be excluded by the provisions of section 1 of this amendment, for the reason that they are not citizens. They come here of foreign birth.

They have not, as yet, become citizens of the State. We often have residents of the State of New Jersey members of our uniformed National Guard, and it is to cover such cases as that that the committee have seen fit to put in section 2, that the Legislature may provide for the enlistment into the active force of all such other persons as may make application to be so enlisted. We could not compel any residents of the State of New Jersey, or any foreign-born resident, to become a member of our militia, but we do want them in the service, if they see fit to volunteer, and it is to cover those cases that we have put in section 2 in this amendment.

Section 3 of this proposed amendment is really the most important of the entire amendment. There has existed a question as to the right of the State to maintain a naval militia. It has, however, not received much consideration, because it was thought that there was nothing in the controversy. At the same time, when we were preparing this article, we thought it well to avoid all question in the future, to recognize the naval militia, and to that end we have provided that the Legislature may divide the State into reserve forces, land and naval. The reserve forces constitute all who are not active; that is, the ununiformed militia. We provide that the State shall maintain, at all times, a force of not less than 10,000 men.

The present Constitution provides that the militia of this State shall be armed and disciplined and ready to serve us, but there is nothing in that provision which will prevent any Governor, on occasions such as we have seen in some of our western States, or any Legislature which so desires, from wiping the National Guard out of existence. We have, therefore, inserted in this provision that there shall be maintained, at all times, a minimum force of 10,000 men.

As to the number selected, I might say, that that number has existed in the law of the State for many years, even as far back as 1820. There has always been a minimum of 10,000 men. The present law provides that there shall be a minimum of 10,000 men, and a maximum of 15,000 men. The present force aggregates some 11,000 men.

The last clause of this section 3 makes it the duty of the Legislature at each session to make sufficient appropriations for the maintenance of the National Guard. That is an entirely new provision. There is nothing in our Constitution which makes it the duty of any of the branches of the State government to either maintain or look to the maintenance of the National Guard, and for that reason we have inserted this provision.

Section 4 of this amendment is the same as the present section 3, with but one exception. We have omitted from the present Constitution the provision relative to the commissary general, that he should be appointed for two years, and should give a bond. That provision we have omitted, because it is an obsolete provision. It has been in the Constitution since 1821 and has now no weight. The commissary general should have the same tenure of office as all the other staff officers of the Governor, and that is, should go out of office with the chief. At the time this provision was put in the Constitution the commissary general was the only officer who had charge of all the State property, and it was thought best to give him a definite term. As it is now, the commissary general has no property to take care of and has no responsibility, and we have wiped it out as obsolete.

Section 5 is also a new provision. The present Constitution has two inconsistent sections relative to the election or appointment of officers. Section 2 of the present Constitution provides how the officers shall be elected or appointed, and then section 6, which was added subsequently, provides that in case the method provided for in section 2 shall not be deemed conducive to the improvement of the National Guard, then the Legislature, by a two-thirds vote, may provide the method that may be most conducive to that improvement. Under section 6 the Legislature has, for the last fifty years, made very many changes from what is provided in section 2. In fact, it is entirely obsolete, and section 6 is the section we are now working under. To obviate this, and at the same time recognize some system by which the officers could be elected, we have provided in section 5 that commissioned and non-commissioned officers shall be chosen or appointed in such manner as the Legislature may deem most conducive to the improvement of the militia, provided, however, that no law shall be passed changing the existing mode of election and appointment unless two-thirds of the members present in each house shall concur therein. This allows the same restriction that now exists in the Legislature for changing the existing mode of election or appointment, and codifies in one section what is now in two sections.

Section 6 of this amendment, is in effect the same as the present section 5, with the exception of a provision at the end relative to the removal of an officer from his office. Under the present Constitution an officer can be removed by the Senate only on the recommendation of the Governor, or by the sentence of a court-martial. Now, we have found in our experience that that was not sufficient; that there were very many instances where it was

desirable to remove an officer from his position, and yet it was not within either one of the provisions provided for in the Constitution. By some hocus-pocus the Legislature provided another way, but to my mind they have always been unconstitutional. We have put in all the provisions which are in existence in the Military Code relative to the removal of officers; that is to say, we provide that an officer may be removed upon the finding of a board, or if he absents himself without leave for a period of six months or more. The provision for the examining board is a most excellent one, and, as was said by Mr. Hedges, meets with the full approval of the officers of the National Guard. The absence without leave for a period of six months or more is to cover the very infrequent cases of desertion. The present military law provides that when an officer is absent for six months or more, he can be discharged from the service. We have now embodied this in the article proposed.

Those, I think, are, in brief, all the changes which have been made. I do not desire to take up any more of the time of the committee, but at the same time if there are any questions to be asked I will be most delighted to answer them.

Mr. Peck — Mr. President, I desire to ask a question. I would like to ask the gentleman who has been explaining the bill whether it is not unusual to remove officers on the mere sentence of a court-martial or upon the finding of an examining board; whether it is not usual to require such sentences to be confirmed by some superior authority, or the results of the examining board to be confirmed in some way; whether the mere sentence or mere finding of an examining board is sufficient to remove from a military office.

Mr. Cochran — I would say, in answer to the question of the gentleman from Rensselaer, that that provision is taken from the present Constitution, and that it is construed not to be a sentence until it is approved by the commander-in-chief. He can disapprove of it at any time and the sentence is null and void. As to the examining board I would say, as I have already stated, that it is a very rare instance. At the same time we have had occasions when it was a most needed provision. I can cite what occurred during the past two years, which will illustrate better than anything I can say. We have had a change in our entire drill system during the past two years. We have had very many officers who have been in the guard so long that they would not depart from the old methods and would not study the changes and put them into

effect. If we do not have a provision such as this is for removing them by an examining board, we would never have any way of getting rid of them.

Mr. Peck — Is it held in those cases that the finding is not a finding until it is approved?

Mr. Cochran — That is the universal practice.

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

The Chairman — The Secretary will read the amendment.

The Secretary read the amendment as follows:

Insert after the word "states," in line 8, page 1, the words "but all such inhabitants of this State of any religious denomination whatever, as from scruples of conscience may be averse to bearing arms, may be excused thereform upon such conditions as prescribed by law.

Mr. McDonough — Mr. Chairman, I desire to state that these are the very words of the present Constitution. I do not find them in this amendment. The words provide for the very exemptions as now provided by law. This provision just read does not provide for exemptions solely. It provides for exemptions upon such conditions as the Legislature may prescribe. I think if this amendment, as reported by the committee, shall stand and be adopted by the Convention, it will change the rule laid down in the present Constitution, and I think we had better have the words of the present Constitution remain.

Mr. Cochran — Mr. Chairman, in reply to what Mr. McDonough has said, I desire to state that that very question was considered very carefully by the committee. In fact, Mr. Tucker introduced an amendment looking to the striking out of that very provision and that amendment was reported back favorably in connection with this very article. We struck it out from this article. There is nothing in it that would prevent a man from saying, I am a Presbyterian, and thus be exempted.

Mr. McDonough — Mr. Chairman, I rather supposed something of that kind. I rather supposed that they were trying to change the present law, although it was told me by the gentleman who first explained it that that was not the fact. Now, if this is to be changed, I want it changed with full knowledge of the fact. I want this Convention to change it. We are not so anxious for recruits now as to divert from the rules established by the present Constitution.

Mr. Cochran — Do you know of any religion which would be covered by this amendment?

Mr. McDonough — I understand the Quakers are opposed to it. I am not. I am a fighter from way back.

Mr. Ackerly — Mr. Chairman, it will be noticed that this amendment says "subject, however, to such exemptions as are now, or may be hereafter, created by the laws of the United States, or by the Legislature of this State."

Now, the Revised Statutes contain a provision providing that all such inhabitants of this State of any religious denominations whatever as, from scruples of conscience, may be averse to bearing arms, are to be excused therefrom by paying to the State an equivalent in money, and the Legislature is to provide by law for the collection of such money, to be estimated by the value of the services of an able-bodied militia man. That has been the law for a great many years, and there is no reason why it should not remain the law of this State. This amendment simply ratifies that and leaves the Legislature to change it if it sees fit.

The Chairman — Only four minutes remain for the debate.

Mr. Putnam — Mr. Chairman, all I have to say is, in reference to the statute that has just been read by Mr. Ackerly. The Legislature last year passed a law reorganizing the National Guard of the State of New York, and, as an officer of the National Guard of this State, I know that the feeling is very strong in favor of the passage of this proposed amendment as presented by the committee. The National Guard officers of the State have practically agreed among themselves, as to this form of amendment being advisable and in every way fitting and proper to be passed by this Constitutional Convention. It meets with the approval of the executive officers of this State.

So far as the provision suggested by my friend from Albany (Mr. McDonough) is concerned, the statutes of the State of New York to-day provide for just what he asks shall be provided for, and the provision in section 1 of the proposed amendment does the same thing. I cannot, therefore, see any good reason for passing the amendment as proposed by Mr. McDonough, and I hope that the article will pass as proposed by the committee.

Mr. McDonough — Mr. Chairman, may I ask the gentleman a question?

Mr. Putnam — Certainly.

Mr. McDonough — Then what was the object of striking it out of the Constitution?

Mr. Putnam — It is unnecessary.

Mr. Goeller — Mr. Chairman, as a member of the Military Committee of this Convention, I desire to press a consideration or two. I was going to say that the adoption of this article as submitted by the committee is something that is founded in the highest consideration of the public welfare, and also in the highest consideration of protection to life and property. The committee have had it for months under consideration as well as various other amendments, and have deduced and taken out the best of the various propositions that were formulated and placed before them. They have, as has been stated here, consulted with the best authorities upon military affairs and gentlemen identified with that calling in this State. The article presented, viewed from the present standpoint, is undoubtedly an invaluable measure and will meet all the present military requirements of the State.

In reference to the amendment offered by Mr. McDonough, of Albany, that amendment may be good or it may not be good. However, that may be, there is considerable left for the consideration of the next Legislature or any succeeding Legislature. For instance, we say in section 1 of the bill: "subject, however to such exemptions as are now, or may be hereafter, created by the laws of the United States, or by the Legislature of this State."

Now, Mr. Chairman, in view of the fact that our time is very limited, I desire to impress further upon the Convention that asking for legislation in reference to the militia is not asking anything new. It is not novel. There has been a provision in the Constitution of 1846, and the provision that we here propose is an improvement, and a very limited one at that. I admit that, in view of exigencies that have arisen in the past few years on account of disorders in the State, etc., that it is very proper that an amendment of this kind should be passed in the highest consideration of public duty.

Mr. A. H. Green — Mr. Chairman, I would like to ask one question. I would like to know what propriety there is in fastening upon the State of New York a naval force, which should properly belong to the United States to pay? If any military gentleman can answer that question satisfactorily I should like to know it.

Also, I should like to ask what the cost of maintaining ten thousand soldiers will be?

I should like to have those two questions answered.

Mr. Cochran — In reply to the questions of Mr. Green, I will say that so far as the first is concerned, the right of the State to main-

tain a naval reserve has been recognized since the foundation of the State. The Constitution says that the Governor is the commander-in-chief of the army and navy. I do not want to go any further back than that.

The Chairman — The time of debate is now closed, and the first question is on the amendment offered by Mr. McDonough, which the Secretary will read.

The Secretary read Mr. McDonough's amendment, as follows:

Amend by inserting after the word "States," in line 8, page 1, the words: "But all such inhabitants of this State of any religious denomination whatever as, from scruples of conscience, may be averse to bearing arms, shall be excused therefrom, upon such conditions as may be prescribed by law."

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

Mr. Hedges — 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. Hedges, and it was determined in the affirmative.

President Choate resumed the chair.

Chairman Hotchkiss — Mr. President, the Committee of the Whole have had under consideration proposed constitutional amendment (printed No. 453), entitled "Proposed constitutional amendment to amend article 11 of the Constitution, relating to militia," have gone through with the same, made an amendment 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 on the order of third reading by way of the Committee on Revision.

Mr. Foote, from the Committee on Revision, to which was referred the proposed constitutional amendment introduced by the Committee on Preamble and Bill of Rights (introductory No. 384, P. No. 425), reported by the Committee on Preamble and Bill of Rights and by the Committee of the Whole, entitled "Proposed constitutional amendment to amend section 10, or article 1 of the Constitution, in relation to the suppression of gambling," reports the same as examined and corrected and as correctly engrossed.

The President — It stands on the order of third reading.

Mr. Marshall — Mr. President, I move that we take a recess until eight o'clock this evening.

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

EVENING SESSION.

Friday Evening, September 21, 1894.

The Constitutional Convention met in the Capitol, Albany, N. Y., September twenty-first, at 8 P. M.

Second Vice-President Steele called the Convention to order.

The Secretary called the roll and announced that a quorum was present.

Mr. Foote — Mr. President, I desire to present a report; and I wish to call attention to the fact that this proposed amendment has been printed and is reprinted in printed form; that no changes were made in Committee of the Whole, except to change the word "an" to "all" to correct a printer's error; and that, therefore, the rule which requires this proposed amendment to have been once printed before being put upon third reading has been complied with.

The Secretary read the report as follows:

Mr. Foote, from the Committee on Revision and Engrossment, to which was referred the constitutional amendment introduced by Mr. Cochran (introductory No. 333, P. 455), reported by the Committee on Militia and by the Committee of the Whole, entitled proposed constitutional amendment to amend article 11 of the Constitution relating to the militia, reports the same as examined and corrected, and as correctly engrossed.

Mr. Woodward — Mr. President, the report of the Committee on Preamble and Bill of Rights has never been adopted. It has never been brought before the Committee of the Whole, even. It was made by the chairman, and we have no preamble as yet adopted by the Convention. It seems to me that it is rather important that we should have a preamble to the Constitution. We labored a long time on the preamble. There were not many amendments made, but there were some, and it seems to me it ought to be brought forward. Besides, Mr. President, I have a minority report that I was told I could bring in when the main report was to be acted upon. I have been ready to bring forward

my minority report from day to day, but I have waited for the chairman of the Committee on Preamble and Bill of Rights to bring forward his report, so that I might bring forward my minority report. I would like to have it brought forward to-night, if it is not too late. It seems to me that we should not neglect the preamble; we shall have no handle to our Constitution if we do, and there should be a handle to it. (Laughter.) It seems to me it would hardly do to send it forth without a handle.

The President *pro tempore* — Does Mr. Woodward ask that it be ordered to a third reading?

Mr. Woodward — I ask that it be ordered to a third reading. It has not been brought before the Committee of the Whole yet. It seems to me it is necessary that that should first be done.

Mr. C. B. McLaughlin — Mr. President, I ask that the minority report be read.

Mr. Woodward — Mr. President, I will read the minority report.

Mr. Woodward read the report as follows:

"We, the people of the State of New York, hold these truths to be self-evident: that all governments are founded upon one or the other of two principles. Upon equal rights or upon exclusive privileges. That our government, both State and national, is founded upon the principle of equal rights.

"That grateful to Almighty God for our freedom, in order to secure those rights and the blessings of liberty, we do establish this Constitution:

"Sec. 2. The State of New York is an inseparable part of the American Union, and the Constitution of the United States, within its legitimate sphere, is the supreme law of the land.

"No person has a right, in this State to incite others to the commission of crime or violence, or to advocate in public doctrines, tending directly or indirectly to overthrow or abrogate the rights of the people to enjoy property, life, liberty or the pursuit of happiness.

"Sec. 8. Every citizen of this State shall be free to obtain employment whenever possible, and any person, corporation or agent thereof, unlawfully or maliciously interfering or hindering in any way any citizen or person from obtaining or enjoying employment already obtained, shall be deemed guilty of a crime, or misdemeanor, depending on the means used.

"Sec. 9. The rights of the laborer shall receive just protection, through laws calculated to protect him in his labors and to promote the industrial welfare of the State.

"Sec. 7. The people of this State have a right to assemble together to consult for their common good, or to instruct their representatives, and to apply to the Legislature for the redress of grievances.

"But, secret societies, associations or combinations, illegally interfering with the business or occupation of private individuals or corporations, by force of numbers and violence, should be suppressed.

"The rights enumerated in this bill of rights shall not be construed to limit other rights of the people not therein expressed. This declaration of rights and privileges of the inhabitants of this State is hereby declared to be a part of the Constitution of the State, and shall not be violated under any pretense whatever."

Mr. Choate — Mr. President, I move that rule 36, so far as it prohibits a third reading, or requires a third reading to be on a day subsequent to that on which the proposed constitutional amendment passed in Committee of the Whole, be suspended. The object of this motion is to enable us, if time allows to-night, to pass on third reading upon all the four matters that remain, including the two that passed the Committee of the Whole to-day.

The President *pro tempore* — Are there any objections to this order being made? There being none, it is so ordered.

Mr. Barhite — Mr. President, I move you, sir, that the Committee of the Whole be discharged from consideration of the minority report of the Committee on Preamble, and that it be ordered to a third reading.

Mr. C. B. McLaughlin — I object to that, Mr. President.

The President *pro tempore* — It requires unanimous consent.

Mr. E. R. Brown — Mr. President, I offer the following resolution:

The Secretary read the resolution as follows:

R. 228.— "Whereas, No provisions were made by the Legislature for the care of the document room and said document room having been placed in charge of Joseph Fayel by the Sergeant-at-Arms; therefore,

"Resolved, That for the very efficient services which Joseph Fayel has rendered this Convention in the discharge of his duties he be paid the sum of six dollars per day for the session, the same that is paid by the Legislature for the same services rendered."

The President *pro tempore* — It is referred to the Committee on Contingent Expenses.

Mr. Cookinham — Mr. President, I call for the regular order of business, the third reading of amendments.

The President *pro tempore* — The first in order is general order No. 12 (O., I. No. 368, P. No. 436), and the Secretary will read the title.

The Secretary read the amendment by title, as follows:

"Proposed constitutional amendment to amend article 13 of the Constitution, relating to future amendments."

The President *pro tempore* — One hour is allowed by the rules for debate.

Mr. Hawley — Mr. President, no one arising to debate the amendment, I ask that the proposed amendment be read for the third time.

The President *pro tempore* — The Secretary will read the proposed constitutional amendment through if not objected to.

The Secretary read the proposed amendment as follows:

"Article 13 of the Constitution is hereby amended so as to read as follows:

"ARTICLE XIII.

"SECTION 1. Any amendment or amendments to this Constitution may be proposed in the Senate and Assembly; and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals, with the ayes and nays taken thereon, and referred to the Legislature to be chosen at the next general election of Senators, and shall be published for three months previous to the time of making such choice; and if in the Legislature so next chosen, as aforesaid, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the Legislature to submit such proposed amendment or amendments to the people for approval, in such manner and at such times as the Legislature shall prescribe; and if the people shall approve and ratify such amendment or amendments by a majority of the electors voting thereon, such amendment or amendments shall become a part of the Constitution from and after the first day of January next after such approval.

"Sec. 2. At the general election to be held in the year one thousand nine hundred and sixteen, and every twentieth year thereafter, and also at such times as the Legislature may by law provide, the question, "Shall there be a Convention to revise the Constitution

and amend the same?" shall be decided by the electors of the State; and in case a majority of such electors shall decide in favor of a Convention for such purpose, the electors of every Senate district of the State, as then organized, shall elect three delegates at the next ensuing general election at which Members of Assembly shall be chosen, and the electors of the State voting at the same election shall elect fifteen delegates-at-large. The delegates so elected shall convene at the Capitol on the first Tuesday of April next ensuing after their election, and shall continue their session until the business of such Convention shall have been completed. Every delegate shall receive for his services the same compensation, and the same mileage, as shall then be annually payable to the members of the Assembly. A majority of the Convention shall constitute a quorum for the transaction of business, and no amendment to the Constitution shall be submitted for approval to the electors as hereinafter provided unless by the assent of a majority of all the delegates elected to the Convention, the yeas and nays being entered on the journal to be kept. The Convention shall have the power to appoint such officers, employes and assistants as it may deem necessary, and to fix their compensations and to provide for the printing of its documents, journal and proceedings. The Convention shall determine the rules of its own proceedings, choose its own officers and be the judge of the election, returns and qualifications of its members. In case of a vacancy, by death, resignation or other cause, of any district delegate, such vacancy shall be filled by a vote of the remaining delegates representing the district, in which such vacancy occurs. If such vacancy occurs in the office of a delegate-at-large, such vacancy shall be filled by a vote of the remaining delegates-at-large. Any proposed Constitution or constitutional amendment, which shall have been adopted by such Convention, shall be submitted to a vote of the electors of the State at the time and in the manner provided by such Convention, at an election which shall be held not less than six weeks after the adjournment of such Convention. Upon the approval of such Constitution or constitutional amendments, in the manner provided in the last preceding section, such Constitution or constitutional amendments shall go into effect on the first day of January next after such approval.

"Sec. 3. Any amendment proposed by a Constitutional Convention relating to the same subject as an amendment proposed by the Legislature, coincidentally submitted to the people for approval at the general election held in the year one thousand eight hundred and ninety-four, or at any subsequent election, shall, if approved,

be deemed to supersede the amendment so proposed by the Legislature."

The President *pro tempore* — This proposed constitutional amendment having had three several readings, the question is now upon its final passage. Those in favor will saye aye, and those opposed will say no.

The Secretary proceeded with the call of the roll.

Mr. Choate — Mr. President, I would like to explain my vote, the reason why I vote against this amendment. As I read it, it virtually prevents the holding of any future Conventions. It is provided in the second section, that on the question being submitted to the electors of the State, shall there be a Convention to revise the Constitution and to amend the same ——

Mr. Veeder — Mr. President, I rise to a point of order. I understood we were prohibited from explaining our votes.

Mr. Choate — I do not know of any action that has prohibited it.

Mr. Veeder — I ask unanimous consent that the gentleman have the privilege.

Mr. Choate — I am very much obliged to Mr. Veeder. It is provided that the question whether there shall be a Convention shall be decided by the electors of the State, and in case a majority of such electors shall decide in favor of a Convention for such purpose, then there shall be a Convention. If, then, there are two million voters in the State, it will require the affirmative vote of a million and one, which in all probability never could be secured for the holding of a Convention. That this is the necessary meaning is clear by a comparison with line 8 on page 2, where in respect to an amendment proposed by two successive Legislatures, it is provided expressly that the people may approve and ratify such amendment or amendments by a majority of the electors voting thereon.

Now, the contrast is clear, precise and unmistakable, and I do not see that any court could possibly hold that a case of a majority of such electors, immediately referring to the electors of the State, meant anything less than a majority of all of the electors of the State; emphasized by the contrast with the provision for a ratification of the action of two Legislatures, which is expressly limited to a majority of the electors voting thereon.

Now, if that cannot be remedied, I vote no.

The roll-call being completed, the following result appeared:

Ayes — Messrs. Abbott, Acker, Ackerly, Arnold, Baker, Barhite,

Barnum, Barrow, Becker, Brown, E. A., Cady, Carter, Church, Clark, H. A., Cookinham, Crosby, Davenport, Davies, Deterling, Deyo, Dickey, Doty, Durfee, Emmet, Faber, Foote, Francis, Frank, Andrew, Frank, Augustus, Fraser, Galinger, Gibney, Giegerich, Goodelle, Green, A. H., Green, J. I., Hamlin, Hawley, Hecker, Hedges, Hill, Holls, Johnson, I. Sam, Johnson, J., Kellogg, Kinkel, Kurth, Lauterbach, Lester, Lewis, C. H., Lincoln, Lyon, Manley, Marshall, Maybee, McKinstry, McLaughlin, C. B., McMillan, Mereness, Moore, Nichols, Nicoll, Nostrand, Ohmeis, Osborn, Parker, Parkhurst, Parmenter, Pashley, Peck, Phipps, Platzek, Pool, Porter, Powell, Putnam, Roche, Rogers, Sandford, Spencer, Springweiler, Steele, A. B., Steele, W. H., Storm, Sullivan, W., Tekulsky, Turner, Vedder, Vogt, Wellington, Whitmyer, Woodward — 94.

Noes — Messrs. Bowers, Cochran, Danforth, Dean, Forbes, Mantanye, Peabody, Titus, Veeder, President — 10.

Mr. Holls — Mr. President, I suggest that the matter referred to by the President is so clearly a typographical error that unanimous consent should be given that it be rectified.

Mr. Veeder — I object, Mr. President.

Mr. Vedder — Mr. President, I move that the vote by which this amendment was passed be reconsidered. If what the President says is true, it ought not to pass, and, therefore, I move a reconsideration. That matter, Mr. President, was under consideration in Committee of the Whole, and at least a score of delegates here have understood that it was changed.

Mr. Marshall — It was changed.

Mr. Vedder — If it is still in there, I move a reconsideration so that we may correct it and pass the bill to-night. I move a reconsideration.

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

Mr. Bowers — A point of order, Mr. President. Has not the Chair announced that the amendment was adopted?

The President *pro tempore* — The amendment was passed, but it can be reconsidered.

Mr. Tekulsky — Mr. President, I understand that this is only an error of the printer, and in the Committee of the Whole that was changed.

Mr. Vedder — We passed it as read.

The President *pro tempore* — Mr. Vedder is evidently right. We have passed the proposition as read, and it cannot be altered or rectified without a reconsideration.

Mr. Vedder — I move that reconsideration, Mr. President.

Mr. I. Sam Johnson — Mr. President, I hope this matter will be reconsidered; and I hope while we are reconsidering it that we will consider another question. This matter was brought up and railroaded through. An attempt was made to bring about something by which we might consider these matters, but no proposition was allowed to be considered. The previous question was moved at once so that we could not consider. We see what it means to attempt to rush things through at the rate which this body sees fit to do. We have abandoned every rule. We have to-night seen fit to say that we would go back upon the very resolution or the very action which we have passed; to say that we would consider matters without even reading them or having them printed. I think this matter should be reconsidered, and then I think we should take some little time to investigate and see whether matters are right or not.

Cries of "Question," "Question."

Mr. Bowers — Mr. President, calling for the question by the delegates on this floor is not speaking to a motion; and while the gentleman has correctly stated that rules have long since been thrown to the wind in this Convention, and you are now commencing to reap the fruits of such actions, it would seem at least due to the dignity of the Convention that the Chair prevent the calling of "Question," "Question."

The President *pro tempore* — The Convention will be in order and decorum will be observed. The Chair especially desires to conduct the business of the Convention according to parliamentary practice, as he understands it, and in strict conformity to the rules adopted by the Convention. The Secretary will call the roll upon the reconsideration of this vote.

Mr. Veeder — Mr. President, I desire to withdraw my call for the ayes and noes.

The President *pro tempore* — The Chair knows of no other way to reconsider than by calling the ayes and noes. It must be reconsidered in the same manner in which it was passed. The Secretary will call the roll.

The Secretary called the roll with the following result:

Ayes — Messrs. Abbott, Acker, Ackerly, Arnold, Baker, Barhite, Barnum, Barrow, Becker, Bigelow, Bowers, Brown, E. A., Burr, Carter, Church, Clark, G. W., Clark, H. A., Cookinham, Cornwell, Countryman, Crosby, Danforth, Davenport, Davies, Deady, Deterling, Dickey, Doty, Durfee, Emmet, Faber, Foote, Francis, Frank, Andrew, Frank, Augustus, Fraser, Galinger, Gibney, Giegerich, Gilbert, Goeller, Goodelle, Green, A. H., Green, J. I., Hamlin, Hawley, Hecker, Hedges, Hill, Holls, Hotchkiss, Hottenroth, Jacobs, Johnson, I. Sam, Kurth, Lauterbach, Lester, Lewis, C. H., Lewis, M. E., Lincoln, Lyon, Manley, Mantanye, Marshall, McDonough, McIntyre, McKinstry, McLaughlin, C. B., McMillan, Mereness, Morton, Nichols, Nicoll, Nostrand, Ohmeis, Osborn, Parker, Parkhurst, Parmenter, Pashley, Peck, Phipps, Platzek, Pool, Porter, Powell, Putnam, Roche, Rogers, Root, Spencer, Springweiler, Steele, A. B., Steele, W. H., Storm, Sullivan, W., Tekulsky, Turner, Vedder, Vogt, Whitmyer, Woodward, President — 103.

Noes — Messrs. Maybee, Moore, Speer — 3.

The President *pro tempore* — The reconsideration is duly passed.

Mr. Vedder — Mr. President, I now move that this proposition be recommitted to the Committee on Future Amendments, with instructions to report forthwith as follows, retaining its place on third reading of bills, its present place.

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

The Secretary read the amendment, as follows: after the word "majority," in line 16, page 2, strike out the words "of such electors," and insert in place thereof the words "of the electors voting thereon."

Mr. Marshall — Mr. President, I desire to state, in respect to this matter, that it is purely a typographical error, if it is an error at all, but the meaning, I think, is unchanged.

The President *pro tempore* — The Secretary will read the proposed constitutional amendment, as amended, through, for the third reading of the amendment.

The Secretary read the amendment, as amended, through.

The President *pro tempore* — This proposed constitutional amendment having had three several readings, the question is now upon its final passage. Those in favor will say aye, and those opposed will say no.

The Secretary called the roll, with the following result:

Ayes — Messrs. Abbott, Acker, Ackerly, Arnold, Barhite, Barnum, Barrow, Becker, Bigelow, Brown, E. A., Brown, E. R., Burr, Cady, Carter, Cassidy, Clark, G. W., Clark, H. A., Coleman, Cookinham, Cornwell, Crosby, Davenport, Davies, Deady, Deterling, Deyo, Dickey, Doty, Durfee, Emmet, Faber, Foote, Francis, Frank, Andrew, Frank, Augustus, Fraser, Galinger, Gibney, Giegerich, Gilbert, Goeller, Goodelle, Green, A. H., Hamlin, Hawley, Hecker, Hedges, Hill, Holls, Jacobs, Johnson, I. Sam, Johnson, J., Kellogg, Lauterbach, Lester, Lewis, C. H., Lewis, M. E., Lincoln, Lyon, Manley, Marshall, McDonough, McIntyre, McKinstry, McLaughlin, C. B., McMillan, Mereness, Morton, Nichols, Nicoll, Nostrand, O'Brien, Ohmeis, Osborn, Parker, Parkhurst, Parmenter, Pashley, Peck, Phipps, Platzek, Pool, Porter, Powell, Putnam, Roche, Rogers, Root, Schumaker, Spencer, Springweiler, Steele, A. B., Steele, W. H., Storm, Sullivan, W., Tekulsky, Tibbetts, Vedder, Vogt, Wellington, Whitmyer, Woodward, President — 103.

Noes — Messrs. Bowers, Cochran, Danforth, Dean, Hottenroth, Maybee, Mulqueen, Peabody, Sandford, Speer, Titus, Veeder — 13.

The President *pro tempore* — This proposed constitutional amendment, having received the votes of a majority of all the delegates elected to this Convention, is duly passed.

The next in order is third reading No. 31. The Secretary will read the title.

The Secretary read the amendment by title, as follows (O., Nos. 69-434):

"Proposed constitutional amendment to amend section 7 of article 8 of the Constitution, relative to the liability of the stockholders of banking corporations."

The President *pro tempore* — One hour is allowed by the rules for debate.

If no one desires to debate it, the Secretary will read the proposed constitutional amendment through.

The Secretary read the proposed constitutional amendment, as follows:

"Section 7 of article 8 of the Constitution of the State of New York is hereby amended so as to read as follows:

"Sec. 7. The stockholders of every corporation and joint-stock association, for banking purposes, shall be individually responsible to the amount of their respective share or shares of stock in any

such corporation or association, for all its debts and liabilities of every kind."

The President *pro tempore* — This proposed constitutional amendment having had three several readings, the question now is upon its final passage. Those in favor will say aye and those opposed will say no.

The Secretary proceeded to call the roll.

Mr. Root — Mr. President, I wish to explain my vote. I am going to vote against this amendment.

The President *pro tempore* — The gentleman's explanation is forbidden by a late rule of his committee.

Mr. McMillan — Mr. President, I ask that the gentleman have unanimous consent to explain his vote.

Mr. Root — I was not aware of the change in the rules, Mr. President.

I shall vote against this proposition because I see that under the form of limiting the liability of joint-stock associations for banking purposes, it really exempts partners engaged in banking from the general liability to which they are now subject. I have no objection whatever to putting the stockholders of banking corporations, organized under the laws of the State, on the same footing as the stockholders of national banks, but I believe that a joint-stock association for banking purposes, which is merely a copartnership, should be subject to the same liability as other copartnerships, and I think it is all wrong that in the Constitution we should include a provision which limits the liability of that particular kind of partnership. I, therefore, vote no.

Mr. Bowers — Mr. President, it is quite evident that if the statement made by the gentleman from New York is correct, this amendment ought not to have passed; and it is quite evident, also, that he is correct, if any one stops to consider the question for a moment.

Mr. Schumaker — He is not correct. It is in the present Constitution.

Mr. Bowers — That is no answer.

Mr. Marshall — Mr. President, I desire to have my name called in order to make an explanation. I think this is the wrong time to make an attack on the constitutional article. A joint-stock association, as everybody knows, is a *quasi*-corporation, and has nothing to do with a partnership. The language is in the present Constitution, without any change in that regard.

The amendment was adopted by the following vote:

Ayes — Messrs. Abbott, Acker, Ackerly, Arnold, Baker, Banks, Barhite, Barnum, Barrow, Becker, Burr, Cady, Carter, Church, Clark, G. W., Cookinham, Cornwell, Countryman, Crosby, Davies, Deterling, Dickey, Doty, Durfee, Emmet, Faber, Foote, Francis, Frank, Andrew, Frank, Augustus, Fraser, Fuller, O. A., Galinger, Gibney, Green, A. H., Green, J. I., Hamlin, Hawley, Hecker, Hedges, Holls, Hotchkiss, Jacobs, Johnson, J., Kinkel, Kurth, Lauterbach, Lester, Lewis, C. H., Lewis, M. E., Lincoln, Lyon, Manley, Marshall, McDonough, McIntyre, McKinstry, McMillan, Mereness, Morton, Nichols, Nicoll, Nostrand, O'Brien, Ohmeis, Osborn, Parker, Parmenter, Pashley, Phipps, Platzek, Pool, Powell, Roche, Rogers, Schumaker, Smith, Springweiler, Steele, A. B., Steele, W. H., Storm, Sullivan, W., Tekulsky, Tibbetts, Titus, Turner, Vogt, Wellington, Whitmyer — 88.

Noes — Messrs. Bigelow, Blake, Bowers, Brown, E. A., Cassidy, Clark, H. A., Coleman, Danforth, Davenport, Deady, Dean, Deyo, Forbes, Goeller, Hottenroth, Johnson, I. Sam, Kellogg, Mantanye, Maybee, McLaughlin, C. B., Moore, Mulqueen, Parkhurst, Peabody, Putnam, Root, Sandford, Spencer, Vedder, Veeder, Woodward, President — 32.

The President *pro tempore* — This proposed constitutional amendment, having received the votes of a majority of all the delegates elected to this Convention, is duly passed.

The next in order is O., I. No. 384, printed No. 425, third reading No. 32, which the Secretary will read by title.

The Secretary read the amendment by title as follows: "Proposed constitutional amendment to amend section 10, article 1 of the Constitution," in relation to the suppression of gambling.

Mr. Choate — Mr. President, I hope that this amendment will not be rushed through before we have time to ascertain even what it is; and in order that it may not be, I move to recommit to the committee from which it originated, with instructions to report forthwith an amendment striking out the words "or any other kind of gambling." I do not like the amendment in that shape. As it now stands, it is exactly as if it read, "or any kind of gambling."

Mr. Veeder — Mr. President, I rise to a point of order again. The gentleman is out of order. This is on third reading, and I understand he has no right to explain his vote.

Mr. Choate — I am not explaining my vote. I am moving to recommit.

The President *pro tempore* — The title of the amendment having been read, one hour is allowed by the rules for debate.

Mr. Choate — Mr. President, to lay the foundation for discussion, I make my motion to recommit to the Committee on Preamble with instructions to report forthwith an amendment striking out the words "or any other kind of gambling." For one, I do not like the presence of those words in the article if it is to be adopted. In the first place it takes all the force away from the specifications of pool selling and bookmaking, which I suppose are the evils to be prohibited by constitutional enactment, and makes it read exactly as if it were "or any kind of gambling hereafter be authorized or allowed within this State."

Now, the laws as they stand, are ample for the prohibition of gambling. The evils to be reached, as I understand by this amendment, are the special forms of pool selling and bookmaking, whatever they may be; well known generally, I suppose, to the members of this Convention, although I confess to some personal and individual lack of knowledge on the subject. I suppose they aim at the possibility of the Legislature passing or keeping upon the statute books of this State such an enactment as the Ives Pool Bill, so-called.

It is not necessary to incite the Legislature to prohibit other forms of gambling. As the law now stands, it is so broad, so deep, so far reaching, as to make criminals of many innocently-intending people, including a vast number of church members; and for one, I do not desire to see it made any worse by being carried into the Constitution. If, in one of our own families, there happens to be a little card playing for a little money, the law as it now stands, makes that a crime, as I am told. In the clubs, to which even possibly some of the members of this Convention may resort, the law as it now stands, makes card playing for a little money, a crime. Isn't that enough? Do you want to incite a Legislature to go further and strike deeper and come nearer home to every individual than the laws now do on the subject of gambling? No. What you want to reach is this evil which the Legislature has legalized, making one law in Utica and another law at Gravesend; one law on one side of a fence, and another law on another side of a fence, and a condition of law in regard to this matter of pool selling and bookmaking, which is certainly very iniquitous.

Now, do not let us make ourselves — shall I say ridiculous? — in seeking to reach and prohibit and render absolutely impossible for the future, that evil. Do not let us carry into the Constitution a provision against these lesser and minor and more virtuous kinds

of gambling which are already prohibited by law, and a crime. That is the point of my amendment. The effect of the amendment, if carried, will be to strike out the words "or any other kind of gambling."

Mr. Veeder — Mr. President, I am astonished at the admission of the President of this Convention. The idea that the people of the State of New York, by its representatives here, are willing to permit gambling in all forms except pool selling and bookmaking and lotteries! That is the substance and the meaning of the amendment proposed, that we shall allow gambling to go on in all its forms, in the churches, as the President says, and in private families, the President says; corrupting the morals of everybody, so long as you do not go into pool selling and bookmaking. I am astonished. I submit, sir, that the inventive genius of the men who are capable of conducting pool selling and bookmaking, if we are limited to those matters, will devise some means other than pool selling and bookmaking by which they can gamble just the same as ever; and so there is no relief against these evils, except to go to the root of them, and stop all forms of gambling. I submit that the amendment proposed by the President, if adopted, will nullify it entirely. The Legislature may have enacted laws and it will be admitted that they have been violated. He admits that; but is that any reason why the Constitutional Convention should not try to stop this evil? I submit that I never heard of a proposition of the kind, that we shall encourage gambling, instead of trying to prohibit it.

Mr. Bigelow — Mr. President, I would like to ask the gentleman whether he wishes to prevent the Legislature, when it meets, from gambling for their seats, as we gambled for our seats in this Convention?

Mr. Veeder — Mr. President, there was no gambling about it. Gambling means something entirely different from what the gentleman understands it to mean.

Mr. Schumaker — Mr. President, I am as much astonished at my friend from Kings as he is astonished at the President. All forms of gambling are prohibited by law in this State, except the special laws which were passed by the Legislature in relation to bookmaking and pool selling on the race courses of the State. There are special laws in relation to the selling of pools and bookmaking in the different counties of the State, and that is the kind of thing which the Constitution of this State is attempting to interdict. There are no cases that can be brought up which the State laws are not now sufficient to stop and suppress. All sorts of gambling

are suppressed, except the individual instances of pool selling and bookmaking which stalk through this State like a ghost, which are the crying evils of the State, and those are supposed to be affected by this constitutional amendment; and there should be no other, because there are sufficient laws now to arrest gambling of any other description except those which have been specified by the Legislature.

Mr. President, you cannot stop gambling, that is impossible. It will be done in all sorts of queer ways and in different manners. It is impossible to stop men from betting. They will bet at their bedsides. They will bet early in the morning and late at night, in such a manner that they cannot be detected. But the crying evil of the day is the race track gambling, and this Convention has almost unanimously decided to stop that if it can. I believe that the Legislature can control that matter; but, as this Convention has almost unanimously decided that it should stop that form of gambling, I, for one, am in favor of this constitutional amendment; but when it is to be sent throughout the State, into every church and into every family, to prevent the little amusements of the family, and to prevent the church from being assisted by innocent lotteries; when those things are to be ridiculed and suppressed, I for one am not willing to lend my voice to having it put into the Constitution of the State to any such extent as that. In some places the poor people of a church have been indicted for selling tickets for a book or a picture, but it has been discountenanced. The people of the State have frowned it down, and now, from one end of the State to the other, little lotteries for the selling of pictures and books and trifles of that sort are tolerated, and the grand juries do not pay any attention to them. In some cases they have indicted the people who have indulged in those little innocent amusements of selling pictures and books and other things that have been given to the church for the purpose of paying a debt or advancing the Christian religion throughout the country. I, for one, am glad of the opportunity to say that the race track gambling should be stopped if it is possible. I do not know as it is possible. I do not think that the amendment to the Constitution is broad enough. I insisted in the Committee on Preamble that it should include all sorts of race track gambling, pool selling, every kind and nature of gambling upon horse races, but they saw fit to introduce this amendment instead of the one that I was in favor of. I am satisfied that this will do some good, and, therefore, I hope that the President's good intention will prevail in this Convention and that

we will stop the race track gambling of every description. The reason that lotteries have been specified in the Constitution is, that before the Convention of 1821, lotteries were tolerated in this State and it was necessary to stop them.

Mr. Nicoll — Mr. President, are we to see repeated, in this Convention, one of those extraordinary performances with which the practice of the last four months has made us familiar? Are we to see the Convention, by an almost unanimous vote, condemn certain unlawful and immoral practices, and then are we to see the President of this Convention or the leader of the majority, or some other distinguished member, move to amend a salutary amendment and emasculate it and have the great majority of this Convention follow like sheep, to their own stultification? Are we to be treated, in the last hours of this Convention, to another illustration of the inconsistency and utter incapacity of a body of lawyers to adhere to their own expressed opinions and convictions? I hope not, Mr. President. By an almost unanimous vote this afternoon, we adopted this amendment, declaring what? That we were opposed to gambling; either bookmaking or pool selling, or any other kind of gambling. Does that principle deserve a place in our Constitution, or does it not? Are we engaged simply in the business of hitting at this race track or that race track, or some other race track or county fair, or are we opposed as a moral principle, as a governmental principle, to the whole immoral practice of gambling, whether it assume one form or another?

Now, it is proposed to emasculate this amendment by taking out the words "any other kind of gambling." Why, what do you suppose will happen? Do you know how adroit and clever the professional gambler is? If he cannot be a bookmaker or a pool seller, do you not think he will find some other form of gambling on the race track? Of course he will. You might just as well wipe this amendment out altogether as to take out the words "any other kind of gambling." I am not only astonished at the proposition of the President; I am paralyzed by it. That we should be deliberately invited to reverse our record of this afternoon, and declare to the people of this State that while we are opposed to bookmaking and pool selling, we favor, perhaps, gambling in the stock exchange or gambling at the faro table, or gambling of some other kind, or in some other place.

Let us be perfectly honest about this thing. We are either in favor of a constitutional declaration against gambling, or we are not. Many other States have it. It is nothing new or strange. It

is not, as I have been told since I made my remarks this afternoon, a mere piece of professional reform.

Mr. Root — Mr. President, will the gentleman permit me to ask him a question?

Mr. Nicoll — Certainly.

Mr. Root — Since the gentleman says "let us be perfectly honest about this thing," will he permit me to ask him, in his own words, whether he is opposed to every form of gambling? (Laughter.)

Mr. Nicoll — Every form of gambling, Mr. President; and if for not other reason, as a matter of personal profit. (Laughter.) I am opposed to it. We are all gentleman together. We have had our little games. But that is not the question here. It is a much larger and greater question, whether gambling is in itself a vice which deserves our condemnation in the organic law; whether or not we ought to put it there; whether or not if we condemn bookmaking and pool selling and so forth, we ought not to extend it so that all other kinds of gambling shall be forbidden. You are not going to stop it by that. Men will continue to gamble, I suppose, as long as they live; but that is not the question. The question is whether or not this State stands with the other great States of the Union upon the moral side of great questions, or whether it goes half way and gives a mere beggarly indorsement of a moral principle.

I sincerely hope, Mr. President, that we will not treat the people of this State to the spectacle of discriminating between kinds of gambling, and while we condemn one, indirectly approve another.

Mr. Abbott — Mr. President, I should have availed myself of the opportunity to explain my vote but for the reason that the rule has been suspended. I will only take a moment, and I desire to define my position.

First, then, as an individual, I am opposed to all kinds of betting, from fan-tan and fly-loo to the various grades of horseracing, poker playing, gambling on elections and church lotteries. As an individual I am opposed to all these.

Secondly, as a Republican simply, I am opposed to this proposition, because I believe it will lose us fifty thousand votes in this State and result in the creation of a large political campaign fund, which may lose us this Constitution, and may lose us the Governor and other officers.

Thirdly, as a member of this Constitutional Convention, putting my individual preference aside and my partisanship, and desiring to act only for the good of the State, I am opposed to this proposition, because I believe it is purely a matter of legislation. I

believe that the Legislature is nearer to the people than we are. It comes fresh from the people every year, and when the people demand a suppression of gambling, and public sentiment demands it, the Legislature will be ready and willing to enact the laws, and those laws may be enforced. As they stand now, our statute books are full of obsolete laws. I am not in favor of putting into this Constitution a provision which every delegate in this Convention knows will be disregarded every hour from now until election time and for all time until public sentiment demands a change in this respect. I do not believe that saying in this Constitution that we prohibit gambling of any kind will have any effect upon the people. I believe that public sentiment does not demand it, and that public sentiment will not sustain it, and that it is only cumbering the Constitution by enacting it in the organic law. I believe the Legislature can take care of this question, and will take care of it as soon as the people demand it. I shall, therefore, oppose this proposition.

Mr. Dickey — Mr. President, unless better reasons can be given than the President of this Convention has given for the proposed amendment, it should be voted down, because the only reason that he gave us was that it would prohibit, if left as it was, some of the present forms of gambling. Anything that is gambling and may be properly called gambling, should be prohibited by this Constitutional Convention, and they should do as much good in that direction as lies in their power. We used to have a preacher down our way who used to say, "Do as I tell you, don't do as I do." And so Mr. Nicoll very well says, "Don't follow my example, but do as I tell you." Do good. Protect him against himself, even to his profit.

Now, I look upon this amendment, as here written, as a very important one. I am sorry to say I shall dissent from the views of Mr. Abbott, who says that putting this moral matter in our Constitution may lose us fifty thousand votes. If it will array against us the wicked and bad and vile of this State, won't it on the other hand array in our favor the good and moral people of the State without regard to party? And whether it will or not, do not let us here legislate, as he calls it, in behalf of the vile and impure for the sake of getting their votes or keeping their money, against our Constitution. Let us do the manly, honest, right thing, even though the heavens fall.

Mr. J. Johnson — Mr. President, this amendment is aimed at a well-known form of gambling; a form which stands as stood the

lottery before the Convention of 1846, which has proved more powerful than the Legislature, and, therefore, needs the power of a Constitutional Convention to prohibit it. It is worse than the lottery, because it is branded as a cancer everywhere save within the inclosures where it is allowed to go on unimpeded. Now, no one appears to defend that vice. No one in this Convention. There is no one but that says it should be stopped, and no one but agrees that the Legislature is impotent to stop it, and this is the only place to stop it. And yet, although no one says that we should not stop it, I want to say to the gentlemen of this Convention that this measure is at this instant in the gravest danger. Why? Because the attempt is to make us scatter our blows. Gambling is prohibited by statute. The Penal Code is aimed against it. This form of pool selling is allowed by statute. There is no more reason for putting into this amendment a provision against gambling as ordinarily carried on than there is for putting in a provision against murder or burglary. It is simply making us scatter our blows, and attempting to put into the Constitution that which will make this amendment unpopular and impossible of adoption.

Mr. Bigelow — Mr. President, will the gentleman allow me to ask him a question? I want to know if the gentleman is aware that this provision protects the Ives bill. It does not operate except hereafter. It says that "the State shall not hereafter."

Mr. Johnson — Mr. President, in answer to the gentleman, I should suggest the amendment "or carried on." I think it would be well, although I would not press the amendment, to say "authorized, allowed or carried on," if there is any doubt about it. But I think this is sufficient. That would make it stronger.

Now, sir, with this vice rampant before us, with it permeating every grade of society, the morals of the young being corrupted and their lives destroyed; confidence between employer and employe gone; let us take this thing by the throat, and not scatter our blows. (Applause.)

Sir, I have heard the word "emasculate" from sneering lips before to-night, and it was just as well said then as now. Everything is emasculated that does any good, and nothing is worthy of the speaker save what is impossible. I want to take this vice by the throat, and there is no emasculative blow that will do it. (Applause.)

Mr. E. R. Brown — Mr. President, I regret very much to disagree with the distinguished President of this Convention, but it seems to me in regard to his amendment that it is about on a par with the

proposition to reject the free pass amendment, because a notary public or a commissioner of deeds could not enjoy the privilege of a free pass without committing a crime.

Now, a little more careful attention to the wording of this amendment, it seems to me, would satisfy the delegates that there is no occasion for the purpose of protecting the matters to which the President refers, to wit, his own private enjoyment, from the provisions of this section. It says that the sale of lottery tickets, pool selling, bookmaking or any other kind of gambling, shall not hereafter be authorized or allowed by an affirmative law, or tolerated by the sanction of judicial decisions or of legislative enactment. And the only instance that we have now on the statute books of this State, and the only instance that we have even in the judicial decisions of the court, is this Ives pool bill, and it was because that bill was an affirmative sanction of gambling that this measure was brought before this body. And it says, furthermore, in relation to violations of this section, that the Legislature shall pass appropriate laws. That is, it shall pass severe laws against gambling, which is destructive of the public morals, and that it shall pass temperate, moderate and inocuous laws against the gambling which the President desires to enjoy.

Now, Mr. President, I have also heard it suggested that the stock exchange might be affected by this amendment. Why, Mr. President, it is now illegal for the stock exchange to gamble. The Court of Appeals have decided that dealings in futures, where it is not intended that the goods shall be actually delivered, but it is simply a bet upon the future price, makes an illegal contract, makes no contract. It is not legalized by the Court of Appeals. It is not legalized by statute; and this says that if it is gambling it shall never be legalized by statute; and so far as the peccadilloes of the gentlemen who sit upon this floor are concerned, I think that they would be excepted by universal consent from subjection to any severe penalties. I regret that the President should be willing to make an amendment to this Constitution which would result, as I believe, within a year after the adoption of this amendment, in some other device by which these men would be enabled to practice the very evil against which this amendment is directed. And seriously and earnestly, I believe that it is a necessary thing that this Constitutional Convention should say that there never should be a law affirmatively justifying gambling.

Mr. Barhite — Mr. President, I do not believe that this Convention can adopt an amendment upon the subject of gambling which is too broad or too sweeping in its provisions. I do not

believe, sir, that we should say, even by implication, that we are opposed to bookmaking and pool selling, but that other forms of gambling, in our opinion, may be allowed. I believe that this amendment should be so broad as to prohibit not only the boy upon the street, who gambles away a few pennies which he may earn from day to day, but it should prevent poker playing in the Union Club in New York. If the gentlemen of that institution desire to engage in a legitimate game of chance, let them enter the domain of politics; they will find something worthy of their ability. As has been said on the floor of this Convention, and well said, if we restrict this simply to the well understood terms of bookmaking and pool selling, the wit of the gamblers and their attorneys will be sufficient for the occasion, and it will not be three months after this amendment goes into effect before they will have some other device, which is not within the prohibition of the Constitution, but serves their purpose equally well. I believe that there is no measure that has been passed upon by this Convention which will be more popular with the people of the State of New York than this very amendment which we have under consideration at the present time. We have endeavored here to serve all classes of persons. We have passed amendments which have been asked for by the corporation; we have passed amendments which have been asked for by the laboring men; we have passed amendments which have been asked for by the farmers; we have passed amendments which have been asked for by the canal men, and now, at this late hour, let us round up our work by passing an amendment which is asked for by every honest and intelligent citizen of the State of New York.

Mr. Davies — Mr. President, I have observed during the deliberations of this Convention, when anything of real importance is sought to be put into the Constitution, that we are told by members about the floor repeatedly that we are trenching upon the powers of the Legislature.

Mr. C. B. McLaughlin — Mr. President, I rise to a point of order. I have been trying for about ten minutes to get the Chair's attention. I think this time should be divided between those speaking against and those in favor of this proposition. I desire to speak against it.

Mr. Davies — Mr. President, I have not troubled this Convention with many speeches nor with many motions. I have taken up about one-tenth of the time that my friend from Essex has; and I move to extend the time of this session until this question is disposed of.

The President *pro tempore* put the question on agreeing to the motion of Mr. Davies.

Mr. Root — Mr. President, I do not know what that means. I do not believe the Convention knows what it means ——

Mr. Mulqueen — I move, Mr. President, as an amendment, that the session be extended until twelve o'clock.

Mr. Root — It seems to me, sir, that something definite ought to be said on the subject. The motion to extend the session of the Convention until this matter is disposed of may carry it into next month.

Mr. Davies — I withdraw that motion and make it one hour.

Mr. Root — Well, Mr. President, is there any occasion for extending the session one hour more?

Mr. Moore — Yes; I want to speak on the subject. (Laughter.)

Mr. Root — Very well, if Mr. Moore wants to speak I withdraw my objection to the extension by one hour.

The President *pro tempore* — A motion is made to extend the session until eleven o'clock, and that is amended by making it twelve o'clock. Extending the time of the session does not extend the time of this debate, however.

The President *pro tempore* put the question on extending the session until twelve o'clock, and it was determined in the affirmative.

Mr. Davies — Mr. President, I, for one, do not propose to get under the petticoats of the Legislature in this matter. I was a member of the Legislature in 1887 when this gambling act, known as the Ives pool bill, was enacted. The Republican party was in a slight majority in both branches. I confess that at that time I went home with a blush upon my cheek for my party. (Democratic applause.) It did not matter that in the Senate every Democrat voted for it (Republican laughter); it did not matter that in the Assembly every Democrat save three voted for it — the Republican party was in the majority in both branches, and it was held responsible. The Republican party is in the majority in this Convention, and it will be held responsible for the acts of this Convention; and it cannot escape it. Now, Mr. President, the State of Louisiana, which we are wont to call a half civilized State, has outlawed the Louisiana lottery. It had a hard fight to get through with it. The lottery offered it immense sums for the privilege; yet the State spurned it and placed in its organic law a prohibition that will stand there forever against gambling of any sort; and it is broad enough to cover gambling of any

sort in the State of Louisiana. We saw in our neighboring commonwealth (New Jersey), the struggle that was waged with the race tracks of that State. We saw how morality triumphed; we saw the people come out ahead there. And, Mr. President, I am not awed by this suggestion that the pool men will raise a large fund of money and put it into the campaign against our party. Why, Mr. President, they have been doing that every year since the Ives bill became a law, and it is a notorious fact. Now I say, Mr. President, that we cannot afford to avoid passing this amendment. I hear my friend from Kings (Mr. Schumaker) — and I am not sure whether he spoke sarcastically or not — speak about the cause of religion being supported by innocent gambling and innocent lotteries, and the poor little churches that are kept open by such means. Now, I know of no such churches that are kept open by gambling or by lotteries; and if there are any such churches, Mr. President, I say, for the cause of religion, for the cause of God and country, they would better be closed. (Applause.) I cannot, Mr. President, agree with our distinguished President upon this question. I am not in favor of emasculating this measure by the undotting of an *i* or the uncrossing of a *t*. I want it precisely as it is. I think it is right as it is, and I hope for the sake of the cause of good government, for the cause of every mother, for the cause of every wife whose husband, whose son, is addicted to this curse of gambling, that this Convention will pass this amendment and thus receive the commendations of every lover of good in the land.

Mr. McIntyre — Mr. President, I would like to know if there is any limit to the time allowed to the speakers?

The President *pro tempore* — Five minutes. If the Chair is mistaken about that the Convention will correct him.

Mr. C. B. McLaughlin — Mr. President, so far as this amendment relates to the sale of lottery tickets, pool selling or bookmaking, I am in favor of it. But I am opposed to incorporating in this amendment that portion of it relating to any other kind of gambling. I am opposed to it, because I believe the effect of it is to kill the very measure which is sought here to adopt. Now, let us see what is the legal effect of this proposed amendment. Is it self-educating? No. It requires legislation to carry it into effect, and very many of the men who are seeking to pass this amendment know, as I believe, that this amendment has no effect until the Legislature has passed upon it. Ah, but see how much further

it goes. If it can be construed into repealing the Ives pool bill, then it repeals every law on the statute books of this State in reference to gambling. Now, we have upon the statute books of this State stringent laws in reference to gambling.

Mr. Veeder — Will the gentleman allow a question?

Mr. McLaughlin — I have only five minutes and I do not care to be interrupted. Now, as I have said, we have upon the statute books of this State stringent laws against every other kind of gambling, and the only thing here sought to be remedied is the operation of the Ives pool bill. Then why not confine this amendment to that? If that is the thing sought to be remedied, and the measure is against that, I have no objection. But when you have incorporated in this amendment not only that, but every other kind of gambling, and if the effect is to repeal the Ives pool bill, then you repeal every other statute in reference to every other kind of gambling. Now, if that is true, then you must have legislation in order to provide for the penalties for the violation of law. It is not self-executing. And another thing; the mere fact that we oppose this amendment cannot be construed into a demonstration that delegates are in favor of gambling. Why, how absurd it would be to provide in the Constitution that a man should not steal or murder. I contend that the criticism upon this proposed amendment is just. Limit it to the very thing that you want to eradicate, and to that extent I am in favor of it.

Mr. Veeder — Mr. President, I am astonished at the argument being advanced by a lawyer that because you abrogate a law that licenses gambling, you consequently abrogate laws that prohibit gambling. It is an absurdity. There is nothing that allows gambling except the Ives pool bill, and if you abrogate that it does not follow that you abolish the laws that prohibit gambling. I am astonished, as I said before, that a lawyer should make a remark of that kind, and urge it upon the Convention. The proposition in this constitutional amendment is that gambling shall not be allowed, leaving it to legislative declaration what shall be the penalty for the violation. I have heard the gentleman speak before against putting legislation into the Constitution. That was the object of the gentleman who proposed this measure, to avoid legislation. It is declared that this gambling shall stop, and that the Legislature shall fix a penalty for the violation of this provision of the Constitution.

Mr. Dean — Mr. President, I had supposed when I came to this Convention that it was the duty and the obligation of a Constitu-

tional Convention to limit the action of the Legislature and to define the duties of the public officials of the State. I infer, however, from the discussion upon this floor, and particularly this evening, that the object of a Constitutional Convention is to do good to somebody. If that is the purpose of a Constitutional Convention, if that is what we want in the fundamental law, then I submit that a formula for the preparation of a soothing syrup would constitute a very efficacious chapter. In view of the people who have been playing the baby act here to-night, and I do not refer exclusively to the gentleman from Orange (Mr. Dickey), that would be an exceedingly valuable acquisition to this Constitution.

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

The President *pro tempore* — The gentleman will state his point of order.

Mr. Dickey — The gentleman is impertinent and personal in his remarks.

The President *pro tempore* — The gentleman will please cease being impertinent and personal in his remarks and proceed in order.

Mr. Dean — I was about to address myself to the subject-matter, Mr. President. I have at the present time small wagers with three gentlemen upon this floor who are to-night advocating this anti-lottery, anti-gambling proposition. (Laughter.) I do not consider that I have committed any great moral wrong, or that these gentlemen have done so. It is simply the inconsistency that I am opposed to, and I am opposed to hypocrisy in the Constitution above everything else.

Mr. Cassidy — Mr. President, may I ask the gentleman a question?

Mr. Dean — Certainly.

Mr. Cassidy — Will the gentleman state what his wagers are on, and how much they are?

Mr. Dean — Upon the probability of the work of this Convention being ratified by the people at the polls. (Laughter.)

Mr. McIntyre — Mr. President, I should hardly think that this was an appropriate discussion for the last hours of this Convention, upon a subject that was passed upon almost unanimously to-day. This article was advanced to third reading, and now we find ourselves all by the ears, and everybody is taking a different view of the matter and thinking to escape the subject of gambling. It is now

proposed to stop the sale of lottery tickets, pool selling and book-making, and to stop there. It will not be twenty-four hours before they would have some new scheme of gambling, and the evil would still exist, and still they could not be punished. As far as gambling is concerned in its relation to the statutes of this State, if gentlemen sit down in their houses and play a game of draw poker, I do not know that there is any law that will punish them for doing so. It is the parties who keep the gambling places that are subject to the penalties prescribed for that. But it is just as bad for gentlemen to play draw poker as it is for them to bet on a horse race, and I see no difference between the two; and when people come here and try to condemn one person for doing a thing that they will not condemn in themselves, it seems to me that that is a very strange position to take. To my mind it is a ridiculous position, and we make ourselves here ridiculous if we indorse that proposition. I am reminded of the time when this article, a short time ago, was wanted to be advanced, when some thirty or forty men arose and were so anxious to get at this, so that they could vote for it, so that they could spread themselves on the record and go before the people as being opposed to gambling. Now that they have it, now that they have the opportunity to vote for it, they want to skulk behind it and kill it by technicalities; they are not in favor of abolishing gambling, and do not have the moral courage to say so. That is where they stand, and I am surprised at it. Suppose it does stop poker playing, suppose it does stop church gambling, what is the harm done? That is what ought to be done; and I, for one, say let us not quibble over this; let us pass it broadly, let us put it into the Constitution. You will never get the Legislature to do anything about it. Gentlemen that spend half their leisure hours in playing draw poker, when they are here making laws (applause), will not pass any law for the suppression of gambling. I believe in calling things by their right names, and not in trying to shirk or shun them. I was not for bringing this up myself, because I almost believe it will be a dead letter. Gambling has gone to such an extent that you must almost eradicate the human nature of the citizens of this country in order to stop it; but, now that we have got at it, let us take it by the throat, as far as the Constitution is concerned, and let us show the people that we are not ashamed and not afraid to put it into the Constitution. Why, you propose to put in a provision against lotteries, and still you say you would not include gambling. Is not lottery as much a subject of legislation as gambling? If you do not put it in the people will say you are afraid to put it in; and, for one, I would not stultify my

vote given here within six hours, and vote contrary to that. I hope members will not change their votes. If there is anything that I dislike in this world it is to see people commit a folly and then spring down to the front of the Convention, and, with hands raised, cry, "Mr. Chairman, Mr. Chairman, I change from no to aye," "from aye to no."

Mr. Woodward — Mr. President, I wish to say a few words upon this question. I am in favor of this amendment as it stands. I am not one of those who want to strike gambling out of this proposition. I am not in favor of gambling in private houses, nor in churches. I would put a stop to it everywhere. The amendment as it stands is none too strong. The position of some of our delegates reminds me of a story I heard when a boy. With the permission of the Convention I will relate it. A Dutch justice had a lot of "drunks" brought up before him to be dealt with. He said to the first one brought up: "And what did you get drunk on?" "Why, I got drunk on cider." "You gets drunk on cider; you shall pay fifteen tollars." The next one, "And what did you get drunk on?" "I gets drunk on beer." "You gets drunk on beer; you shall pay twelve tollars." The next one, "And what did you get drunk on?" "I gets drunk on whiskey." "You gets drunk on whiskey; you shall pay ten tollars." The next one, "And what did you get drunk on?" "I gets drunk on rum." "You gets drunk on rum; you shall pay five tollars." The last one brought up, "And what did you get drunk on?" "I gets drunk on sherry." "Go your way, go your way. I gets drunk on that myself sometimes." It strikes me that some of those gentlemen who favor striking out the words "all other gambling," as proposed by our honored President, are like the Dutch justice who got drunk on sherry himself sometimes. I am not in favor of gambling anywhere — in public or in private — in churches or in private houses. I do not gamble myself, and would not have others do so.

Mr. Lauterbach — Mr. President, I shall be surprised if the object which was sought to be accomplished by the Committee on Preamble when it submitted the amendment now under consideration to the Convention, after a most thorough examination of the subject, and after completely remodeling the amendment as originally submitted, shall not receive substantially the universal assent of delegates on both sides of the Convention. During the debate considerations of a political character were presented as affecting the question under deliberation. If there is any one matter that has come before this Convention in which politics and political expedi-

ency, or expediency in any other form, should be banished from consideration, it is this theme.

The subject involved has already savored too much of politics. The infamy which this amendment seeks to destroy is the creature of politics, and of the basest order of politics. It is time that the subject covered by the amendment should be considered in the light of ethics, morality and propriety, so that the State itself, awakening to a consciousness of the iniquitous policy which itself has pursued, shall conduct itself decently, and not indecently.

It is the duty of this Constitutional Convention without stopping, as it is now doing, to trifle with phraseology or to play with words, or to make nice shadings among fine-spun ideas, to proceed promptly to do its share in abolishing the co-partnership of the State with criminals in a business otherwise conceded to be criminal, an alliance which every one will agree will be found unparalleled in the record of any civilized community.

This great and powerful State has engrafted in its Constitution a prohibition against lotteries of any description, and has so carefully guarded its citizens against indulgence in that vice that to-day a child taking a chance in the contents of a toy grab-bag is guilty of a violation of constitutional law. It has annihilated, and, properly so, all systems of lottery playing, however praiseworthy might be the ultimate purpose for which the lottery might be conducted. In its Penal Code are provisions making criminal all species of betting and gaming, and especially all indulgence in bets or wagers of any description at races or trials of speed between horses or other animals, and it would be justly the subject of condemnation did these laws, which prevail in every State throughout the Union, not obtain here.

Can it be believed, then, that in 1887 a compact was solemnly entered into in these legislative halls, deliberately entered into, passed by Assembly, passed by Senate, signed by the Governor, in spite of the protest of the press and of the pulpit, which said to the horse track gambler in effect:

"If you will establish race tracks throughout the State; if you will put your ill-gotten millions in this form of enterprise, we will legitimatize the business of horse racing, and we will do more. We will render lawful the pursuit of pool selling and of bookmaking; we will declare that which is a felony everywhere and anywhere throughout the State of New York, a felony which has met with our severest condemnation and which has had imposed upon it the most restrictive provisions of our Penal Code, if pursued by you as your vocation, to be a felony no longer, but to be a pursuit

receiving the express sanction and approval of the Empire State. Yes, if you, whom the State has ostracized and driven from the pale of decent society, will establish race tracks, will surround them with sufficient glory and attraction so as to render them popular, and if you will then agree to give me, the State, five *per centum* upon the gross amounts of receipts for admission on race days to race tracks and race grounds which you shall so establish — if you will allow to the State this pittance out of the vast sums which you shall reap from the guilty whom you have made guilty and whose money you have secured — if you will but turn into the treasury of the Empire State this tithe of the filthy lucre which you shall thus obtain, you shall be permitted to carry on as a lawful avocation the most iniquitous, vile and wretched business that has ever been carried on within the borders of this State."

Yet this is precisely what was done when chapter 479 of the Laws of 1887 was passed. Can it really be believed that the State itself said to these men:

"Gather yourselves together in associations, under the pretense that horse breeding is your object; erect your race tracks throughout the State, and then use them as you please, for any purpose, however vile; you shall be at liberty to dethrone right, morality, decency; to drag down the youth of this State to the lowest depths of degradation. You shall be licensed to carry on your most nefarious pursuit, not throughout the whole of the year — some few months shall remain sacred to decency and propriety, but from the first of May until the first of October. No part of the State shall be protected from your intrusion, but you shall not pollute the air of any one section for more than thirty days consecutively. Erect your fences, charge admission within your gates, and when you have decoyed your victims and despoiled them, give to the Empire State, which eagerly awaits it, a penny out of every dollar that you shall have filched dishonestly from the young and the weak; those whom you have lured to their ruin and destruction. The State shall be your partner only in gate-money receipts, it is true, the least of your earnings, but for your generous concession in this respect you shall not only pursue your felonious business as a lawful business, but we shall enact laws that shall invest in you a monopoly of that business as against the other rascals who are engaged in pool selling and bookmaking outside of your inclosures. Their vile trade shall remain a felony. Your outrageous traffic shall be lifted into lawfulness. They shall be prosecuted. You shall be protected and encouraged."

Such, in brief outline, is the contract, the solemn contract that the Empire State, the great, glorious Empire State, made in 1887, by the enactment of the Ives pool law, with gamblers of the lowest degree, and which it has since maintained. Their nefarious establishments have been erected from Montauk Point to Niagara Falls, and the State treasury has received and distributed to the country fairs the few miserable shekels which it has received as its share of the plunder. Why, for every dollar which it has received, it has expended ten dollars to support those who have become inmates of its prisons by reason of the weak policy so pursued. You are all familiar with the terrible temptation of this alluring vice. The passion of gambling is pandered to in this fashion in the most insidious manner. Other forms of like viciousness must be followed by the pursuit of sinister and indirect methods. The fear of discovery, the dread of detection are sufficient in themselves to destroy their seductiveness; but the haunts of the bookmaker and the pool seller at the race track present nothing that is repulsive, but everything that is attractive to the seduced. You are all familiar with the picture. It needs no description from me. The race track with its splendid surroundings, the clubhouse with its social attractions, the magnificent animals prostituted to uses which shall enable the pool seller and bookmaker to win his thousands, used not in an honorable sporting sense, but fraudulently and dishonorably. The newspapers herald the great events that are to take place and exhaust their powers to depict magnificently and attractively the racing events as they occur. Exaggerated accounts of great winnings are presented to the readers of every journal and the details of a winning of fifty thousand dollars on Domino or Henry of Navarre within five minutes of the making of a wager are glowingly set forth. Allured by these descriptions, tempted by cheap fares and facility of access, the young man or the young woman entering these inclosures sees gathered those whom he has learned to honor and respect, and is set the example by his employer, the bank president or its cashier, men most honored and respected, all engaged without shame or secrecy in this abominable game of gambling with large hazards. I have seen, as you have seen, young women fifteen or sixteen years of age, with their hands full of greenbacks, accompanied by horse jockeys and touters, seeking advice of men, contact with whom is pollution and corruption, criticising points of horses, talking pedigrees, rushing about excitedly and wildly, full of the maddened frenzy of gambling in its worst spirit, scattering their money right and left, engaged in a pursuit as hellish and devilish as any that can possibly be conceived of. What won-

der that they sink into the lowest abyss of degradation! What wonder that their brothers similarly tempted will stop at no action however criminal to secure the means to carry on this tempting but destroying evil!

Long has the existence of this wrong been recognized, but every effort to induce the Legislature to come to the rescue has been futile. Again and again have your representatives been importuned to put an end to it. Again and again, under one pretense and another, generally invoking as an excuse their desire to receive these moneys for the encouragement of horse breeding by the distribution of prizes at country fairs, has the wrong been steadily maintained and the danger suffered to become greater and greater. Every year from 1887 to 1894 have these futile efforts been made. The crime continued on the increase. Tens of thousands of young men and women have been hurled to their ruin through the instrumentality of the State that should have protected them, and yet the relief would never come. Now, here at this Convention, and in this presence, I implore that an end shall be put to it forever. We have heard the argument of my faint-hearted brother from St. Lawrence, whom I have never known to evince such weakness before, that he fears the passage of this amendment, lest those who have concocted and maintained this scheme of iniquity will gather vast funds and annihilate all the work upon which we have been engaged; but their moneys, however vast, will never withstand the outraged sentiment of the people of the State, if you shall permit it to final expression. The majority of the Committee on Preamble fully appreciate the great importance of this proposition. They placed it upon your files with favorable report, and it should long since have been adjudicated upon. But, oh, with what weary travail has it been permitted to come before this Convention. Oh, with what desperation have insidious efforts been made to prevent the topic from being considered! And it is only now, at the last moment, at the expiring hour of the Convention, that we have an opportunity to grasp this monster by the throat and choke it to death, unless the interposition of some technicality of parliamentary procedure, some ingenuity of suggested amendment, shall be permitted to intervene. Do not, you are urged, treat this matter radically; limit, it is suggested, the phraseology of your amendment to pool selling and bookmaking only, but do not attempt to restrict gambling generally, so that if an amendment shall finally have been here adopted, and if, perchance, the will of the people shall not be defeated, and it shall be enacted into constitutional law, the tricks of the gambler, supplemented by the aid of able counsel, shall

suffice to devise some other scheme of perpetuating the same iniquities in the same way, but under other nomenclature. Do not be deceived. Gambling has already been made unlawful. If any one desires to legalize any one branch of gambling by the suggestion of proposed amendments, let us say to him, never! Never! No matter from how high a source the demand may come; no matter how great the influence of the proponent, let us refuse his request, let us pass this amendment, so that once enacted into law it may carry out its beneficent purpose and not prove a sham and a deceit. Just as it was reported let us have this amendment. No subterfuge, no change, no alterations. Make no half-way work. Sweep the whole brood together, gamblers, pool sellers, bookmakers, all the racing fraternity, into oblivion forever. Pass this amendment now as it is, unaltered and unchanged. True horse fanciers, the Bonners, the Lorillards, the Belmonts, the Keenes and the rest will thank you for the protection you thus afford their legitimate pursuit. Only the gambler, who should be a Pariah and an outcast, and not the State's associate, will have cause for regret.

Mr. Moore — Mr. President, the eloquent gentleman from New York has said all and more than I can say upon this amendment, and, therefore, Mr. President, I simply want to record myself as being in entire sympathy with his utterances. I believe that the thing for this Convention to do is to meet this righteous measure soberly and pass it by a large majority. (Applause.) I am not frightened, Mr. President, by the spectre of seven hundred thousand dollars of our gamblers coming up against the moral elements in this State. I am not frightened by any such phantom as that. I believe if there is any amendment which is devoid of politics that it is this. I ask, Mr. President, that the better sense and the moral principle of this Convention shall come to the rescue of this amendment and pass it by such a majority as no other measure has been passed by.

The President *pro tempore* — The time for debate upon this amendment has closed.

The President *pro tempore* put the question on agreeing with the motion of Mr. Choate to recommit, with instructions, and it was determined in the negative.

The President *pro tempore* — The Secretary will read the proposed constitutional amendment through.

The Secretary read the proposed constitutional amendment, in the language following (O., I. No. 384, P. No. 425):

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

"Section 10 of article 1 of the Constitution is hereby amended so as to read as follows:

"Sec. 10. No law shall be passed abridging the right of the people peaceably to assemble and to petition the government or any department thereof; nor shall any divorce be granted, otherwise than by due judicial proceedings; nor shall any lottery, or the sale of lottery tickets, pool selling, bookmaking, or any other kind of gambling hereafter be authorized or allowed within this State; and the Legislature shall pass appropriate laws to prevent offenses against any of the provisions of this section."

The President *pro tempore* — This proposed constitutional amendment, having had three several readings, the question now is upon its final passage. Those in favor will say aye; those opposed will say no.

The Secretary called the roll, and the following result appeared:

Ayes — Messrs. Acker, Ackerly, Arnold, Baker, Banks, Barhite, Barnum, Barrow, Becker, Brown, E. A., Brown, E. R., Burr, Cady, Carter, Cassidy, Church, Clark, G. W., Clark, H. A., Cochran, Coleman, Cookinham, Cornwell, Countryman, Crosby, Danforth, Davies, Deady, Deterling, Deyo, Dickey, Doty, Durfee, Faber, Foote, Forbes, Francis, Frank, Andrew, Frank, Augustus, Fraser, Fuller, O. A., Galinger, Gilbert, Goeller, Green, A. H., Hamlin, Hawley, Hecker, Hedges, Hill, Holls, Hottenroth, Jacobs, Johnson, I. Sam, Johnson, J., Kellogg, Kinkel, Lauterbach, Lester, Lewis, C. H., Lewis, M. E., Lincoln, Lyon, Manley, Mantanye, Marshall, Maybee, McDonough, McIntyre, McKinstry, McMillan, Mereness, Moore, Morton, Nichols, Nicoll, Nostrand, O'Brien, Ohmeis, Osborn, Parker, Parkhurst, Parmenter, Pashley, Peck, Phipps, Platzek, Pool, Porter, Powell, Putnam, Roche, Root, Schumaker, Spencer, Springweiler, Steele, A. B., Steele, W. H., Storm, Sullivan, W., Tekulsky, Tibbetts, Titus, Turner, Vedder, Veeder, Vogt, Wellington, Woodward, President — 109.

Noes — Messrs. Abbott, Bigelow, Dean, Peabody — 4.

The President *pro tempore* — This proposed constitutional amendment, having received the votes of a majority of all the delegates elected to this Convention, is duly passed. The next order of third reading is No. 33, general order No. 73.

Mr. I. S. Johnson — Mr. President, I move that we do now adjourn.

The President *pro tempore* — The Secretary will read the title (O., I. No. 333, P. No. 453).

The Secretary read the proposed constitutional amendment, in the language following:

"Proposed constitutional amendment to amend article 11 of the Constitution, relating to the militia."

The President *pro tempore* — One hour is allowed for the discussion of this proposed amendment.

Mr. I. S. Johnson — Mr. President, is a motion to adjourn in order at any time?

The President *pro tempore* put the question on the motion of Mr. Johnson to adjourn, and it was determined in the negative.

Mr. I. S. Johnson — I rise to a point of order, Mr. President, that this proposed amendment has not been printed.

The President *pro tempore* — The point of order is not well taken, since it has been printed, and is now on the President's desk. No amendments have been submitted.

Mr. Cochran — I do not think, Mr. President, that any one desires to debate this.

The President *pro tempore* — If no member desires to debate this proposed amendment, the Secretary will read the amendment through the third time.

"Article 11 of the Constitution is hereby amended by striking out all of this article, and inserting in lieu thereof the following:

"Section 1. All able-bodied male citizens, between the ages of eighteen and forty-five years, who are residents of the State, shall constitute the militia, subject, however, to such exemptions as are now or may be hereafter created by the laws of the United States, or by the Legislature of this State.

"Sec. 2. The Legislature may provide for enlistment into the active force of all such other persons as may make application to be so enlisted.

"Sec. 3. The militia shall be organized and divided into such land and naval, and active and reserve forces, as the Legislature may deem proper, provided, however, that there shall be maintained, at all times, a force of not less than 10,000 enlisted men, fully uniformed, armed, equipped, disciplined and ready for active service. And it shall be the duty of the Legislature, at each session, to make sufficient appropriations for the maintenance thereof.

"Sec. 4. The Governor shall appoint the chief of the several staff departments, his aide-de-camp and military secretary, all of whom

shall hold office during his pleasure, their commissions to expire with the term for which the Governor shall have been elected; he shall also nominate and, with the consent of the Senate, appoint, all major-generals.

"Sec. 5. All other commissioned and non-commissioned officers shall be chosen or appointed in such manner as the Legislature may deem best conducive to the improvement of the militia, provided, however, that no law shall be passed changing the existing mode of election and appointment, unless two-thirds of the members present in each House shall concur therein.

"Sec. 6. The commissioned officers shall be commissioned by the Governor as commander-in-chief. No commissioned officer shall be removed from office during the term for which he shall have been appointed or elected, unless by the Senate, on the recommendation of the Governor, stating the grounds on which such removal is recommended, or by the sentence of a court-martial, or upon the findings of an examining board organized pursuant to law, or for absence without leave for a period of six months or more."

The President *pro tempore* — This proposed constitutional amendment, having had three several readings, the question is now upon its final passage. Those in favor will say aye; those opposed will say no.

The Secretary called the roll, and the following result appeared:

Ayes — Messrs. Abbott, Acker, Ackerly, Arnold, Baker, Banks, Barhite, Barnum, Barrow, Becker, Bigelow, Blake, Bowers, Brown, E. A., Brown, E. R., Burr, Bush, Cady, Carter, Church, Clark, G. W., Clark, H. A., Cochran, Cookinham, Cornwell, Crosby, Danforth, Davenport, Davies, Deady, Dean, Deyo, Dickey, Durfee, Emmet, Faber, Foote, Forbes, Francis, Frank, Andrew, Frank, Augustus, Fraser, Fuller, O. A., Galinger, Gilbert, Goeller, Green, A. H., Green, J. I., Hamlin, Hawley, Hecker, Hedges, Hill, Hotchkiss, Hottenroth, Jacobs, Johnson, I. Sam, Johnson, J., Kellogg, Kinkel, Lauterbach, Lester, Lewis, C. H., Lewis, M. E., Lincoln, Lyon, Manley, Mantanye, Marshall, Maybee, McIntyre, McKinstry, McLaughlin, C. B., McMillan, Mereness, Moore, Morton, Mulqueen, Nichols, Nicoll, Nostrand, O'Brien, Osborn, Parker, Parmenter, Pashley, Peabody, Peck, Phipps, Platzek, Pool, Putnam, Root, Schumaker, Spencer, Steele, W. H., Storm, Tekulsky, Vedder, Veeder, Vogt, Woodward, President — 101.

Noes — Messrs. Coleman, McDonough, Springweiler — 3.

The President *pro tempore* — This proposed constitutional amendment, having received the votes of a majority of all the delegates elected to this Convention, is duly passed.

Mr. Lyon — Mr. President, I beg to submit the following report.

The Secretary read: Mr. Lyon, from the Committee on Contingent Expenses, reports as follows:

"The Committee on Contingent Expenses, to which was referred the annexed resolution, providing for the payment to Joseph Fayel of the sum of six dollars per day during the sessions, on account of services performed in the document room, would respectfully report that said Joseph Fayel was appointed a messenger of the Convention, and as such became entitled to three dollars per day for his services, and that he was thereafter assigned to assist in the work of the document room, in accordance with the provisions of rule 72, authorizing the President of the Convention to detail messengers to render such assistance as might be necessary.

"The Committee on Contingent Expenses is of the opinion that the Convention has not the power to allow the additional compensation asked for, and reports adversely upon such application."

(Signed) GEORGE H. LYON,
Chairman.

The President *pro tempore* — What is the pleasure of the Convention with regard to this report?

On motion of Mr. Veeder, the report was laid upon the table.

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

Mr. Veeder — Mr. President, there is very important business to be performed yet. I ask the privilege of going into Committee of the Whole on amendment 56. It will take but a few minutes.

Mr. Cady — I do not withdraw my motion.

Mr. Veeder — The gentleman is a very unkind man; most unkind.

The President *pro tempore* put the question on agreeing with the motion to adjourn, and it was determined in the affirmative.

Saturday Morning, September 22, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber, at the Capitol, at Albany, N. Y., Saturday morning, September 22, 1894.

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

The Rev. A. Kennedy Duff offered prayer.

Mr. Deady — Mr. President, I move that the call of the roll be dispensed with.

The President — That is not quite in order until a motion is put to dispense with the reading of the Journal of yesterday.

Mr. Acker — Mr. President, I move to dispense with reading the Journal of yesterday.

The President put the question on the motion of Mr. Acker to dispense with the reading of the Journal of yesterday, and it was determined in the affirmative.

The President — The roll will not be called. The Chair has a matter to bring to the attention of the Convention, which, in his judgment, requires its immediate action, and is in regard to the status and pay of the employes of the Convention from the fifteenth day of the present month. The act is silent about their pay after the fifteenth, although I know of no principle upon which they can be retained in the service of the Convention and not paid. They have all been retained up to the present time, and, according to my judgment, they should be paid as heretofore. I do not feel exactly that it is my duty to certify without the authority of the Convention, which I ask this morning. Now, in regard to the continuance of service, it is quite evident that after to-day's meeting, as we shall have only two or three days hereafter to make final settlement of this Convention, we shall need all the Secretary's force. There is no doubt about that. I do not see why the pages and the messengers, and the sergeant-at-arms and janitors will not be required; but there seems to be no further occasion for the services of the librarian and assistant librarian and the committee clerks, and possibly the doorkeepers. At any rate, I wish for authority and direction in the matter, and these employes are well entitled that it should be given.

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

The President — Mr. Acker offers a resolution. The Secretary will read it.

The Secretary read Mr. Acker's resolution as follows:

R. 229.—" Resolved, That all the employes of the Convention and of the Secretary be paid to and including to-day; the services of the librarian and assistant librarian, of the committee clerks and doorkeepers be dispensed with after to-day, and all the other employes be retained and paid until the final adjournment of the Convention, and that the President be and is hereby authorized to certify for employes to be paid as herein prescribed."

Mr. Schumaker — The doorkeepers are needed. I shall ask to amend that. What will we do here without doorkeepers? The doorkeepers ought to be kept. I move as an amendment that the doorkeepers be added, and the postmaster.

The President — You move to strike out the doorkeepers and the postmaster from Mr. Acker's resolution. The postmaster will remain, of course. I understood Mr. Acker's motion was to dispense with the services of the librarian and assistant librarian, and the committee clerks and doorkeepers.

Mr. McMillan — Mr. President, I move to lay this resolution on the table.

The President — Before the motion is put, will you allow the Chair to state that, in justice to these employes, the matter ought to be determined, and the President ought to be authorized or not.

Mr. Schumaker — The President makes himself liable.

Mr. Deady — Withdraw your motion, Mr. McMillan.

Mr. McMillan — Then I move to amend this resolution. I withdraw my motion to lay on the table, and I move to amend by striking out all that portion of the resolution which provides for the dispensing with the services of any of the attaches of this Convention. I cannot understand why we should begin to divide pennies. I think the pay of all the employes should go on to the completion of the work of this Convention. If you wanted to discharge the committee clerks, why didn't you do it on the day the committees made their reports? I cannot see any necessity for any picayune policy in respect to this matter.

Mr. Schumaker — Mr. President, I withdraw my amendment. I supposed the matter had been caucused on.

Mr. Gilbert — Mr. President, I was going to say that this resolution ought not to be laid on the table; but I am in favor of the amendment that has been made by the gentleman from Erie. I think the employes should be retained and paid up to the time of

the final adjournment of this Convention. I hope the amendment will be adopted.

Mr. Vedder — Mr. President, I sincerely hope that the amendment of the gentleman from Erie will prevail. It is absolutely right, and any other course would be wrong. These gentlemen who have been employed should remain here as long as we do. I do not believe in this cheese-paring business at all. They should remain here until the business of this Convention is concluded.

The President — The question is upon Mr. McMillan's amendment, the effect of which is to continue all employes under pay down to the final adjournment of the Convention, and authorize the President to certify to their pay accordingly.

The amendment prevailed.

The President — The Secretary will read the resolution, as amended.

The Secretary read the resolution as amended, as follows (R. 229):

"Resolved, That all the employes of the Convention and of the Secretary be retained and paid until the final adjournment of the Convention, and the President be and is hereby authorized to certify to the employes' pay, as herein prescribed."

The President put the question on the resolution, as amended, and it was determined in the affirmative.

Mr. Vedder — Mr. President, I move that when this Convention adjourns it adjourn to meet again on Thursday next, at eight o'clock in the evening.

Mr. Bowers — Mr. President, I move to amend by making it Friday morning at ten o'clock. Coming here on Thursday will be manifestly much more inconvenient than coming here on Friday. There is probably but a day or two more of work to be done. But it is manifestly apparent to me that it is an utter waste of time to discuss these motions this morning. Mr. Acker makes one motion, and Mr. McMillan and Mr. Vedder oppose it. Now, Mr. Vedder makes a motion, and probably some one else of the majority side will oppose it. Of course, later when they meet in caucus, they will come in here with a unanimous front and reconsider any resolution we adopt. But, as we of the minority would like to have some certainty as to our future movements, I certainly hope until some resolution is acted upon, and acted upon for good, that there will be no attempt to fix a day that will be broken hereafter. But

if we are to dispose of it seriously, and if we are to expect that the majority will adhere to any resolution they will adopt this morning, then, undoubtedly, we will come here and act upon the revised Constitution. I do not know when that will be completed. Unless it is put in better form than the last attempt, I do not know when it will be disposed of.

The President — That is, perhaps, because Mr. Bowers was not there.

Mr. Bowers — Let us have until Friday, and come here Friday and end the work, and get ready to go to the people, but do not let us come here on Thursday, and have Thursday and Friday on our hands, and possibly not have the work ready.

Mr. A. H. Green — Mr. President, it has been for a day or two generally understood that this Convention would adjourn on Thursday, and I think that any alteration of the day would occasion many of us inconvenience. I have a further suggestion to make, that if the hour were fixed for half-past eleven on Thursday (it is probable that the Convention will not be in session over a few hours), that would be a convenience to half the Convention. There is no train that comes here, and we would have to make arrangements to come the night before. If it could be fixed at half-past eleven on Thursday, we people from the southern part of the State could leave our homes in the morning and arrive here by that hour.

Mr. Vedder — Mr. President, I believe it is the intention of the whole Convention to close its work up as soon as practicable, and to adjourn in decency and order. The Revision Committee, to which is committed now the principal work of the Convention, is getting our work in proper legitimate shape, so that they possibly can be ready to report on Friday morning, possibly Thursday evening. Now, if we meet here Thursday evening, there may be some little work that can be done that evening as a preliminary to adjourning on Friday *sine die*. Therefore, in order if business should come before us, or should remain to be done which is undone, we could do it Thursday evening and be ready on Friday to adjourn by having the whole day at our disposal. It is for the economy of time that I have suggested Thursday evening. It will inconvenience no one unless it is the majority side of this Convention. The party which will be headed, which is headed, and led here substantially by the gentleman from New York, Mr. Bowers, will be returning in the funeral procession from Saratoga of the Democracy of the State, and they will want to come here in this retreat on that evening.

Mr. Bowers (*sotto voce*) — We won't look as much like a funeral procession as you did when you came here on Thursday last.

Mr. Vedder — So it won't be much of an inconvenience to the Democracy. But I have made this in the matter of economy of time, to come here on Thursday evening, so we could finish up anything that remains to be done, and we can adjourn here on Friday *sine die*.

Mr. Bowers — Will the gentleman permit a question?

Mr. Vedder — Yes.

Mr. Bowers — If Thursday evening at eight o'clock is fixed as the time to adjourn, will it remain so?

Mr. Vedder — There is no doubt about the fact. When the Republicans fix upon a policy they follow it without diverging from it. (Laughter.)

The President put the question on the amendment of Mr. Bowers, that the Convention adjourn until Friday morning at ten o'clock, and it was determined in the negative.

Mr. A. H. Green — Mr. President, I would like to have it Thursday, at half-past eleven o'clock A. M.

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

The President put the question on the motion of Mr. Vedder, that when the Convention adjourn, it meet again on next Thursday evening at eight o'clock, and it was determined in the affirmative.

Mr. J. Johnson — Mr. President, on Wednesday of last week a motion was made to reconsider the vote by which O., Nos. 6-339, third reading No. 1, was passed, usually called the amendment in reference to the coroners. The motion was laid on the table.

The President — Thursday of last week?

Mr. J. Johnson — Wednesday of last week. I move you, sir, that that motion be taken from the table. It is necessary to amend that section in order to make it harmonize with the cities article.

Mr. Vedder — Mr. President, may we have that motion read by the Secretary?

The President — I think it is the right of the Convention to have it read before that motion is taken from the table. The Secretary will read it.

The Secretary read Mr. Johnson's motion, as follows:

"Mr. J. Johnson moved to reconsider the vote by which general order No. 9 (printed No. 339), entitled, 'Proposed constitutional

amendment to amend article 10 of the Constitution to do away with the office of coroner as a constitutional office,' was passed, and that that motion lie on the table. Determined in the affirmative."

The President — The question is on Mr. Johnson's motion to take from the table.

Mr. Bowers — Is that motion debatable?

The President — I think it is.

Mr. Bowers — I would suggest to Mr. Johnson and members of the Convention, that it would be a very good thing if we could be told what would be the object of taking it from the table. Is it to correct a typographical error in the amendment that passed the Convention? Is it to change the form of the amendment? Why should it be reconsidered? Why go through the trouble of a roll-call to reconsider an amendment that has been adopted, merely because Mr. Johnson suggests it? Why doesn't he give us some reasons and explain the object of taking it from the table, that the Convention may know what it is to do and what it is about? It seems to me that without any explanation the proper course of the Convention should be to defeat the resolution to take from the table.

Mr. Mulqueen — Mr. President, I hope on this last day of this Convention this great body of men will not turn itself into a legislative assembly and propose one motion for the sake of getting in another. I believe that the proposition to take this matter from the table is a trick, and it is the purpose of Mr. Johnson to propose something entirely new, and to add it on as a joker, and thus carry it through this Convention. It has been said here that Mr. Johnson has had Mr. Sullivan, from Erie, running around the House this morning asking: "How many Republicans are here?" "Are they ready to vote upon this question?" They must, by this trick, this subterfuge, reconsider this amendment. Oh, is that the conduct of these men after the resolution that has been passed upon that we were to only consider two questions? I moved yesterday that the session be extended from five o'clock until six o'clock, so that we might have a full and fair discussion upon these two amendments, and now, to-day, in the last hours of the session, we are to be cheated by a motion of this kind to reconsider a vote we had taken upon the abolition of the office of coroner, and then to bring in a rider upon it. I hope the manliness, if there be any left on the Republican side of this question, will protest against the action of this old man who is fond of his article; this old man who is in love with his article; this old man who dreams of his article ——

The President — The Chair would suggest that any comments upon the age of a member is out of order.

Mr. Mulqueen — Mr. President, I will take back the age. But I am informed by friends that the cities article has been his pride by day and has occupied his time at night. Morning, noon and night he has dreamed of his cities article. He cares nothing about the way he secures the fruition of his hopes. He would send us out to the people of the State saying that in the last hours of the Convention he resorted to a trick in order to pass his much-abused and much-laughed-at cities article. I hope, Mr. President, that this motion will be voted down.

Mr. J. Johnson — Mr. President, this motion was made because there is a three years' term for the county officers of New York and Kings, which is in conflict with the provisions for the separation of elections. Now, sir, whether there will be any other amendment made or not, I do not know, and I speak it with absolute candor. That certainly must be done, or else there is a conflict between that amendment and the other amendment as to the separation of elections, one making it in even-numbered years for every term, and the other a three years' term.

Mr. A. H. Green — Mr. President, if this motion is reconsidered, I think it would be very desirable to make a further amendment to that article, not touching at all the question of separating the two elections, but as to the mayor of the city of New York next to be elected. No man can tell whether we are going to vote for a three years' term or a two years' term. It undoubtedly may have been, and I will concede that it was, an erroneous arrangement of verbiage, but it ought to be adjusted so that we will know what we are going to do in New York. I do not refer to the second article on cities, which ought to be reconsidered altogether, but the article which Mr. Johnson speaks of, so that the term of the mayor can be defined, instead of acting under an uncertainty.

Mr. Cochran — Mr. President, I desire to make this point of order. As I understand the resolution which was reconsidered yesterday, and finally adopted, as amended, we were not to take up any further amendments to the Constitution after those two which have been recommended in that resolution. Now, if this motion to reconsider prevails, then a motion will be made to amend this constitutional amendment, and then we will have an hour to debate this entire constitutional amendment. We will also have another roll-call, and we will be reconsidering the entire constitu-

tional amendment and voting upon it, just as if it was a new amendment.

The President — The Chair does not consider that there is anything in the order of yesterday that prevents the reconsideration of matters that have passed on third reading. I do not think it would be out of order, under that resolution, to reconsider any action taken yesterday. Now, Mr. Johnson makes this motion after this amendment has passed to third reading. The motion was laid upon the table, and the question now is whether it shall be taken from the table. Does any other gentleman desire to be heard upon Mr. Johnson's motion?

Mr. Hotchkiss — Mr. President, I think that I understood Mr. Johnson, but in order that there may be no mistake, I would like to ask him the question, whether it is his intention, or whether he knows of an intention, upon the part of any other person to move an amendment to this coroners' article, which will pertain to or affect any other office than that of coroner?

Mr. J. Johnson — Mr. President, I have a resolution here, the effect of which, after the formal part, is to strike out all of line 3 after the word "counties," and all of line 4 before and including the words "New York," and insert after the word "happen," in line 6, page 1, the words "except in the counties of New York and Kings, and in all counties whose boundaries are the same as those of a city, where such officers shall be chosen once in every two or four years, as the Legislature shall direct," and that is the only amendment that I propose to offer, and the only amendment which I believe will be offered.

Mr. Hotchkiss — The gentleman does not answer my question completely. I accept his statement so far as it pertains to himself. I asked him if he knows of an intention upon the part of any other person to offer an amendment which will affect any other office, except the office of coroner.

Mr. J. Johnson — I think I have given all the statement that is necessary.

Mr. Bowers — Mr. President, then, in other words, there is no responsible man on the part of the majority, including the gentleman who makes this motion, who will tell us whether or not the real intent of moving to reconsider this coroners' amendment is to make the change proposed, or whether it is intended to offer some other. It seems to me that we are entitled, before we are called upon to vote upon a question, to be told what is to be done. There has been no disposition on the part of the minority to do

anything other than to facilitate business. If there was a necessary change to be made in any proposed constitutional amendment that had been passed, it is reasonable to suppose that the minority would assist. It seems to me that we are entitled to know whether we are to be launched into a new debate upon new questions, or upon questions once killed, and when Mr. Johnson, who moves this resolution, and his associates, do not choose to deny in advance what we apprehend, it seems to me, that we cannot be expected to join in the motion to reconsider, and that we will be justified in voting against it. We shall characterize it as a trick, if anything is done, other than as Mr. Johnson has stated.

Mr. J. Johnson — Do not characterize it until it is done.

Mr. Bowers — I did not; I said I should.

Mr. Smith — Mr. President, we all know that we are bound up here by a set of rules, which, if observed, would require the article to be reconsidered. But we are not, in that respect, so bound up, but that, if a clerical error was discovered in any amendment, it might not be corrected. We could correct it by unanimous consent.

Mr. J. Johnson — If you get unanimous consent, I will withdraw my motion.

Mr. Smith — That is it, exactly. I was trying to reach that. Suppose a figure was wrong, or a date wrong, it could be corrected by unanimous consent, and the subject need not be open to other amendments. Now, as I understand the motion or purpose of the honorable chairman of the Cities Committee, it is simply to correct what might be regarded as a clerical error, and should be done by unanimous consent, without referring it back or opening the subject at all, and I suggest that course be taken.

Mr. J. Johnson — Mr. President, if that can be done, I will fully agree that it be done in that way.

Mr. Veeder — Mr. President, I sincerely hope that this Convention will not stultify itself and set this example for future Legislatures. The way they can beat the devil around the stump, according to your proposition, general order No. 1, is amazing, when you have declared that on the last reading of a bill no amendment shall be allowed, and the question on its final passage shall be taken. Now, you are demonstrating to future Legislatures of the State how you can get around this other elegant proposition of this virtuous Convention, and I submit, after all our attempts to try and compel the Legislature to let the people know, in advance, what they propose to enact, we are demonstrating to them that

we cannot do it ourselves; that we intend to do one thing to-day and surreptitiously, and without the knowledge of the delegates, do something else to-morrow.

Mr. McMillan — Mr. President, I desire to say that I understood Mr. Johnson to state that he was willing to so amend this resolution that this matter be reconsidered for the purpose of this amendment, and for this purpose only.

Mr. J. Johnson — I will do that; but I cannot do that until it is taken from the table.

Mr. McMillan — He can make his motion so it will be taken from the table for that purpose only.

Mr. J. Johnson — I move that the resolution to reconsider third reading No. 1 be taken from the table for the purpose of reconsidering, and offer the following resolution as an amendment.

Mr. Cochran — And that only?

Mr. Veeder — Is there anything else, or are you going to offer another amendment?

Mr. J. Johnson — And that only.

Mr. Veeder — Try and be honest with us once.

Mr. J. Johnson — Mr. President, I desire my friends on the other side to reserve their invectives and adjectives and anathemas until something is done. I do not desire, nor do I propose to stand here and have characterized in advance that which is not done. I think I am just as honest as the gentlemen who make the allusion, and I insist that adjectives and hints and innuendoes of that kind are unworthy of this Convention. (Applause.)

Mr. Bowers — Mr. President, it seems to me, in view of the declaration of the gentleman from Kings (Mr. Johnson), that he ought to receive from this Convention a certificate of character that he is doing all he represents.

Mr. J. Johnson — Mr. President, the remarks of the gentleman are altogether out of order and beneath the dignity of a deliberative Convention.

Mr. Alvord — Mr. President, I desire to say that I have listened to this debate somewhat at length, not endeavoring to put in a parliamentary objection to it. I ask the Chair to reflect a single moment. I make the point of order that this matter is not debatable. A motion to lay on the table is not debatable, and the motion to take from the table is not debatable until after the matter has been taken from the table.

The President — The point of order is well taken. The question is on the motion of Mr. Johnson to take from the table.

Mr. Veeder — Why not have the motion read?

Mr. Morton — Mr. President ——

The President — The Secretary will read.

Mr. Morton — Mr. President ——

The President — What does the gentleman desire?

Mr. Morton — I desire to be heard.

The President — You are a little late.

Mr. Morton — Very well, sir, if I am not in order.

The President — You are not in order to debate a motion to take from the table.

Mr. Morton — What has all this debate been about then?

Mr. Mulqueen — Mr. President, I desire to ask if Mr. Johnson has not included in his motion that the purpose of the motion to reconsider is to amend in the respect that he has indicated, and for that purpose only?

The President — The question is on the motion to take from the table.

The motion prevailed.

The President — The question now is on the motion to reconsider the vote by which the coroners' amendment was adopted.

Mr. McClure — Mr. President, I understand that this motion has now taken the shape of Mr. Johnson's consent, that he only moves to reconsider it for the purpose of making the amendment indicated by him, and that only.

Mr. J. Johnson — That is the shape, so far as I know how to put it or state it in parliamentary form.

Mr. McClure — I think that should be stated by the Chair.

Mr. Morton — Mr. President, after what has transpired on this floor, with reference to this subject, I wish to stand here, as a delegate in this Convention, and to disclaim for myself being committed by Mr. Johnson or by anybody else in this Convention against my rights and privileges as a delegate. Now, sir, I know nothing about this movement, but I do protest, in the name of independence and of right, against the minority upon this floor standing up here, one after another, and undertaking to reflect upon the motives, the rights and the privileges of the delegates to this Convention, and to deliberately, here in the face of this body,

make a contract with Mr. Johnson or anybody else, whereby any other delegate would be deprived of his privileges in this matter. I want you to understand that if I see fit to offer an amendment; when it is reconsidered, that I will not permit Mr. Johnson or any other delegate on this floor to preclude me from that privilege. I consider it an insult, sir, to the dignity of the Convention, and an insult to the rights of the individual members here, and an insult to the majority of this Convention to have such a scene transpire as has been going on this morning. The consideration with which Mr. Johnson has been treated by the minority is one thing, and the rights and the privileges of the individual members are another, and I, for one, after the indignities that have been heaped upon Mr. Johnson, the chairman of the Cities Committee, will not consider myself bound by any understanding had in reference to this matter, and I wish to state to the minority in this Convention that they were very fortunate in having a man of the temperament of Mr. Johnson, as the chairman of the Cities Committee. If some other gentlemen were chairman of that committee, they would have had their hides hung on a fence where they ought to have been long ago. (Applause and laughter.)

The President put the question on the motion of Mr. Johnson, to reconsider the vote by which the coroners' amendment was passed.

Mr. Bowers — Mr. President, I rise to a point of order. It was ruled in the chair last night that you could not reconsider the passage of a constitutional amendment, except by calling the ayes and noes. I do not say that that ruling was right, but we want to get a contrary ruling this morning. I want to make the point of order so that we can get the ruling of the President as against the Vice-President.

The President — Before Mr. Bowers had made his point of order the Secretary had called the attention of the Chair to the fact that the ayes and noes were necessary on the reconsidering of an amendment. Now, those in favor of reconsidering the vote by which this amendment was carried, as their names are called, will say aye, and those opposed, no. The Secretary will call.

Mr. Bowers — I do not wish to be misunderstood. I cannot see why, without objection, we should be forced to go on and call the ayes and noes. I call your attention to it because it was so ruled yesterday by the Vice-President.

The President — It seems to be the rule that upon reconsidering the vote by which an amendment is finally passed, it can only be

done in the same way that it was passed. The Secretary will call the roll on reconsidering the vote by which this amendment was finally passed.

The Secretary proceeded to call the roll.

Mr. Holcomb — Mr. President, I would like to explain my vote. I am quite unable to see why there should be any reconsideration of this proposition. I do not understand the remarks of the chairman of the Committee on Cities to be entitled to any great weight ——

Mr. Hawley — I rise to a point of order. The gentlemen are not permitted to explain their votes.

The President — I think that rule was passed.

Mr. Holcomb — Oh, I beg your pardon. I did not know that. I vote no.

Mr. Veeder — Do I understand the Chair to say that we cannot explain our votes?

The President — So the Chair understands.

Mr. Veeder — Then I vote no.

The motion to reconsider prevailed by the following vote:

Ayes — Messrs. Abbott, Acker, Ackerly, Alvord, Arnold, Baker, Barhite, Barnum, Barrow, Becker, Bigelow, Bowers, Brown, E. A., Cady, Chipp, Jr., Clark, G. W., Clark, H. A., Cochran, Cookinham, Cornwell, Crosby, Danforth, Davies, Dickey, Durfee, Emmet, Faber, Foote, Forbes, Francis, Frank, Augustus, Fraser, Fuller, C. A., Fuller, O. A., Galinger, Goodelle, Green, A. H., Hamlin, Hawley, Hecker, Hedges, Hill, Hirschberg, Holls, Hotchkiss, Jacobs, Johnson, I. Sam, Johnson, J., Kellogg, Kinkel, Lauterbach, Lester, Lincoln, Lyon, Manley, Mantanye, Marshall, McArthur, McKinstry, McLaughlin, C. B., McMillan, Moore, Morton, Nostrand, O'Brien, Osborn, Parker, Parkhurst, Parmenter, Peck, Phipps, Platzek, Pool, Porter, Powell, Pratt, Putnam, Redman, Roche, Sandford, Spencer, Springweiler, Steele, A. B., Steele, W. H., Storm, Sullivan, T. A., Sullivan, W., Tekulsky, Tibbetts, Titus, Vedder, Vogt, Wellington, Whitmyer, Woodward, President — 92.

Noes — Messrs. Blake, Burr, Davenport, Deady, Deyo, Durnin, Giegerich, Goeller, Green, J. I., Griswold, Holcomb, Hottenroth, Mulqueen, Peabody, Rogers, Schumaker, Tucker, Veeder — 18.

The President — This venerable amendment, No. 1, standing at the head of the calendar, is now on the order of third reading, and is open for amendment.

Mr. J. Johnson — Mr. President, I move my resolution in the hands of the Secretary.

The President — The Secretary will read Mr. Johnson's motion to recommit, with instructions to amend.

The Secretary read the motion as follows:

"Mr. Johnson moves that this proposed amendment be recommitted to the Committee on County, Town and Village Officers, with instructions to forthwith report an amendment striking out all of line 3 after the word 'counties,' and all of line 4 before and including the words 'New York,' and insert after the word 'happen' the words 'except in the counties of New York and Kings, and in all counties whose boundaries are the same as that of a city where such officers shall be chosen once in every two or four years as the Legislature shall direct.'"

The President — Are the gentlemen ready for the question on that amendment?

Mr. Cochran — Mr. President, I call the attention of the chairman of the Committee on Cities to an inconsistency. As I understand this amendment as he proposes, would allow the Legislature to fix the term of sheriff at either two or four years.

Mr. J. Johnson — That is it exactly.

Mr. Cochran — There is further down in this paragraph a provision that provides that the sheriff shall be ineligible for the next three years. I suggest that it be made to read ineligible for the next term. As it is now, if the Legislature makes the term for two years and he is ineligible for the next three years, it would come in the middle of the term of the next sheriff.

Mr. Johnson — I accept that amendment.

The President — If any gentlemen have any other amendments to this section, they can offer them at this time.

Mr. Johnson — Mr. President, I understand the amendment of the gentleman from Kings is to substitute for "three years" the word "term." It seems to me that it is entirely consistent, and I see no objection to it.

The President — Mr. Cochran will hand in his amendment in writing.

Mr. Hotchkiss — Mr. President, there is considerable doubt about the propriety of Mr. Cochran's amendment, because his amendment would apply universally throughout the State; whereas it is the intention of the amendment to be applicable only to the

counties of New York and Kings and to all counties whose boundaries are the same as cities.

This thing has to be formulated carefully, and not jumped through on mere inspiration.

Mr. J. Johnson — I would like to add to my resolution this: strike out the words "three years," in line 7, and insert instead thereof the word "term;" the effect of that amendment will be this: that, if the sheriff of New York is elected for two years, he will be then ineligible until another sheriff has been elected and served his term, which is the effect of the present amendment.

Mr. Cochran — That is my amendment.

Mr. Johnson — Yes; I was merely putting it in my amendment.

The President — If the gentlemen will give attention, it will be read again so that it will be understood.

The Secretary read the proposed constitutional amendment, as amended by Mr. Johnson, as follows:

"Sheriffs, clerks of counties and district attorneys shall be chosen by the electors of the respective counties once in every three years, and as often as vacancies shall happen, except in the counties of New York and Kings and in all counties whose boundaries are the same as those of a city, where such officers shall be chosen once in every two or four years, as the Legislature shall direct. Sheriffs shall hold no other office and be ineligible for the next term after the termination of their office. They may be required by law to renew their security from time to time, and in default of giving such new security, their office shall be deemed vacant, but the county shall never be made responsible for the acts of the sheriff. The Governor may remove any officer in this section mentioned within the term for which he shall have been elected, giving to such officer a copy of the charges against him and an opportunity of being heard in his defense."

Mr. Veeder — Mr. President, I rise to an inquiry. This proposition, as it is now amended, allowing the Legislature to fix the term of these officers in the county of Kings and in the county of New York and other counties whose territory is all embraced in a city, will leave their tenure of office at the mercy of the Legislature. They can change it back and forth from two to four years. One Legislature may make it a four-years' term, and the next Legislature may change it back to a two-years' term. It seems to me to be a very serious thing.

Mr. H. A. Clark — Mr. President, I notice by the amendment as now proposed by Mr. Johnson, that he leaves out the office of register of deeds of the city and county of New York. I cannot understand why that office should not be left as it was in the first amendment, and as it is in the present Constitution. In drawing the amendment that he proposes, he includes sheriffs, county clerks and district attorneys, but leaves out the register of deeds. Now, the term of the register of deeds, as I understand it, is three years. It will be another inconsistency, if he doesn't keep it in and provide for the change to two or four years, as he does the other officers. I would like to have the gentleman explain why that change was made.

The President — It should be made right.

Mr. J. Johnson — There are no registers of deeds, so far as I know, except in those counties where their boundaries are the same as those of the cities.

Mr. Hotchkiss — Westchester county has a register.

Mr. J. Johnson — I was not aware that there were registers of deeds in other counties. If the Clerk will let me take that a moment, I think I can rectify it.

Mr. Storm — While we are waiting, Mr. Floyd is detained at home on official business, and desires to be excused for to-day.

Mr. Veeder — Would it be in order, Mr. President, to move that this matter lay over until we meet again and then we can fix it up.

The President — It might interfere with the business of the Revision Committee in the final printing.

Mr. J. Johnson — Mr. President, I would ask that the word "registers" be retained after the word "counties."

Mr. Veeder — What becomes of the register of the county of Kings?

Mr. J. Johnson — That leaves it as it was.

Mr. Veeder — That does not take that office in. I should like to know what becomes of the register of the county of Kings.

Mr. J. Johnson — By inserting the word "registers," in line 3, after the word "counties," the matter is entirely covered. Therefore, I would add to the amendment by inserting the word "registers" after the word "counties," so that it will then read: "Sheriffs, clerks of counties, registers" (I think the official name is registers; if gentlemen have any other information, I am willing to call it registers of deeds), "and district attorneys."

Mr. Mulqueen — Mr. President, are we going to vote upon an amendment containing terms that we are not sure of? The gentleman says: "I think the terms are so and so." The gentleman does not know himself.

Mr. J. Johnson — Mr. President, I use the same word that is now in the Constitution.

Mr. Mulqueen — He really doesn't know what he wants himself.

Mr. Bowers — Mr. President, would it be in order to suggest, for the purpose of facilitating the orderly progress of this Convention, that Mr. Johnson take it to one of three committees to correct? First, the Cities Committee; second, the Committee of the Whole, and, third, the more important committee, because we would know when we got through with it, the Caucus Committee. (Laughter.)

Mr. Hawley — Mr. President, I move to amend that the resolution be referred to the concentrated wisdom and volubility of the Convention, the gentleman who has just taken his seat. (Renewed laughter.)

Mr. Bowers — We will take that, if you give it to us.

Mr. Nicoll — Mr. President, is a general debate on the cities article now in order?

The President — A general debate upon this venerable amendment about the deceased coroners is in order.

Mr. Bowers — What are we on?

The President — We are in that order prescribed by the rule which allows one hour for debate.

Mr. Bowers — I thought after the debate ceased we would take a vote?

The President — We are now to have the pleasure of listening to Mr. Nicoll, of New York.

Mr. Cookinham — Mr. President, may I ask the gentleman a question?

The President — Will Mr. Nicoll permit Mr. Cookinham to ask him a modest question?

Mr. Nicoll — Of course.

Mr. Cookinham — I would like to ask the gentleman if he has sold the farm which he moved upon yesterday?

Mr. Nicoll — I have had several offers to trade, but I have not come to a conclusion in the matter. It is too early in the morning for me to match jokes with my brother from Oneida, but I am

disposed to occupy this hiatus in the proceedings of the Convention by calling their attention to what, after all, is a very serious matter, as far as the cities article is concerned. In the excitement of the other evening Mr. A. H. Green — always the careful conservator and guardian of the rights of the cities — noticed this omission and endeavored to attract the attention of the bewildered Convention to it, but some way or other it was overlooked in the rush. The difficulty is this: in the cities article, relating to the extension of terms of municipal officers, the provision is so put that the next mayor elected in the city of New York will have a three-years' term of office. It is not so intended by the framers of the amendment, but it arises from this reason ——

Mr. Hotchkiss — Oh, yes; it was intended in the deliberate passage of the measure.

Mr. Nicoll — Was it intended, Mr. Johnson?

Mr. Johnson — Yes.

Mr. Nicoll — Well, if it was intended, I have nothing more to say. (Laughter.)

Mr. Hotchkiss — Mr. President, for the information of the gentleman from New York, may I say that that was debated in the Cities Committee and was fully and accurately pointed out to them; that they adopted it, notwithstanding, and when the measure came into the Convention I called attention to it. I discussed its propriety with several of the most prominent members of the majority, and they all seem to think that it fell quite in line with the anticipated Republican majority of this fall, and in that regard was entirely satisfactory to them.

Mr. Bowers — That was before the Saratoga convention, was it not?

Mr. J. Johnson — I desire to say that Mr. Hotchkiss has accurately stated it, and that the subsequent events have convinced us that we were right.

Mr. Veeder — Mr. President, I would like to inquire what are we at now?

The President — We are at the same thing. The hour has not yet expired.

Mr. Veeder — But Mr. Johnson flew off on another subject.

Mr. Bowers — Mr. President, I move we adjourn.

The President — It is not in order pending a third reading.

Mr. J. Johnson — I am very sorry that there should have been

any error in this amendment. It arose from misinformation as to the office of register, that we supposed was purely local to those two counties that we provided. Now, sir, I desire to amend the resolution in this form so that the first eight lines shall read as follows, and I think it is correct:

"Sheriffs, clerks and registers of counties, and district attorneys shall be chosen by the electors of the respective counties once in every three years, and as often as vacancies shall happen, except in the counties of New York and Kings, and in all counties whose boundaries are the same as those of a city, where all such officers shall be chosen for two or four years, as the Legislature may provide. Sheriffs shall hold no other office and be ineligible for the next term after the termination of their office. They may be required by"

The effect of it is that the first eight lines are those amended, and, with the consent of the gentleman, I will change my resolution to this form, which, I believe, is agreeable to every one who has examined the question.

Mr. H. A. Clark — Mr. President, I would like to ask the gentleman why he leaves out the office of county clerk and thereby destroys that as a constitutional office?

Mr. Johnson — It reads "sheriffs, clerks and registers of counties." I do not leave it out.

Mr. Veeder — I think there is one little trouble about that proposed amendment just now. They provide for the election of sheriffs and clerks of counties, other than in the counties of New York, Kings and other counties where the city embraces the entire county. The only provision made for those county clerks and sheriffs and registers is the fact that the Legislature shall fix their term of office, but there is nothing said about their election. I do not suppose that makes any difference.

Mr. J. Johnson — I think, Mr. President, that that is entirely answered by the amendment. There is no suggestion necessary.

The President — The question is on the amendment of Mr. Johnson.

Mr. Bowers — Mr. President, may we hear the amendment, if we have got one at last to vote upon?

Mr. Moore — Mr. President, I would like to ask if the amendment has yet been perfected, so that we will know what it is?

The President — The Chair cannot answer, but the Secretary will read it in its present form.

The Secretary read the proposed constitutional amendment as follows:

"Sheriffs, clerks, and registers of counties, and district attorneys shall be chosen by the electors of the respective counties once in every three years, and as often as vacancies shall happen, except in the counties of New York and Kings, and in all counties whose boundaries are the same as those of a city, where such officers shall be chosen once in every two or four years, as the Legislature shall direct. The sheriffs shall hold no other office, and be ineligible for the next term after the termination of their office"——

Mr. Veeder — May I interrupt right there? The expression there is that the sheriffs, and registers, and county clerks are to be "chosen" in such manner as the Legislature may direct. There is no provision for their election at all.

The President — The Secretary will proceed.

The Secretary continued as follows:

"They may be required by law to renew their security from time to time, and in default of giving such new security their offices shall be deemed vacant; but the county shall never be made responsible for the acts of the sheriff. The Governor may remove any officer in this section mentioned, within the term for which he shall have been elected, giving to such officer a copy of the charges against him and an opportunity of being heard in his defense."

The President — Is there any more debate? Does anybody else desire to be heard upon this matter before it goes upon third reading? There being no more debate, the Secretary will read this amendment through the third time.

Mr. Bowers — This amendment, I believe, is satisfactory to Mr. Johnson. He has probably accomplished the purpose he has in mind. It provides for the choosing of officers one way in certain counties, and their election another way in other counties.

Mr. J. Johnson — Mr. President, the word "chosen" is the word used in the Constitution almost invariably instead of the word "elected." I certainly do not intend to have any double dealing in this business. If there is any possible suggestion that there is in the amendment, I should be glad to rectify it. The word "chosen" is the word used for "elected." If they will make that last phrase, "where such officer shall be chosen," read "elected," if it will be consented to, I have no objection to it.

Mr. Hawley — Mr. President, if the word "elected" is put in, the Revision Committee will change it to "chosen," because that is the word used in the first section of the Constitution and used all the way through.

Mr. J. Johnson — Will you change it so as it will read "chosen by the electors?"

Mr. McClure — We would like to have the Revision Committee inform us whether they will allow the language to stand as Mr. Johnson has changed it?

Mr. Bowers — That will depend upon the caucus.

Mr. McClure — But between the caucus and Mr. Johnson we are in a dilemma here.

Mr. Bowers — Quite so.

Mr. H. A. Clark — Mr. President, may I ask that the Secretary again read that clause so that we may understand it?

The President — The Secretary will again read it.

The Secretary read the following:

"Sheriffs, clerks and registers of counties and district attorneys shall be chosen by the electors of the respective counties once in every three years, and as often as vacancies shall happen, except in the counties of New York and Kings, and in all counties whose boundaries are the same as those of a city, where such officers shall be chosen by the electors once in every two or four years, as the Legislature shall direct."

The President — Does any other gentleman desire to be heard upon this amendment before it is read the third time?

Mr. Durfee — I would like to inquire what becomes of the amendment of Mr. Cochran?

Mr. Cochran — That was accepted by Mr. Johnson.

The President — The question is on Mr. Johnson's motion to amend, which must be acted upon before the matter is voted upon the third time.

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

The President — The amendment will now be read a third time before the final vote is taken.

The Secretary commenced the reading of the amendment the third time, Second Vice-President W. H. Steele in the chair.

Mr. Veeder — I rise to a point of order. Must not this matter be engrossed and reported by the Revision Committee before a vote

can be taken upon it? Are we going to take the responsibility of voting upon a scrap of paper that is all interlined?

The President *pro tempore* — The Chair must decide that, according to the custom, an amendment made at this stage of procedure does not go to the Committee on Revision, unless expressly ordered. That committee has finished with it by its former report.

Mr. Veeder — Are we to be required to vote upon a scrap of paper that has a lot of mixed-up stuff on it?

The President *pro tempore* — The Chair is obliged by the rules we have adopted to rule that we have to pass upon it as it is.

Mr. Veeder — That beats any legislative proceeding that I ever heard of.

The Secretary completed the reading of the amendment the third time.

The President *pro tempore* — This proposed constitutional amendment having had three several readings, the question is now upon its final passage. Those in favor will say aye, and those opposed will say no.

The Secretary will call the roll.

Mr. Veeder — Mr. President, would it be in order to lay that matter aside to be engrossed before we vote upon it?

The President *pro tempore* — Not unless we suspend the rule.

Mr. Veeder — Then I move to suspend the rule.

The President *pro tempore* — Under the rule no dilatory motion can be entertained when the call of the roll has been ordered.

Mr. Veeder — Then I move that Mr. Johnson be allowed to hold that paper.

The President *pro tempore* — The Secretary wlll proceed with the call of the roll.

The Secretary proceeded to call the roll.

Mr. Kellogg — I desire to explain my vote.

The President *pro tempore* — Not in order.

Mr. Kellogg — I was going to say that I voted against it before, but I am going to vote for it now.

The President *pro tempore* — This proposed constitutional amendment, having received the votes of a majority of all the delegates elected to this Convention, is duly passed.

The vote in detail is as follows:

Ayes — Messrs. Abbott, Acker, Ackerly, Alvord, Arnold, Baker,

Banks, Barnum, Barrow, Becker, Brown, E. A., Brown, E. R., Cady, Carter, Church, Clark, G. W., Clark, H. A., Coleman, Cookinham, Cornwell, Crosby, Davies, Dean, Dickey, Durfee, Faber, Francis, Frank, Andrew, Frank, Augustus, Fraser, Fuller, C. A., Fuller, O. A., Galinger, Gibney, Gilbert, Goodelle, Hamlin, Hawley, Hecker, Hedges, Hill, Hirschberg, Holls, Hotchkiss, Jacobs, Johnson, I. Sam, Johnson, J., Kellogg, Kinkel, Lauterbach, Lester, Lewis, C. H., Lincoln, Lyon, Manley, Mantanye, Marshall, McArthur, McIntyre, McKinstry, McLaughlin, C. B., McMillan, Moore, Morton, Nostrand, O'Brien, Parker, Parkhurst, Pashley, Phipps, Pool, Porter, Powell, Putnam, Redman, Root, Smith, Spencer, Springweiler, Steele, A. B., Steele, W. H., Storm, Sullivan, T. A., Sullivan, W., Tekulsky, Tibbetts, Vedder, Vogt, Wellington, Whitmyer, Wiggins, Woodward, President — 93.

Noes — Messrs. Blake, Bowers, Burr, Chipp, Jr., Cochran, Danforth, Deyo, Durnin, Emmet, Forbes, Giegerich, Gilleran, Goeller, Green, A. H., Green, J. I., Griswold, Holcomb, Hottenroth, Kerwin, Kimmey, Maybee, McClure, Mulqueen, Nicoll, Parmenter, Peabody, Peck, Rogers, Sandford, Titus, Tucker, Veeder — 32.

Mr. Cookinham — Mr. President, I call from the table a resolution offered by me on Thursday evening last in regard to the appointment of a committee and ask for its reading.

The President *pro tempore* — The Secretary will read the resolution.

The Secretary read the resolution as follows (R. 222):

"Resolved, That a committee consisting of ten delegates, be appointed by the president, to draft an address to the people of the State, explanatory of the proposed constitutional amendments to be submitted to the popular vote, and that the President be *ex officio* chairman of such committee.

Mr. Cookinham — Mr. President, I do not suppose that it is necessary to say a word in regard to this resolution. It is the ordinary resolution, offered upon such occasions, that an address explanatory of amendments should be issued, and if no one desires to debate it, I ask for a vote upon it.

Mr. Bowers — Mr. President, it seems to me that such a resolution would be eminently proper when the work of the Convention is completed, but it will not have been completed until you have had the report of the Committee on Revision. Nobody knows but that next week everything will be changed. Nobody knows what will happen. How can you appoint a committee until you know what you are to draft an address on?

The President *pro tempore* — This resolution is that the committee shall be appointed when the work is completed.

Mr. Veeder — Mr. President, may I ask if that committee is to be made up of members of this Convention irrespective of party?

The President *pro tempore* — I suppose so.

Mr. Veeder — And in that address each member may express his views?

The President *pro tempore* — It is the same as any committee appointed by the Convention.

Mr. Veeder — The majority will control?

The President *pro tempore* — The majority will control.

Mr. Veeder — And the Democrats will be in the majority, I suppose?

Mr. Mulqueen — Mr. President, I offer as an amendment that a committee of ten be selected from the Republicans in this Convention.

The President *pro tempore* — Mr. Mulqueen offers an amendment that a committee of ten be selected from the Republicans in this Convention.

Mr. Mulqueen — Mr. President, believing as I do that this Convention intends to rob the people living in the great cities of their rights, it is unfair to ask us, who are so opposed to your Constitution, who will denounce it everywhere as a work, not of a deliberative body, but of a caucus, to act on your committee. Last night you had a caucus on the gambling amendment. Thirty men in your caucus opposed it, and yet they came in here and, at the dictates of the caucus, voted in favor of it. That shows, Mr. President, that the work of this Convention does not represent the deliberative judgment even of the Republicans of this House. It is the work of the caucus, and no Democrat, I hope, will accept a position on a committee to recommend to the people of the State of New York the adoption of this Constitution, which seeks to do so much wrong to the people of this State.

Mr. Abbott — Mr. President, I do not know what authority the gentleman from New York (Mr. Mulqueen) has for making any such assertion as that. I am here as a Republican. I consider myself bound by the action of the Republican caucus, and if bound by such action, I think my vote is a sufficient refutation of his statement. I voted against the amendment he refers to.

Mr. Mulqueen — Will the gentleman permit a question? Did

not thirty members in your caucus vote against it, and were they not voted down?

(Cries from the other side of "No," "no.")

Mr. Mulqueen — Did not thirty-one, I mean not thirty? (Cries from the other side, "No," "no.")

Mr. Root — Mr. President, I suppose it to be proper to say that the gentleman from New York (Mr. Mulqueen) is wholly mistaken in the statement that there was any vote in any Republican caucus upon that measure.

Mr. Veeder — Mr. President, I rise to a point of order. It is a breach of faith to divulge the secrets of the caucus.

The President *pro tempore* — The Chair will state that that does not apply to this Convention.

Mr. Root — It may be a breach of faith, Mr. President, to misstate the action of a caucus. There can be no worse breach of faith than misrepresentation. I do not know how the gentleman obtains the information which he undertakes to deal out upon this floor, but it is from no good or truthful source. Mr. President, I hope the resolution, as offered by Mr. Cookinham, will prevail, and that this Convention will not by any vote upon this floor relieve these gentlemen from the obligation and the opportunity to do their duty, politics or no politics, upon the committees of the Convention.

Mr. Bowers — Mr. President, all that the gentleman from New York has said would be very correct if this had been a deliberative body. When the gentleman from New York criticises a misstatement of his caucus, let me state to him that an affirmative assertion requires an affirmative denial of what was done; if he wishes to consider that, he can negative it.

Mr. Root — Will the gentleman please repeat his statement?

Mr. Bowers — We want from you an affirmative denial, which we have not had because you have carefully avoided it. Tell us what did take place, and then you will be in a condition to relieve yourself. (Laughter on the other side.)

Now, Mr. President, having been guided, as we have been during the past three weeks, by the action of this caucus, whatever may have taken place, resolutions having been changed over night, after the caucus met, it does not leave the gentleman free to say that there is any duty to be performed by the minority. Coming to the point of his resolution, and dealing with it seriously, I made my motion in perfect good faith, that it should not be considered

to-day. It may be that before this Convention shall have concluded its deliberations, there may be propositions introduced as to the submission of independent articles to the people in such form as to enable minority members to confer with the majority members upon the question of the address to be issued. But, sir, standing as it does to-day with the apportionment article, which, to a man, the minority must oppose, it is a perfect absurdity to ask them to join in the address to the people of the State. I hope the amendment of the gentleman from New York (Mr. Mulqueen) will prevail. As it stands now, you will have difficulty in getting members of the minority to serve upon this committee.

Mr. E. R. Brown — Mr. President, I do not think, at this time, it is becoming to engage in a debate as to whether we should have a Democrat appointed on the committee to issue an address or not. If the President of the Convention, in his wisdom, sees fit to name any gentleman upon that committee who does not wish to serve there, he will be permitted to resign. It seems to me to be purely an attempt upon the part of gentlemen here who are known to be controlled by a single mind, and who are making every effort they are now making, and taking every step they now take, from partisan considerations, to throw this Convention in its last hours into disorder, on the claim that the majorty have some organization in the conduct of the business of the Convention. I regard it as discreditable to them.

Mr. Mulqueen — Mr. President, the reason that I have proposed this amendment is that the minority members of the committees of this Convention already have been totally ignored ——

(Derisive cries on the other side.)

Mr. Mulqueen (continuing) — Sneer if you will, you cannot get rid of the facts in that way. The Democratic minority upon the Committee on Apportionment proposed a substitute in this House, and you refused even to allow a vote to be taken upon it. Now, you would name seven Republicans and three Democrats, and then force them into a position, but if I know anything of the Democrats of this Convention, they will refuse to be caught by any such trick and they will join, as all the Democrats in this State must join, in denouncing your work as a fraud.

Mr. Cookinham — Mr. President, we will all admit that he must know the Democrats, and I now move the previous question.

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

The President *pro tempore* — The question is now on the amendment offered by Mr. Mulqueen, which the Chair will state, however inconsistent it may be with the ideas of the Convention or to the proposition to which it refers that under good parliamentary law has the right to be put and acted upon by the Convention. The question is now upon the amendment of Mr. Mulqueen.

Mr. Mulqueen — I ask for a rising vote.

Mr. Blake — What is the amendment?

The President *pro tempore* — The amendment is that no Democrat shall be put upon the committee provided for in the resolution.

The President *pro tempore* put the question upon the amendment of Mr. Mulqueen and it was determined in the negative.

The President *pro tempore* then put the question on the resolution of Mr. Cookinham, and it was determined in the affirmative.

Mr. Lyon — I offer the following resolution.

The President *pro tempore* — The Secretary will read the resolution.

The Secretary read the resolution as follows:

R. 230.— Resolved, That the Secretary of this Convention be and is hereby directed to have printed such additional number of copies of the proposed Constitution as may be necessary to supply each member of the Convention with such number of copies as he wishes for distribution, not exceeding in the aggregate thirty thousand copies, each member to at once notify the Secretary of the number of copies he wishes, and in the event of the number asked for exceeding thirty thousand copies, the Secretary shall apportion the number allowed among the members asking copies.

Mr. Veeder — What is the expense of this resolution?

The President *pro tempore* — This is a resolution for the action of the Convention.

Mr. Veeder — At what expense?

The President *pro tempore* — Does the resolution give rise to debate?

Mr. Kerwin — Mr. President, I rise to debate the resolution.

The President *pro tempore* — It must go over under the rules.

Mr. Tekulsky — Mr. President, I desire to inquire what has been done with the report of the joint Committees on Privileges and Elections and Contingent Expenses in reference to the expense of counsel fees for the contestants in the Sixth District?

The President *pro tempore* — The resolution in reference to printing the Constitution under the rules must be referred to the Printing Committee.

Mr. Tekulsky — Mr. President, I ask to know what has been done in reference to the report of the joint Committees of Privileges and Elections and Contingent Expenses in reference to the expense of counsel fees for the contestants in the Sixth District?

The President *pro tempore* — The Chair is unable to inform the gentleman. He can find out at the Secretary's desk.

Mr. Tekulsky — Then I offer the following resolution.

The President *pro tempore* — The resolution of Mr. Tekulsky will be read.

The Secretary read the resolution as follows:

R. 231.— Whereas, The Committee on Privileges and Elections and the Committee on Contingent Expenses have reported that the claims of Delegates Charles J. Kurth, J. Lott Nostrand, John C. Kinkel, Charles L. Pashley and William Deterling, for expenses and counsel fee in their contest for the seats awarded to them in this Convention is a just and reasonable one; and,

Whereas, It is the sense of this Convention that the said claims should be paid; and,

Whereas, The Convention questions its power to make an appropriation to pay the said claims out of the present fund appropriated to the use of this Convention; therefore, be it

Resolved, That the said matter be and the same is hereby respectfully referred to the Legislature of this State with the recommendation that it provide for the payment of said claim.

The President *pro tempore* — The question is on the adoption of Mr. Tekulsky's resolution. This resolution is to call up the report of the Committee on Contingent Expenses.

Mr. Bowers — What does that report refer to, the Buffalo matter?

Mr. Deady — That has been disposed of.

Mr. Bowers — What was the sum?

Mr. Deady — It was audited at $1,500. I would state, for the information of the Convention, that the expenses of these Gravesend delegates were audited by the Committee on Contingent Expenses and by the Committee on Privileges and Elections at the sum of $1,500, besides their disbursements, which were a few hundred dollars. The counsel fees were audited at that amount, $1,500.

The President *pro tempore* — The Secretary will now read the resolution again for the information of the Convention.

The Secretary again read the resolution.

Mr. Alvord — Mr. President, I move that we do now adjourn.

Mr. Root — I hope not, Mr. Alvord.

The President *pro tempore* — The motion of the gentleman from Onondaga is in order.

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

President Choate resumed the chair.

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

Mr. Root — Mr. President, I ask unanimous consent to take from the table the resolution (No. 219) in regard to printing and put it upon its passage. It is important that this resolution should be adopted, so that we can have the printed copies of the Constitution upon our desks when we return here, and so that we can distribute them.

The President — The matter was referred to the Committee on Printing.

Mr. Root — Mr. President, I move that the Committee on Printing be discharged from the consideration of that resolution, and that the resolution be now adopted.

Mr. Kerwin — I would like to ask the gentleman from New York by what power he is going to compel the contractors for printing this work to have this work here next Thursday?

Mr. Root — I do not know what power will compel them. We can go no further now than a resolution of the Convention.

Mr. Kerwin — Mr. President ——

Mr. Root — Mr. President, I yield the floor no longer. I move the previous question.

Mr. Bowers — Then we object, under the rules, if he moves the previous question. Then we object to the consideration of this matter.

The President — The Chair holds that a motion to discharge the Committee on Printing does not require unanimous consent; that it is a matter for the disposition of the Convention, and that Mr. Root's motion for the previous question is in order.

Mr. Kerwin — Then upon the motion for the previous question I call for the ayes and noes.

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

Mr. Veeder — Let us have the resolution read, won't you, please?

The President — Yes. The question now is on Mr. Root's motion to discharge the Committee on Printing from the resolution referred to it, and that that resolution be passed. The Secretary will read it.

The Secretary again read the resolution.

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

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

The President put the question on the motion of Mr. Root, and it was determined in the affirmative; whereupon the Convention adjourned until Thursday evening, September twenty-seventh, at eight o'clock.

EVENING SESSION.

Thursday Evening, September 27, 1894.

The Constitutional Convention met in the Assembly Chamber in the Capitol, at Albany, N. Y., on the 27th of September, 1894, at eight o'clock P. M.

President Choate called the Convention to order.

The Rev. A. M. Boulgourjoo offered prayer.

Mr. Acker moved that the reading of the Journal of the last day's session be dispensed with.

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

Mr. Bigelow — Mr. President, I move that the courtesies of the floor be extended to the Hon. Levi Brown.

Carried.

The Secretary called the roll. One hundred and twenty-four members present.

The Secretary announced the names of the members of the Committee on Address, appointed by the President, as follows: Messrs. Cookinham, Acker, Root, Hirschberg, E. R. Brown, C. B. McLaughlin, McMillan, Bigelow, Jenks and Maybee.

Mr. Foote, from the Committee on Revision, presented a report.

Mr. Foote — Mr. President, in connection with the report, I

desire to state that the Committee on Revision have prepared and have placed upon the desks of the members printed copies of the revised Constitution. There are a few typographical errors in the printed copy, to which we shall call attention by memorandum, to be handed to the Secretary. The report we now submit calls attention to the changes and corrections which we have made. We have also prepared, and will be ready to submit to the Convention, an engrossed copy of the Constitution, the last page of which will be completed in about fifteen minutes.

The Secretary read the report of the Committee on Revision as follows:

To the Convention:

The Committee on Revision and Engrossment call attention to the following changes and corrections made by the committee in preparing the final draft of the revised Constitution. The reasons for the several changes and corrections, except as stated below, are apparent and seem to require no explanation from the committee.

The location in the revised Constitution of the several new amendments adopted by the Convention is shown in the schedule attached to the printed copy of Document No. 72, submitted with this report. The committee have transferred section 9 of article 1 to section 20 of article 3, and section 8 of article 7 to section 1 of article 3; have stricken out of the last sentence of section 2 of article 2 the words after "Legislature," "at the session thereof next after the adoption of this section," and after the word "shall," the words "and from time to time thereafter may."

Have inserted the words "or Amsterdam" after "Tenth," in the description of the street called "Tenth avenue," in Senate districts seventeen and nineteen, and the words "or Columbus" after "Ninth," in the description of Senate districts seventeen and nineteen, and the words "or Park" after "Fourth" in the description of Senate districts nineteen, twenty and twenty-one, for the reason that the latter names seem to be the leading names of these streets in this locality, though they are popularly called by the former names.

Have inserted, after the description of Senate district twenty, the following clause: "All of the above districts in the county of New York, bounded upon or along the boundary waters of the county, shall be deemed to extend to the county line," for the reason that the county of New York extends some, if not all, of these boundary waters.

Have also changed the concluding sentence of the description of Senate district twenty-one by inserting, in place of "all that part

of the city of New York lying north and east of Harlem River," the following: "all that part of the county of New York not hereinbefore described," thus making this description correspond in form with the description of the last Senate district in the county of Erie.

Have substituted, in section 18 of article 3, "Appellate Division" for "General Term," and "department" for "district."

Have changed, in section 29 of article 3, "No person in such prisons, penitentiaries, jails or reformatories," to "No person in any such prison, penitentiary, jail or reformatory."

Have omitted, in section 3 of article 5, the following clause: "The office of Canal Commissioner is abolished from and after the appointment and qualification of the Superintendent of Public Works, until which time the Canal Commissioners shall continue to discharge their duties as required by law," and have inserted the word "former" before "Canal Commissioners" in the next sentence.

Have omitted, in section 4 of article 5, the clause, "from and after the time when such Superintendent of State Prisons shall have been appointed and qualified the office of Inspector of State Prisons shall and hereby is abolished," and in the preceding sentence have changed "or have heretofore been" to "where formerly."

Have substituted, in section 5 of article 5, "Superintendent of Public Works" for "Canal Commissioners" at the end of the section.

Have struck out, in section 6 of article 7 (old section 14 of article 7), the words "Canal Appraisers," and also the clause, "the limitation of existing claims shall begin to run from the adoption of this section; but." Also, the words "to revive claims already barred by existing statutes; nor" in the same sentence.

Have made the proposed amendment as to canal improvement a separate section, being section 10 of article 7.

Have changed "created by" to "mentioned in" after the word "board" in line 6 of section 15 of article 8.

Have changed the first two lines of section 1 of article 10 so as to read as follows: "Sheriffs, clerks of counties, district attorneys and registers in counties having registers." And in line 5 of the same section, have omitted "all" before the word "counties."

Have stricken out the word "all" before "such" in line 2 of section 2 of article 11.

Have transferred section 9 of article 8 to section 1 of article 12.

Have inserted, in section 3 of article 12, the words "of the third class or" in place of "the population of which according to the

latest State enumeration, from time to time made, is less than fifty thousand; nor."

Have transferred section 1 of article 12 to section 1 of article 13, and section 1, section 2, section 3 of article 15 to section 2, section 3, section 4 of article 13, and section 4 of article 15 to section 6 of article 13.

Have inserted, in section 2 of article 14 (page 103, line 11), after the word "delegate," the following: "Elected to the Convention."

Have also changed the numbers of some of the later articles in the Constitution so as to put the subject-matter in a more logical order, as for example: article 12, prescribing oaths of office, is now devoted to cities, and the provisions as to oaths of office (formerly article 12), and as to bribery (formerly article 15), are grouped together in article 13, while the provision as to future amendments (formerly article 13), now constitute article 14; while the time when the Constitution shall take effect, formerly the last section of article 14, now makes article 15, and is the final section of the revised Constitution.

Respectfully submitted,

NATHANIEL FOOTE,

Chairman.

ALBANY, *September 27*, 1894.

The President — The Secretary will now proceed with the reading of the revised Constitution as reported by the Committee on Revision.

Mr. Hawley — Mr. President, I desire, before the reading of the revised Constitution is commenced, to call the attention of the members of the Convention to the only serious error in the printed copies which are upon the desks. It occurs in the second line of page 62. The error is occasioned, I suppose, by one of those accidents which are unavoidable in a printer's office. The proof-sheet of the matter was entirely correct, but evidently a part of the line dropped out in making up the form, and something else of equivalent length was put in its place. If the members will open their books at page 62, and in the second line of that page will strike out "hundred and ninety-five the jurisdiction of," and insert in place thereof, "directed by the court shall be reviewed by," the section will then read correctly. I believe there are no other errors, except errors of single letters and of punctuation marks.

The President — The Secretary will read the revised Constitution, as it comes engrossed from the Committee on Revision.

The Secretary read the proposed Constitution as follows:

We, the People of the State of New York, grateful to Almighty God for our freedom, in order to secure its blessings, do establish this Constitution.

ARTICLE I.

SECTION 1. No member of this State shall be disfranchised, or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land, or the judgment of his peers.

Sec. 2. The trial by jury in all cases in which it has been heretofore used shall remain inviolate forever; but a jury trial may be waived by the parties in all civil cases in the manner to be prescribed by law.

Sec. 3. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this State to all mankind; and no person shall be rendered incompetent to be a witness on account of his opinions on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this State.

Sec. 4. The privilege of the writ of *habeas corpus* shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require its suspension.

Sec. 5. Excessive bail shall not be required nor excessive fines imposed, nor shall cruel and unusual punishments be inflicted, nor shall witnesses be unreasonably detained.

Sec. 6. No person shall be held to answer for a capital or otherwise infamous crime (except in cases of impeachment, and in cases of militia when in actual service, and the land and naval forces in time of war, or which this State may keep with the consent of Congress in time of peace, and in cases of petit larceny, under the regulation of the Legislature), unless on presentment or indictment of a grand jury, and in any trial in any court whatever the party accused shall be allowed to appear and defend in person and with counsel as in civil actions. No person shall be subject to be twice put in jeopardy for the same offense, nor shall he be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty or property without due process of law; nor shall private property be taken for public use without just compensation.

Sec. 7. When private property shall be taken for any public use, the compensation to be made therefor, when such compensation is not made by the State, shall be ascertained by a jury, or by not

less than three commissioners appointed by a court of record, as shall be prescribed by law. Private roads may be opened in the manner to be prescribed by law, but in every case the necessity of the road and the amount of all damage to be sustained by the opening thereof shall first be determined by a jury of freeholders, and such amount, together with the expenses of the proceeding, shall be paid by the person to be benefited. General laws may be passed permitting the owners or occupants of agricultural lands to construct and maintain for the drainage thereof, necessary drains, ditches and dikes upon the lands of others, under proper restrictions and with just compensation, but no special laws shall be enacted for such purposes.

Sec. 8. Every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions or indictments for libels, the truth may be given in evidence to the jury, and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted and the jury shall have the right to determine the law and the fact.

Sec. 9. No law shall be passed abridging the right of the people peaceably to assemble and to petition the government, or any department thereof; nor shall any divorce be granted otherwise than by due judicial proceedings; nor shall any lottery or the sale of lottery tickets, pool selling, bookmaking, or any other kind of gambling hereafter be authorized or allowed within this State; and the Legislature shall pass appropriate laws to prevent offenses against any of the provisions of this section.

Sec. 10. The people of this State, in their right of sovereignty, are deemed to possess the original and ultimate property in and to all lands within the jurisdiction of the State; and all lands, the title to which shall fail, from a defect of heirs, shall revert or escheat to the people.

Sec. 11. All feudal tenures of every description, with all their incidents, are declared to be abolished, saving, however, all rents and services certain which at any time heretofore have been lawfully created or reserved.

Sec. 12. All lands within this State are declared to be allodial, so that, subject only to the liability to escheat, the entire and absolute property is vested in the owners, according to the nature of their respective estates.

Sec. 13. No lease or grant of agricultural land, for a longer period than twelve years, hereafter made, in which shall be reserved any rent or service of any kind, shall be valid.

Sec. 14. All fines, quarter-sales, or other like restraints upon alienation, reserved in any grant of land hereafter to be made, shall be void.

Sec. 15. No purchase or contract for the sale of lands in this State, made since the fourteenth day of October, one thousand seven hundred and seventy-five, or which may hereafter be made, of, or with the Indians, shall be valid, unless made under the authority and with the consent of the Legislature.

Sec. 16. Such parts of the common law, and of the acts of the Legislature of the colony of New York, as together did form the law of the said colony, on the nineteenth day of April, one thousand seven hundred and seventy-five, and the resolutions of the Congress of the said colony, and of the convention of the State of New York, in force on the twentieth day of April, one thousand seven hundred and seventy-seven, which have not since expired, or been repealed or altered; and such acts of the Legislature of this State as are now in force, shall be and continue the law of this State, subject to such alterations as the Legislature shall make concerning the same. But all such parts of the common law, and such of the said acts, or parts thereof, as are repugnant to this Constitution, are hereby abrogated.

Sec. 17. All grants of land within this State made by the king of Great Britain, or persons acting under his authority, after the fourteenth day of October, one thousand seven hundred and seventy-five, shall be null and void; but nothing contained in this Constitution shall affect any grants of land within this State, made by the authority of the said king or his predecessors, or shall annul any charters to bodies politic and corporate, by him or them made, before that day, or shall affect any such grants or charters since made by this State, or by persons acting under its authority; or shall impair the obligation of any debts contracted by the State, or individuals, or bodies corporate, or any other rights of property, or any suits, actions, rights of action, or other proceedings in courts of justice.

Sec. 18. The right of action now existing to recover damages for injuries resulting in death shall never be abrogated; and the amount recoverable shall not be subject to any statutory limitation.

ARTICLE II.

Section 1. Every male citizen of the age of twenty-one years, who shall have been a citizen for ninety days, and an inhabitant of

this State one year next preceding an election, and for 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.

Sec. 2. No person who shall receive, accept, or offer to receive or pay, offer or promise to pay, contribute, offer or promise to contribute to another, to be paid or used, any money or other valuable thing as a compensation or reward for the giving or withholding a vote at an election, or who shall make any promise to influence the giving or withholding any such vote, or who shall make or become directly or indirectly interested in any bet or wager depending upon the result of any election, shall vote at such election; and, upon challenge for such cause, the person so challenged, before the officers authorized for that purpose shall receive his vote, shall swear or affirm before such officers that he has not received or offered, does not expect to receive, has not paid, offered or promised to pay, contributed, offered or promised to contribute to another, to be paid or used, any money or other valuable thing as a compensation or reward for the giving or withholding a vote at such election, and has not made any promise to influence the giving or withholding of any such vote, nor made or become, directly or indirectly, interested in any bet or wager depending upon the result of such election. The Legislature shall enact laws excluding from the right of suffrage all persons convicted of bribery or of any infamous crime.

Sec. 3. For the purpose of voting, no person shall be deemed to have gained or lost a residence, by reason of his presence or absence, while employed in the service of the United States; nor while engaged in the navigation of the waters of this State, or of the United States, or of the high seas; nor while a student of any seminary of learning; nor while kept at any alms-house or other asylum, or institution wholly or partly supported at public expense or by charity; nor while confined in any public prison.

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 ten days before each election. Such registration shall not be required for town and village elections, except by express provision of law. In cities and villages having five thousand inhabitants or more, according to the last preceding State enumeration of inhabitants, voters shall be registered upon personal application only; but voters not residing in such cities or villages shall not be required to apply in person for registration at the first meeting of the officers having charge of the registry of voters.

Sec. 5. All elections by the citizens, except for such town officers as may by law be directed to be otherwise chosen, shall be by ballot, or by such other method as may be prescribed by law, provided that secrecy in voting be preserved.

Sec. 6. All laws creating, regulating or affecting boards of officers charged with the duty of registering voters, or of distributing ballots at the polls to voters, or of receiving, recording or counting votes at elections, shall secure equal representation of the two political parties which, at the general election next 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 and upon the nomination of such representatives of said parties respectively, as the Legislature may direct. Existing laws on this subject shall continue until the Legislature shall otherwise provide. This section shall not apply to town meetings, or to village elections.

ARTICLE III.

SECTION 1. The legislative power of this State shall be vested in the Senate and Assembly.

Sec. 2. The Senate shall consist of fifty members, except as hereinafter provided. The Senators elected in the year one thousand eight hundred and ninety-five shall hold their offices for three years, and their successors shall be chosen for two years. The Assembly shall consist of one hundred and fifty members, who shall be chosen for one year.

Sec. 3. The State shall be divided into fifty districts, to be called Senate districts, each of which shall choose one Senator. The districts shall be numbered from one to fifty, inclusive.

District number one (1) shall consist of the counties of Suffolk and Richmond.

District number two (2) shall consist of the county of Queens.

District number three (3) shall consist of that part of the county of Kings comprising the first, second, third, fourth, fifth and sixth wards of the city of Brooklyn.

District number four (4) shall consist of that part of the county of Kings comprising the seventh, thirteenth, nineteenth and twenty-first wards of the city of Brooklyn.

District number five (5) shall consist of that part of the county of Kings comprising the eighth, tenth, twelfth and thirtieth wards of the city of Brooklyn, and the ward of the city of Brooklyn which was formerly the town of Gravesend.

District number six (6) shall consist of that part of the county of Kings comprising the ninth, eleventh, twentieth and twenty-second wards of the city of Brooklyn.

District number seven (7) shall consist of that part of the county of Kings comprising the fourteenth, fifteenth, sixteenth and seventeenth wards of the city of Brooklyn.

District number eight (8) shall consist of that part of the county of Kings comprising the twenty-third, twenty-fourth, twenty-fifth and twenty-ninth wards of the city of Brooklyn and the town of Flatlands.

District number nine (9) shall consist of that part of the county of Kings comprising the eighteenth, twenty-sixth, twenty-seventh and twenty-eighth wards of the city of Brooklyn.

District number ten (10) shall consist of that part of the county of New York within and bounded by a line beginning at Canal street and the Hudson river, and running thence along Canal street, Hudson street, Dominick street, Varick street, Broome street, Sullivan street, Spring street, Broadway, Canal street, the Bowery, Division street, Grand street and Jackson street, to the East river, and thence around the southern end of Manhattan Island to the place of beginning, and also Governor's, Bedloe's and Ellis Islands.

District number eleven (11) shall consist of that part of the county of New York lying north of district number ten, and within and bounded by a line beginning at the junction of Broadway and Canal street, and running thence along Broadway, Fourth street, the Bowery and Third avenue, St. Mark's place, Avenue A, Seventh street, Avenue B, Clinton street, Rivington street, Norfolk street, Division street, Bowery and Canal street to the place of beginning.

District number twelve (12) shall consist of that part of the county of New York lying north of districts numbers ten and

eleven, and within and bounded by a line beginning at Jackson street and the East river, and running thence through Jackson street, Grand street, Division street, Norfolk street, Rivington street, Clinton street, Avenue B, Seventh street, Avenue A, St. Mark's place, Third avenue, East Fourteenth street to the East river, and along the East river to the place of beginning.

District number thirteen (13) shall consist of that part of the county of New York lying north of district number ten and within and bounded by a line beginning at the Hudson river at the foot of Canal street, and running thence along Canal street, Hudson street, Dominick street, Varick street, Broome street, Sullivan street, Spring street, Broadway, Fourth street, the Bowery and Third avenue, Fourteenth street, Sixth avenue, West Fifteenth street, Seventh avenue, West Nineteenth street, Eighth avenue, West Twentieth street and the Hudson river, to the place of beginning.

District number fourteen (14) shall consist of that part of the county of New York lying north of districts numbers twelve and thirteen, and within and bounded by a line beginning at East Fourteenth street and the East river, and running thence along East Fourteenth street, Irving place, East Nineteenth street, Third avenue, East Twenty-third street, Lexington avenue, East Fifty-third street, Third avenue, East Fifty-second street and the East river, to the place of beginning.

District number fifteen (15) shall consist of that part of the county of New York lying north of district number thirteen, and within and bounded by a line beginning at the junction of West Fourteenth street and Sixth avenue, and running thence along Sixth avenue, West Fifteenth street, Seventh avenue, West Fortieth street, Eighth avenue and the transverse road across Central Park at Ninety-seventh street, Fifth avenue, East Ninety-sixth street, Lexington avenue, East Twenty-third street, Third avenue, East Nineteenth street, Irving place and Fourteenth street, to the place of beginning.

District number sixteen (16) shall consist of that part of the county of New York lying north of district number thirteen, and within and bounded by a line beginning at Seventh avenue and West Nineteenth street, and running thence along West Nineteenth street, Eighth avenue, West Twentieth street, the Hudson river, West Forty-sixth street, Tenth avenue, West Forty-third street, Eighth avenue, West Fortieth street and Seventh avenue, to the place of beginning.

District number seventeen (17) shall consist of that part of the county of New York lying north of district number sixteen, and

within and bounded by a line beginning at the junction of Eighth avenue and West Forty-third street, and running thence along West Forty-third street, Tenth avenue, West Forty-sixth street, the Hudson river, West Eighty-ninth street, Tenth or Amsterdam avenue, West Eighty-sixth street, Ninth or Columbus avenue, West Eighth-first street and Eighth avenue, to the place of beginning.

District number eighteen (18) shall consist of that part of the county of New York lying north of district number fourteen, and within and bounded by a line beginning at the junction of East Fifty-second street and the East river, and running thence along East Fifty-second street, Third avenue, East Fifty-third street, Lexington avenue, East Eighty-fourth street, Second avenue, East Eighty-third street and the East river, to the place of beginning; and also Blackwell's Island.

District number nineteen (19) shall consist of that part of the county of New York lying north of district number seventeen, and within and bounded by a line beginning at West Eighty-ninth street and the Hudson river, and running thence along the Hudson river and Spuyten Duyvil creek around the northern end of Manhattan Island; thence southerly along the Harlem river to the north end of Fifth avenue; thence along Fifth avenue, East One Hundred and Twenty-ninth street, Fourth or Park avenue, East One Hundred and Tenth street, Fifth avenue, the transverse road across Central Park at Ninety-seventh street, Eighth avenue, West Eighty-first street, Ninth or Columbus avenue, West Eighty-sixth street, Tenth or Amsterdam avenue and West Eighty-ninth street, to the place of beginning.

District number twenty (20) shall consist of that part of the county of New York lying north of districts numbers eighteen and fifteen, and within and bounded by a line beginning at East Eighty-third street and the East river, running thence through East Eighty-third street, Second avenue, East Eighty-fourth street, Lexington avenue, East Ninety-sixth street, Fifth avenue, East One Hundred and Tenth street, Fourth or Park avenue, East One Hundred and Nineteenth street to the Harlem river, and along the Harlem and East rivers, to the place of beginning; and also Randall's Island and Ward's Island.

All of the above districts in the county of New York bounded upon or along the boundary waters of the county, shall be deemed to extend to the county line.

District number twenty-one (21) shall consist of that part of the county of New York lying north of districts numbers nineteen and twenty, within and bounded by a line beginning at East One Hun-

dred and Nineteenth street and the Harlem river, and running thence along East One Hundred and Nineteenth street, Fourth or Park avenue, One Hundred and Twenty-ninth street, Fifth avenue and the Harlem river, to the place of beginning; and all that part of the county of New York not hereinbefore described.

District number twenty-two (22) shall consist of the county of Westchester.

District number twenty-three (23) shall consist of the counties of Orange and Rockland.

District number twenty-four (24) shall consist of the counties of Dutchess, Columbia and Putnam.

District number twenty-five (25) shall consist of the counties of Ulster and Greene.

District number twenty-six (26) shall consist of the counties of Delaware, Chenango and Sullivan.

District number twenty-seven (27) shall consist of the counties of Montgomery, Fulton, Hamilton and Schoharie.

District number twenty-eight (28) shall consist of the counties of Saratoga, Schenectady and Washington.

District number twenty-nine (29) shall consist of the county of Albany.

District number thirty (30) shall consist of the county of Rensselaer.

District number thirty-one (31) shall consist of the counties of Clinton, Essex and Warren.

District number thirty-two (32) shall consist of the counties of St. Lawrence and Franklin.

District number thirty-three (33) shall consist of the counties of Otsego and Herkimer.

District number thirty-four (34) shall consist of the county of Oneida.

District number thirty-five (35) shall consist of the counties of Jefferson and Lewis.

District number thirty-six (36) shall consist of the county of Onondaga.

District number thirty-seven (37) shall consist of the counties of Oswego and Madison.

District number thirty-eight (38) shall consist of the counties of Broome, Cortland and Tioga.

District number thirty-nine (39) shall consist of the counties of Cayuga and Seneca.

District number forty (40) shall consist of the counties of Chemung, Tompkins and Schuyler.

District number forty-one (41) shall consist of the counties of Steuben and Yates.

District number forty-two (42) shall consist of the counties of Ontario and Wayne.

District number forty-three (43) shall consist of that part of the county of Monroe comprising the towns of Brighton, Henrietta, Irondequoit, Mendon, Penfield, Perinton, Pittsford, Rush and Webster and the fourth, sixth, seventh, eighth, twelfth, thirteenth, fourteenth, sixteenth, seventeenth and eighteenth wards of the city of Rochester, as at present constituted.

District number forty-four (44) shall consist of that part of the county of Monroe comprising the towns of Chili, Clarkson, Gates, Greece, Hamlin, Ogden, Parma, Riga, Sweden and Wheatland, and the first, second, third, fifth, ninth, tenth, eleventh, fifteenth, nineteenth and twentieth wards of the city of Rochester, as at present constituted.

District number forty-five (45) shall consist of the counties of Niagara, Genesee and Orleans.

District number forty-six (46) shall consist of the counties of Allegany, Livingston and Wyoming.

District number forty-seven (47) shall consist of that part of the county of Erie comprising the first, second, third, sixth, fifteenth, nineteenth, twentieth, twenty-first, twenty-second, twenty-third and twenty-fourth wards of the city of Buffalo, as at present constituted.

District number forty-eight (48) shall consist of that part of the county of Erie comprising the fourth, fifth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth and sixteenth wards of the city of Buffalo, as at present constituted.

District number forty-nine (49) shall consist of that part of the county of Erie comprising the seventeenth, eighteenth and twenty-fifth wards of the city of Buffalo, as at present constituted; and all the remainder of the said county of Erie not hereinbefore described.

District number fifty (50) shall consist of the counties of Chautauqua and Cattaraugus.

Sec. 4. An enumeration of the inhabitants of the State shall be taken under the direction of the Secretary of State, during the months of May and June, in the year one thousand nine hundred and five, and in the same months every tenth year thereafter; and the said districts shall be so altered by the Legislature at the first regular session after the return of every enumeration, that each Senate district shall contain as nearly as may be an equal number of inhabitants, excluding aliens, and be in as compact form as

practicable, and shall remain unaltered until the return of another enumeration, and shall at all times consist of contiguous territory, and no county shall be divided in the formation of a Senate district, except to make two or more Senate districts wholly in such county. No town, and no block in a city inclosed by streets or public ways, shall be divided in the formation of Senate districts; nor shall any district contain a greater excess in population over an adjoining district in the same county, than the population of a town or block therein adjoining such district. Counties, towns or blocks which, from their location, may be included in either of two districts, shall be so placed as to make said districts most nearly equal in number of inhabitants, excluding aliens.

No county shall have four or more Senators, unless it shall have a full ratio for each Senator. No county shall have more than one-third of all the Senators; and no two counties or the territory thereof as now organized, which are adjoining counties, or which are separated only by public waters, shall have more than one-half of all the Senators.

The ratio for apportioning Senators shall always be obtained by dividing the number of inhabitants, excluding aliens, by fifty, and the Senate shall always be composed of fifty members, except that if any county having three or more Senators at the time of any apportionment shall be entitled on such ratio to an additional Senator or Senators, such additional Senator of Senators shall be given to such county in addition to the fifty Senators, and the whole number of Senators shall be increased to that extent.

Sec. 5. The Members of the Assembly shall be chosen by single districts, and shall be apportioned by the Legislature at the first regular session after the return of every enumeration among the several counties of the State as nearly as may be according to the number of their respective inhabitants, excluding aliens. Every county heretofore established and separately organized, except the county of Hamilton, shall always be entitled to one Member of Assembly, and no county shall hereafter be erected unless its population shall entitle it to a member. The county of Hamilton shall elect with the county of Fulton, until the population of the county of Hamilton shall, according to the ratio, entitle it to a member. But the Legislature may abolish the said county of Hamilton and annex the territory thereof to some other county or counties.

The quotient obtained by dividing the whole number of inhabitants of the State, excluding aliens, by the number of Members of Assembly, shall be the ratio for apportionment, which shall be made as follows: one Member of Assembly shall be apportioned to every

county, including Fulton and Hamilton as one county, containing less than the ratio and one-half over. Two members shall be apportioned to every other county. The remaining Members of Assembly shall be apportioned to the counties having more than two ratios according to the number of inhabitants, excluding aliens. Members apportioned on remainders shall be apportioned to the counties having the highest remainders in the order thereof respectively. No county shall have more Members of Assembly than a county having a greater number of inhabitants, excluding aliens.

Until after the next enumeration Members of the Assembly shall be apportioned to the several counties as follows: Albany county, four members; Allegany county, one member; Broome county, two members; Cattaraugus county, two members; Cayuga county, two members; Chautauqua county, two members; Chemung county, one member; Chenango county, one member; Clinton county, one member; Columbia county, one member; Cortland county, one member; Delaware county, one member; Dutchess county, two members; Erie county, eight members; Essex county, one member; Franklin county, one member; Fulton and Hamilton counties, one member; Genesee county, one member; Greene county, one member; Herkimer county, one member; Jefferson county, two members; Kings county, twenty-one members; Lewis county, one member; Livingston county, one member; Madison county, one member; Monroe county, four members; Montgomery county, one member; New York county, thirty-five members; Niagara county, two members; Oneida county, three members; Onondaga county, four members; Ontario county, one member; Orange county, two members; Orleans county, one member; Oswego county, two members; Otsego county, one member; Putnam county, one member; Queens county, three members; Rensselaer county, three members; Richmond county, one member; Rockland county, one member; St. Lawrence county, two members; Saratoga county, one member; Schenectady county, one member; Schoharie county, one member; Schuyler county, one member; Seneca county, one member; Steuben county, two members; Suffolk county, two members; Sullivan county, one member; Tioga county, one member; Tompkins county, one member; Ulster county, two members; Warren county, one member; Washington county, one member; Wayne county, one member; Westchester county, three members; Wyoming county, one member, and Yates county, one member.

In any county entitled to more than one member, the board of supervisors, and in any city embracing an entire county and hav-

ing no board of supervisors, the common council, or if there be none, the body exercising the powers of a common council, shall assemble on the second Tuesday of June, one thousand eight hundred and ninety-five, and at such times as the Legislature making an apportionment shall prescribe, and divide such counties into Assembly districts as nearly equal in number of inhabitants, excluding aliens, as may be, of convenient and contiguous territory in as compact form as practicable, each of which shall be wholly within a Senate district formed under the same apportionment, equal to the number of Members of Assembly to which such county shall be entitled, and shall cause to be filed in the office of the Secretary of State and of the clerk of such county, a description of such districts, specifying the number of each district, and of the inhabitants thereof, excluding aliens, according to the last preceding enumeration; and such apportionment and districts shall remain unaltered until another enumeration shall be made, as herein provided; but said division of the city of Brooklyn and the county of Kings to be made on the second Tuesday of June, one thousand eight hundred and ninety-five, shall be made by the common council of the said city and the board of supervisors of said county, assembled in joint session. In counties having more than one Senate district, the same number of Assembly districts shall be put in each Senate district, unless the Assembly districts cannot be evenly divided among the Senate districts of any county, in which case one more Assembly district shall be put in the Senate district in such county having the largest, or one less Assembly district shall be put in the Senate district in such county having the smallest, number of inhabitants, excluding aliens, as the case may require. No town, and no block in a city inclosed by streets or public ways, shall be divided in the formation of Assembly districts, nor shall any district contain a greater excess in population over an adjoining district in the same Senate district than the population of a town or block therein adjoining such Assembly district. Towns or blocks which, from the location, may be included in either of two districts, shall be so placed as to make said districts most nearly equal in number of inhabitants, excluding aliens; but in the division of cities under the first apportionment, regard shall be had to the number of inhabitants, excluding aliens, of the election districts according to the State enumeration of one thousand eight hundred and ninety-two, so far as may be, instead of blocks. Nothing in this section shall prevent the division, at any time, of counties and towns, and the erection of new towns by the Legislature.

An apportionment by the Legislature, or other body, shall be subject to review by the Supreme Court, at the suit of any citizen, under such reasonable regulations as the Legislature may prescribe; and any court before which a cause may be pending involving an apportionment, shall give precedence thereto over all other causes and proceedings, and if said court be not in session it shall convene promptly for the disposition of the same.

Sec. 6. Each member of the Legislature shall receive for his services an annual salary of one thousand five hundred dollars. The members of either house shall also receive the sum of one dollar for every ten miles they shall travel in going to and returning from their place of meeting, once in each session, on the most usual route. Senators, when the Senate alone is convened in extraordinary session, or when serving as members of the Court for the Trial of Impeachments, and such Members of the Assembly, not exceeding nine in number, as shall be appointed managers of an impeachment, shall receive an additional allowance of ten dollars a day.

Sec. 7. No member of the Legislature shall receive any civil appointment within this State, or the Senate of the United States, from the Governor, the Governor and Senate, or from the Legislature, or from any city government, during the time for which he shall have been elected; and all such appointments and all votes given for any such member for any such office or appointment shall be void.

Sec. 8. No person shall be eligible to the Legislature, who, at the time of his election, is, or within one hundred days previous thereto, has been, a Member of Congress, a civil or military officer under the United States, or an officer under any city government. And if any person shall, after his election as a member of the Legislature, be elected to Congress, or appointed to any office, civil or military, under the government of the United States, or under any city government, his acceptance thereof shall vacate his seat.

Sec. 9. The elections of Senators and Members of the Assembly, pursuant to the provisions of this Constitution, shall be held on the Tuesday succeeding the first Monday of November, unless otherwise directed by the Legislature.

Sec. 10. A majority of each house shall constitute a quorum to do business. Each house shall determine the rules of its own proceedings, and be the judge of the elections, returns and qualifications of its own members; shall choose its own officers; and the Senate shall choose a temporary president to preside in case

of the absence or impeachment of the Lieutenant-Governor, or when he shall refuse to act as president, or shall act as Governor.

Sec. 11. Each house shall keep a journal of its proceedings, and publish the same, except such parts as may require secrecy. The doors of each house shall be kept open, except when the public welfare shall require secrecy. Neither house shall, without the consent of the other, adjourn for more than two days.

Sec. 12. For any speech or debate in either house of the Legislature, the members shall not be questioned in any other place.

Sec. 13. Any bill may originate in either house of the Legislature, and all bills passed by one house may be amended by the other.

Sec. 14. The enacting clause of all bills shall be, "The People of the State of New York, represented in Senate and Assembly, do enact as follows," and no law shall be enacted except by bill.

Sec. 15. No bill shall be passed or become a law unless it shall have been printed and upon the desks of the members, in its final form, at least three calendar legislative days prior to its final passage, unless the Governor, or the acting Governor, shall have certified to the necessity of its immediate passage, under his hand and the seal of the State; nor shall any bill be passed or become a law, except by the assent of a majority of the members elected to each branch of the Legislature; and upon the last reading of a bill, no amendment thereof shall be allowed, and the question upon its final passage shall be taken immediately thereafter, and the yeas and nays entered on the journal.

Sec. 16. 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.

Sec. 17. No act shall be passed which shall provide that any existing law, or any part thereof, shall be made or deemed a part of said act, or which shall enact that any existing law, or part thereof, shall be applicable except by inserting it in such act.

Sec. 18. The Legislature shall not pass a private or local bill in any of the following cases:

Changing the names of persons.

Laying out, opening, altering, working or discontinuing roads, highways or alleys, or for draining swamps or other low lands.

Locating or changing county seats.

Providing for changes of venue in civil or criminal cases.

Incorporating villages.

Providing for election of members of boards of supervisors.

Selecting, drawing, summoning or impaneling grand or petit jurors.

Regulating the rate of interest on money.

The opening and conducting of elections or designating places of voting.

Creating, increasing or decreasing fees, percentages or allowances of public officers, during the term for which said officers are elected or appointed.

Granting to any corporation, association or individual the right to lay down railroad tracks.

Granting to any private corporation, association or individual any exclusive privilege, immunity or franchise whatever.

Providing for building bridges, and chartering companies for such purposes, except on the Hudson river below Waterford, and on the East river, or over the waters forming a part of the boundaries of the State.

The Legislature shall pass general laws providing for the cases enumerated in this section, and for all other cases which in its judgment may be provided for by general laws. But no law shall authorize the construction or operation of a street railroad, except upon the condition that the consent of the owners of one-half in value of the property bounded on, and the consent also of the local authorities having control of, that portion of a street or highway upon which it is proposed to construct or operate such railroad be first obtained, or in case the consent of such property owners cannot be obtained, the Appellate Division of the Supreme Court, in the department in which it is proposed to be constructed, may, upon application, appoint three commissioners who shall determine, after a hearing of all parties interested, whether such railroad ought to be constructed or operated, and their determination, confirmed by the court, may be taken in lieu of the consent of the property owners.

Sec. 19. The Legislature shall neither audit nor allow any private claim or account against the State, but may appropriate money to pay such claims as shall have been audited and allowed according to law.

Sec. 20. The assent of two-thirds of the members elected to each branch of the Legislature shall be requisite to every bill appropriating the public moneys or property for local or private purposes.

Sec. 21. No money shall ever be paid out of the treasury of this State, or any of its funds, or any of the funds under its management, except in pursuance of an appropriation by law; nor

unless such payment be made within two years next after the passage of such appropriation act; and every such law making a new appropriation, or continuing or reviving an appropriation, shall distinctly specify the sum appropriated, and the object to which it is to be applied; and it shall not be sufficient for such law to refer to any other law to fix such sum.

Section 22. No provision or enactment shall be embraced in the annual appropriation or supply bill, unless it relates specifically to some particular appropriation in the bill; and any such provision or enactment shall be limited in its operation to such appropriation.

Sec. 23. Sections seventeen and eighteen of this article shall not apply to any bill, or the amendments to any bill, which shall be reported to the Legislature by commissioners who have been appointed pursuant to law to revise the statutes.

Sec. 24. Every law which imposes, continues or revives a tax shall distinctly state the tax and the object to which it is to be applied, and it shall not be sufficient to refer to any other law to fix such tax or object.

Sec. 25. On the final passage, in either house of the Legislature, of any act which imposes, continues or revives a tax, or creates a debt or charge, or makes, continues or revives any appropriation of public or trust money or property, or releases, discharges or commutes any claim or demand of the State, the question shall be taken by yeas and nays, which shall be duly entered upon the journals, and three-fifths of all the members elected to either house shall, in all such cases, be necessary to constitute a quorum therein.

Sec. 26. There shall be in the several counties, except in cities whose boundaries are the same as those of the county, a board of supervisors, to be composed of such members, and elected in such manner, and for such period, as is or may be provided by law. In any such city the duties and powers of a board of supervisors may be devolved upon the common council or board of aldermen thereof.

Sec. 27. The Legislature shall, by general laws, confer upon the boards of supervisors of the several counties of the State such further powers of local legislation and administration as the Legislature may from time to time deem expedient.

Sec. 28. The Legislature shall not, nor shall the common council of any city, nor any board of supervisors, grant any extra compensation to any public officer, servant, agent or contractor.

Sec. 29. The Legislature shall, by law, provide for the occu-

pation and employment of prisoners sentenced to the several State prisons, penitentiaries, jails and reformatories in the State; and on and after the first day of January, in the year one thousand eight hundred and ninety-seven, no person in any such prison, penitentiary, jail or reformatory 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, firm, association or corporation. This section shall not be construed to prevent the Legislature from providing that convicts may work for, and that the products of their labor may be disposed of to, the State or any political division thereof, or for or to any public institution owned or managed and controlled by the State, or any political division thereof.

ARTICLE IV.

SECTION 1. The executive power shall be vested in a Governor, who shall hold his office for two years; a Lieutenant-Governor shall be chosen at the same time, and for the same term. The Governor and Lieutenant-Governor elected next preceding the time when this section shall take effect, shall hold office until and including the thirty-first day of December, one thousand eight hundred and ninety-six, and their successors shall be chosen at the general election in that year.

Sec. 2. No person shall be eligible to the office of Governor or Lieutenant-Governor, except a citizen of the United States, of the age of not less than thirty years, and who shall have been five years next preceding his election a resident of this State.

Sec. 3. The Governor and Lieutenant-Governor shall be elected at the times and places of choosing Members of the Assembly. The persons respectively having the highest number of votes for Governor and Lieutenant-Governor shall be elected; but in case two or more shall have an equal and the highest number of votes for Governor, or for Lieutenant-Governor, the two houses of the Legislature at its next annual session shall forthwith, by joint ballot, choose one of the said persons so having an equal and the highest number of votes for Governor or Lieutenant-Governor.

Sec. 4. The Governor shall be commander-in-chief of the military and naval forces of the State. He shall have power to convene the Legislature, or the Senate only, on extraordinary occasions.

At extraordinary sessions no subject shall be acted upon, except such as the Governor may recommend for consideration. He shall communicate by message to the Legislature at every session the condition of the State, and recommend such matters to it as he shall judge expedient. He shall transact all necessary business with the officers of government, civil and military. He shall expedite all such measures as may be resolved upon by the Legislature, and shall take care that the laws are faithfully executed. He shall receive for his services an annual salary of ten thousand dollars, and there shall be provided for his use a suitable and furnished executive residence.

Sec. 5. The Governor shall have the power to grant reprieves, commutations and pardons after conviction, for all offenses except treason and cases of impeachment, upon such conditions and with such restrictions and limitations, as he may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons. Upon conviction for treason, he shall have power to suspend the execution of the sentence, until the case shall be reported to the Legislature at its next meeting, when the Legislature shall either pardon, or commute the sentence, direct the execution of the sentence, or grant a further reprieve. He shall annually communicate to the Legislature each case of reprieve, commutation or pardon granted, stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of the commutation, pardon or reprieve.

Sec. 6. In case of the impeachment of the Governor, or his removal from office, death, inability to discharge the powers and duties of the said office, resignation or absence from the State, the powers and duties of the office shall devolve upon the Lieutenant-Governor for the residue of the term, or until the disability shall cease. But when the Governor shall, with the consent of the Legislature, be out of the State, in time of war, at the head of a military force thereof, he shall continue commander-in-chief of all the military force of the State.

Sec. 7. The Lieutenant-Governor shall possess the same qualifications of eligibility for office as the Governor. He shall be president of the Senate, but shall have only a casting vote therein. If during a vacancy of the office of Governor, the Lieutenant-Governor shall be impeached, displaced, resign, die, or become incapable of performing the duties of his office, or be absent from the State, the President of the Senate shall act as Governor until the vacancy be filled or the disability shall cease; and if the President of the Senate for any of the above causes shall become

incapable of performing the duties pertaining to the office of Governor, the Speaker of the Assembly shall act as Governor until the vacancy be filled or the disability shall cease.

Sec. 8. The Lieutenant-Governor shall receive for his services an annual salary of five thousand dollars, and shall not receive or be entitled to any other compensation, fee or perquisite, for any duty or service he may be required to perform by the Constitution or by law.

Sec. 9. Every bill which shall have passed the Senate and Assembly shall, before it becomes a law, be presented to the Governor; if he approve, he shall sign it; but if not, he shall return it with his objections to the house in which it shall have originated, which shall enter the objections at large on the journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of the members elected to that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered; and if approved by two-thirds of the members elected to that house, it shall become a law, notwithstanding the objections of the Governor. In all such cases, the votes in both houses shall be determined by yeas and nays, and the names of the members voting shall be entered on the journal of each house respectively. If any bill shall not be returned by the Governor within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the Legislature shall, by their adjournment, prevent its return, in which case it shall not become a law without the approval of the Governor. No bill shall become a law after the final adjournment of the Legislature, unless approved by the Governor within thirty days after such adjournment. If any bill presented to the Governor contain several items of appropriation of money, he may object to one or more of such items while approving of the other portion of the bill. In such case, he shall append to the bill, at the time of signing it, a statement of the items to which he objects; and the appropriation so objected to shall not take effect. If the Legislature be in session, he shall transmit to the house in which the bill originated a copy of such statement, and the items objected to shall be separately reconsidered. If on reconsideration one or more of such items be approved by two-thirds of the members elected to each house, the same shall be part of the law, notwithstanding the objections of the Governor. All the provisions of this section, in relation to bills not approved by the

Governor, shall apply in cases in which he shall withhold his approval from any item or items contained in a bill appropriating money.

ARTICLE V.

SECTION 1. The Secretary of State, Comptroller, Treasurer, Attorney-General and the State Engineer and Surveyor shall be chosen at a general election, at the times and places of electing the Governor and Lieutenant-Governor, and shall hold their offices for two years, except as provided in section 2 of this article. Each of the officers in this article named, excepting the Speaker of the Assembly, shall at stated times during his continuance in office, receive for his services a compensation which shall not be increased or diminished during the term for which he shall have been elected; nor shall he receive to his use any fees or perquisites of office or other compensation. No person shall be elected to the office of State Engineer and Surveyor who is not a practical civil engineer.

Sec. 2. The first election of the Secretary of State, Comptroller, Treasurer, Attorney-General and State Engineer and Surveyor, pursuant to this article, shall be held in the year one thousand eight hundred and ninety-five, and their terms of office shall begin on the first day of January following, and shall be for three years. At the general election in the year one thousand eight hundred and ninety-eight, and every two years thereafter, their successors shall be chosen for the term of two years.

Sec. 3. A Superintendent of Public Works shall be appointed by the Governor, by and with the advice and consent of the Senate, and hold his office until the end of the term of the Governor, by whom he was nominated, and until his successor is appointed and qualified. He shall receive a compensation to be fixed by law. He shall be required by law to give security for the faithful execution of his office before entering upon the duties thereof. He shall be charged with the execution of all laws relating to the repair and navigation of the canals, and also of those relating to the construction and improvement of the canals, except so far as the execution of the laws relating to such construction or improvement shall be confided to the State Engineer and Surveyor; subject to the control of the Legislature, he shall make the rules and regulations for the navigation or use of the canals. He may be suspended or removed from office by the Governor, whenever, in his judgment, the public interest shall so require; but in case of the removal of such Superintendent of Public Works from office, the Governor shall file with the Secretary of State a state-

ment of the cause of such removal, and shall report such removal and the cause thereof to the Legislature at its next session. The Superintendent of Public Works shall appoint not more than three assistant superintendents, whose duties shall be prescribed by him, subject to modification by the Legislature, and who shall receive for their services a compensation to be fixed by law. They shall hold their office for three years, subject to suspension or removal by the Superintendent of Public Works, whenever, in his judgment, the public interest shall so require. Any vacancy in the office of any such assistant superintendent shall be filled for the remainder of the term for which he was appointed, by the Superintendent of Public Works; but in case of the suspension or removal of any such assistant superintendent by him, he shall at once report to the Governor, in writing, the cause of such removal. All other persons employed in the care and management of the canals, except collectors of tolls, and those in the department of the State Engineer and Surveyor, shall be appointed by the Superintendent of Public Works, and be subject to suspension or removal by him. The Superintendent of Public Works shall perform all the duties of the former canal commissioners, and board of canal commissioners, as now declared by law, until otherwise provided by the Legislature. The Governor, by and with the advice and consent of the Senate, shall have power to fill vacancies in the office of Superintendent of Public Works; if the Senate be not in session, he may grant commissions which shall expire at the end of the next succeeding session of the Senate.

Sec. 4. A Superintendent of State Prisons shall be appointed by the Governor, by and with the advice and consent of the Senate, and hold his office for five years, unless sooner removed; he shall give security in such amount, and with such sureties as shall be required by law, for the faithful discharge of his duties; he shall have the superintendence, management and control of State prisons, subject to such laws as now exist or may hereafter be enacted; he shall appoint the agents, wardens, physicians and chaplains of the prisons. The agent and warden of each prison shall appoint all other officers of such prison, except the clerk, subject to the approval of the same by the superintendent. The Comptroller shall appoint the clerks of the prisons. The superintendent shall have all the powers and perform all the duties not inconsistent herewith, which were formerly had and performed by the inspectors of State prisons. The Governor may remove the superintendent for cause at any time, giving him a copy of the charges against him, and an opportunity to be heard in his defense.

Sec. 5. The Lieutenant-Governor, Speaker of the Assembly, Secretary of State, Comptroller, Treasurer, Attorney-General and State Engineer and Surveyor shall be the commissioners of the land office. The Lieutenant-Governor, Secretary of State, Comptroller, Treasurer and Attorney-General shall be the commissioners of the canal fund. The canal board shall consist of the commissioners of the canal fund, the State Engineer and Surveyor, and the Superintendent of Public Works.

Sec. 6. The powers and duties of the respective boards, and of the several officers in this article mentioned, shall be such as now are or hereafter may be prescribed by law.

Sec. 7. The Treasurer may be suspended from office by the Governor, during the recess of the Legislature, and until thirty days after the commencement of the next session of the Legislature, whenever it shall appear to him that such Treasurer has, in any particular, violated his duty. The Governor shall appoint a competent person to discharge the duties of the office during such suspension of the Treasurer.

Sec. 8. All offices for the weighing, gauging, measuring, culling or inspecting any merchandise, produce, manufacture or commodity whatever, are hereby abolished, and no such office shall hereafter be created by law; but nothing in this section contained shall abrogate any office created for the purpose of protecting the public health or the interests of the State in its property, revenue, tolls or purchases, or of supplying the people with correct standards of weights and measures, or shall prevent the creation of any office for such purposes hereafter.

Sec. 9. Appointments and promotions in the civil service of the State, and of all the civil divisions thereof, including cities and villages, shall be made according to merit and fitness, to be ascertained, so far as practicable, by examinations, which, so far as practicable, shall be competitive; provided, however, that honorably discharged soldiers and sailors from the army and navy of the United States in the late Civil War, who are citizens and residents of this State, shall be entitled to preference in appointment and promotion, without regard to their standing on any list from which such appointments or promotions may be made. Laws shall be made to provide for the enforcement of this section.

ARTICLE VI.

SECTION 1. The Supreme Court is continued with general jurisdiction in law and equity, subject to such appellate jurisdiction of the Court of Appeals as now is or may be prescribed by law not

inconsistent with this article. The existing judicial districts of the State are continued until changed as hereinafter provided. The Supreme Court shall consist of the justices now in office, and of the judges transferred thereto by the fifth section of this article, all of whom shall continue to be justices of the Supreme Court during their respective terms, and of twelve additional justices, who shall reside in and be chosen by the electors of the several existing judicial districts; three in the first district, three in the second, and one in each of the other districts; and of their successors. The successors of said justices shall be chosen by the electors of their respective judicial districts. The Legislature may alter the judicial districts once after every enumeration, under the Constitution, of the inhabitants of the State, and thereupon reapportion the justices to be thereafter elected in the districts so altered.

Sec. 2. The Legislature shall divide the State into four judicial departments. The first department shall consist of the county of New York; the others shall be bounded by county lines, and be compact and equal in population as nearly as may be. Once every ten years the Legislature may alter the judicial departments, but without increasing the number thereof.

There shall be an Appellate Division of the Supreme Court, consisting of seven justices in the first department, and of five justices in each of the other departments. In each department four shall constitute a quorum, and the concurrence of three shall be necessary to a decision. No more than five justices shall sit in any case.

From all the justices elected to the Supreme Court the Governor shall designate those who shall constitute the Appellate Division in each department, and he shall designate the presiding justice thereof, who shall act as such during his term of office, and shall be a resident of the department. The other justices shall be designated for terms of five years, or the unexpired portions of their respective terms of office, if less than five years. From time to time, as the terms of such designations expire, or vacancies occur, he shall make new designations. He may also make temporary designations in case of the absence, or inability to act, of any justice in the Appellate Division. A majority of the justices designated to sit in the Appellate Division in each department shall be residents of the department. Whenever the Appellate Division in any department shall be unable to dispose of its business within a reasonable time, a majority of the presiding justices of the several departments, at a meeting called by the presiding justice of the department in arrears, may transfer any pending appeals from such department to any other department for hearing and determination. No justice

of the Appellate Division shall exercise any of the powers of a justice of the Supreme Court, other than those of a justice out of court, and those pertaining to the Appellate Division, or to the hearing and decision of motions submitted by consent of counsel. From and after the last day of December, one thousand eight hundred and ninety-five, the Appellate Division shall have the jurisdiction now exercised by the Supreme Court at its General Terms, and by the General Terms of the Court of Common Pleas for the City and County of New York, the Superior Court of the City of New York, the Superior Court of Buffalo and the City Court of Brooklyn, and such additional jurisdiction as may be conferred by the Legislature. It shall have power to appoint and remove a reporter.

The justices of the Appellate Division in each department shall have power to fix the times and places for holding Special and Trial Terms therein, and to assign the justices in the departments to hold such terms; or to make rules therefor.

Sec. 3. No judge or justice shall sit in the Appellate Division or in the Court of Appeals in review of a decision made by him or by any court of which he was at the time a sitting member. The testimony in equity cases shall be taken in like manner as in cases at law; and, except as herein otherwise provided, the Legislature shall have the same power to alter and regulate the jurisdiction and proceedings in law and in equity that it has heretofore exercised.

Sec. 4. The official terms of the justices of the Supreme Court shall be fourteen years from and including the first day of January next after their election. When a vacancy shall occur otherwise than by expiration of term in the office of justice of the Supreme Court, the same shall be filled for a full term at the next general election happening not less than three months after such vacancy occurs; and, until the vacancy shall be so filled, the Governor, by and with the advice and consent of the Senate, if the Senate shall be in session, or, if not in session, the Governor may fill such vacancy by appointment, which shall continue until and including the last day of December next after the election at which the vacancy shall be filled.

Sec. 5. The Superior Court of the City of New York, the Court of Common Pleas for the City and County of New York, the Superior Court of Buffalo and the City Court of Brooklyn, are abolished from and after the first day of January, one thousand eight hundred and ninety-six, and thereupon the seals, records, papers and documents of or belonging to such courts shall be deposited in the offices of the clerks of the several counties in which said courts now exist; and all actions and proceedings then pending in such courts shall

be transferred to the Supreme Court for hearing and determination. The judges of said courts in office on the first day of January, one thousand eight hundred and ninety-six, shall, for the remainder of the terms for which they were elected, or appointed, be justices of the Supreme Court; but they shall sit only in the counties in which they were elected or appointed. Their salaries shall be paid by the said counties respectively, and shall be the same as the salaries of the other justices of the Supreme Court residing in the same counties. Their successors shall be elected as justices of the Supreme Court by the electors of the judicial districts in which they respectively reside.

The jurisdiction now exercised by the several courts hereby abolished shall be vested in the Supreme Court. Appeals from inferior and local courts now heard in the Court of Common Pleas for the City and County of New York and the Superior Court of Buffalo, shall be heard in the Supreme Court in such manner and by such justice or justices as the Appellate Divisions in the respective departments which include New York and Buffalo shall direct, unless otherwise provided by the Legislature.

Sec. 6. Circuit Courts and Courts of Oyer and Terminer are abolished from and after the last day of December, one thousand eight hundred and ninety-five. All their jurisdiction shall thereupon be vested in the Supreme Court, and all actions and proceedings then pending in such courts shall be transferred to the Supreme Court for hearing and determination. Any justice of the Supreme Court, except as otherwise provided in this article, may hold court in any county.

Sec. 7. The Court of Appeals is continued. It shall consist of the chief judge and associate judges now in office, who shall hold their offices until the expiration of their respective terms, and their successors, who shall be chosen by the electors of the State. The official terms of the chief judge and associate judges shall be fourteen years from and including the first day of January next after their election. Five members of the court shall form a quorum, and the concurrence of four shall be necessary to a decision. The court shall have power to appoint and to remove its reporter, clerk and attendants.

Sec. 8. When a vacancy shall occur otherwise than by expiration of term in the office of chief or associate judge of the Court of Appeals, the same shall be filled, for a full term, at the next general election happening not less than three months after such vacancy occurs; and until the vacancy shall be so filled, the Governor, by and with the advice and consent of the Senate, if the Senate shall

be in session, or if not in session, the Governor may fill such vacancy by appointment. If any such appointment of chief judge shall be made from among the associate judges, a temporary appointment of associate judge shall be made in like manner; but in such case, the person appointed chief judge shall not be deemed to vacate his office of associate judge any longer than until the expiration of his appointment as chief judge. The powers and jurisdiction of the court shall not be suspended for want of appointment or election, when the number of judges is sufficient to constitute a quorum. All appointments under this section shall continue until and including the last day of December next after the election at which the vacancy shall be filled.

Sec. 9. After the last day of December, one thousand eight hundred and ninety-five, the jurisdiction of the Court of Appeals, except where the judgment is of death, shall be limited to the review of questions of law. No unanimous decision of the Appellate Division of the Supreme Court that there is evidence supporting or tending to sustain a finding of fact or a verdict not directed by the court, shall be reviewed by the Court of Appeals. Except where the judgment is of death, appeals may be taken, as of right, to said court only from judgments or orders entered upon decisions of the Appellate Division of the Supreme Court, finally determining actions or special proceedings, and from orders granting new trials on exceptions, where the appellants stipulate that upon affirmance, judgment absolute shall be rendered against them. The Appellate Division in any department may, however, allow an appeal upon any question of law which, in its opinion, ought to be reviewed by the Court of Appeals.

The Legislature may further restrict the jurisdiction of the Court of Appeals and the right of appeal thereto, but the right to appeal shall not depend upon the amount involved.

The provisions of this section shall not apply to orders made or judgments rendered by any General Term before the last day of December, one thousand eight hundred and ninety-five, but appeals therefrom may be taken under existing provisions of law.

Sec. 10. The judges of the Court of Appeals and the justices of the Supreme Court shall not hold any other office or public trust. All votes for any of them, for any other than a judicial office, given by the Legislature or the people, shall be void.

Sec. 11. Judges of the Court of Appeals and justices of the Supreme Court may be removed by concurrent resolution of both houses of the Legislature, if two-thirds of all the members elected to each house concur therein. All other judicial officers, except

justices of the peace, and judges or justices of inferior courts, not of record, may be removed by the Senate, on the recommendation of the Governor, if two-thirds of all the members elected to the Senate concur therein. But no officer shall be removed by virtue of this section except for cause, which shall be entered on the journals, nor unless he shall have been served with a statement of the cause alleged, and shall have had an opportunity to be heard. On the question of removal, the yeas and nays shall be entered on the journal.

Sec. 12. The judges and justices hereinbefore mentioned shall receive for their services a compensation established by law, which shall not be increased or diminished during their official terms, except as provided in section 5 of this article. No person shall hold the office of judge or justice of any court longer than until and including the last day of December next after he shall be seventy years of age. No judge or justice elected after the first day of January, one thousand eight hundred and ninety-four, shall be entitled to receive any compensation after the last day of December next after he shall be seventy years of age; but the compensation of every judge of the Court of Appeals or justice of the Supreme Court elected prior to the first day of January, one thousand eight hundred and ninety-four, whose term of office has been, or whose present term of office shall be, so abridged, and who shall have served as such judge or justice ten years or more, shall be continued during the remainder of the term for which he was elected; but any such judge or justice may, with his consent, be assigned by the Governor, from time to time, to any duty in the Supreme Court while his compensation is so continued.

Sec. 13. The Assembly shall have the power of impeachment, by a vote of a majority of all the members elected. The court for the trial of impeachments shall be composed of the President of the Senate, the Senators, or the major part of them, and the judges of the Court of Appeals, or the major part of them. On the trial of an impeachment against the Governor or Lieutenant-Governor, the Lieutenant-Governor shall not act as a member of the court. No judicial officer shall exercise his office, after articles of impeachment against him shall have been preferred to the Senate, until he shall have been acquitted. Before the trial of an impeachment the members of the court shall take an oath or affirmation truly and impartially to try the impeachment, according to the evidence, and no person shall be convicted without the concurrence of two-thirds of the members present. Judgment in cases of impeachment shall not extend further than to removal from office, or removal from

office and disqualification to hold and enjoy any office of honor, trust or profit under this State; but the party impeached shall be liable to indictment and punishment according to law.

Sec. 14. The existing County Courts are continued, and the judges thereof now in office shall hold their offices until the expiration of their respective terms. In the county of Kings there shall be two county judges, and the additional county judge shall be chosen at the next general election held after the adoption of this article. The successors of the several county judges shall be chosen by the electors of the counties for the term of six years. County Courts shall have the powers and jurisdiction they now possess, and also original jurisdiction in actions for the recovery of money only where the defendants reside in the county, and in which the complaint demands judgment for a sum not exceeding two thousand dollars. The Legislature may hereafter enlarge or restrict the jurisdiction of the County Courts; provided, however, that their jurisdiction shall not be so extended as to authorize an action therein for the recovery of money only in which the sum demanded exceeds two thousand dollars, or in which any person not a resident of the county is a defendant.

Courts of Sessions, except in the county of New York, are abolished from and after the last day of December, one thousand eight hundred and ninety-five. All the jurisdiction of the Court of Sessions in each county, except the county of New York, shall thereupon be vested in the County Court thereof, and all actions and proceedings then pending in such Courts of Sessions shall be transferred to said County Courts for hearing and determination. Every county judge shall perform such duties as may be required by law. His salary shall be established by law, payable out of the county treasury. A county judge of any county may hold County Courts in any other county when requested by the judge of such other county.

Sec. 15. The existing Surrogate's Courts are continued, and the surrogates now in office shall hold their offices until the expiration of their terms. Their successors shall be chosen by the electors of their respective counties, and their terms of office shall be six years, except in the county of New York, where they shall continue to be fourteen years. Surrogates and Surrogate's Courts shall have the jurisdiction and powers which the surrogates and existing Surrogate's Courts now possess, until otherwise provided by the Legislature. The county judge shall be surrogate of his county, except where a separate surrogate has been or shall be elected. In counties having a population exceeding forty thousand, wherein

there is no separate surrogate, the Legislature may provide for the election of a separate officer to be surrogate, whose term of office shall be six years. When the surrogate shall be elected as a separate officer his salary shall be established by law, payable out of the county treasury. No county judge or surrogate shall hold office longer than until and including the last day of December next after he shall be seventy years of age. Vacancies occurring in the office of county judge or surrogate shall be filled in the same manner as like vacancies occurring in the Supreme Court. The compensation of any county judge or surrogate shall not be increased or diminished during his term of office. For the relief of Surrogate's Courts the Legislature may confer upon the Supreme Court in any county having a population exceeding four hundred thousand the powers and jurisdiction of surrogates, with authority to try issues of fact by jury in probate cases.

Sec. 16. The Legislature may, on application of the board of supervisors, provide for the election of local officers, not to exceed two in any county, to discharge the duties of county judge and of surrogate, in cases of their inability or of a vacancy, and in such other cases as may be provided by law, and to exercise such other powers in special cases as are or may be provided by law.

Sec. 17. The electors of the several towns shall, at their annual town meetings, or at such other time and in such manner as the Legislature may direct, elect justices of the peace, whose term of office shall be four years. In case of an election to fill a vacancy occurring before the expiration of a full term, they shall hold for the residue of the unexpired term. Their number and classification may be regulated by law. Justices of the peace and judges or justices of inferior courts, not of record, and their clerks, may be removed for cause, after due notice and an opportunity of being heard by such courts as are or may be prescribed by law. Justices of the peace and district court justices may be elected in the different cities of this State in such manner, and with such powers, and for such terms, respectively, as are or shall be prescribed by law; all other judicial officers in cities, whose election or appointment is not otherwise provided for in this article, shall be chosen by the electors of such cities, or appointed by some local authorities thereof.

Sec. 18. Inferior local courts of civil and criminal jurisdiction may be established by the Legislature, but no inferior local court hereafter created shall be a court of record. The Legislature shall not hereafter confer upon any inferior or local court of its creation any equity jurisdiction, or any greater jurisdiction in other respects

than is conferred upon County Courts by or under this article. Except as herein otherwise provided, all judicial officers shall be elected or appointed at such times and in such manner as the Legislature may direct.

Sec. 19. Clerks of the several counties shall be clerks of the Supreme Court, with such powers and duties as shall be prescribed by law. The justices of the Appellate Division in each department shall have power to appoint and to remove a clerk, who shall keep his office at a place to be designated by said justices. The clerk of the Court of Appeals shall keep his office at the seat of government. The clerk of the Court of Appeals and the clerks of the Appellate Division shall receive compensation to be established by law and paid out of the public treasury.

Sec. 20. No judicial officer, except justices of the peace, shall receive to his own use any fees or perquisites of office; nor shall any judge of the Court of Appeals, or justices of the Supreme Court, or any county judge or surrogate hereafter elected in a county having a population exceeding one hundred and twenty thousand, practice as an attorney or counselor in any court of record in this State, or act as referee. The Legislature may impose a similar prohibition upon county judges and surrogates in other counties. 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.

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.

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

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

ARTICLE VII.

SECTION 1. The credit of the State shall not in any manner be given or loaned to or in aid of any individual, association or corporation.

Sec. 2. The State may, to meet casual deficits or failures in revenues, or for expenses not provided for, contract debts, but such debts, direct or contingent, singly or in the aggregate, shall

not at any time exceed one million of dollars; and the moneys arising from the loans creating such debts shall be applied to the purpose for which they were obtained, or to repay the debt so contracted, and to no other purpose whatever.

Sec. 3. In addition to the above limited power to contract debts, the State may contract debts to repel invasion, suppress insurrection, or defend the State in war; but the money arising from the contracting of such debts shall be applied to the purpose for which it was raised, or to repay such debts, and to no other purpose whatever.

Sec. 4. Except the debts specified in sections 2 and 3 of this article, no debts shall be hereafter contracted by or on behalf of this State, unless such debt shall be authorized by a law, for some single work or object, to be distinctly specified therein; and such law shall impose and provide for the collection of a direct annual tax to pay, and sufficient to pay the interest on such debt as it falls due, and also to pay and discharge the principal of such debt within eighteen years from the time of the contracting thereof. No such law shall take effect until it shall, at a general election, have been submitted to the people, and have received a majority of all the votes cast for and against it at such election. On the final passage of such bill in either house of the Legislature, the question shall be taken by ayes and noes, to be duly entered on the journals thereof, and shall be: "Shall this bill pass, and ought the same to receive the sanction of the people?"

The Legislature may at any time, after the approval of such law by the people, if no debt shall have been contracted in pursuance thereof, repeal the same; and may at any time, by law, forbid the contracting of any further debt or liability under such law; but the tax imposed by such act, in proportion to the debt and liability which may have been contracted in pursuance of such law, shall remain in force and be irrepealable, and be annually collected, until the proceeds thereof shall have made the provision hereinbefore specified to pay and discharge the interest and principal of such debt and liability. The money arising from any loan or stock creating such debt or liability shall be applied to the work or object specified in the act authorizing such debt or liability, or for the repayment of such debt or liability, and for no other purpose whatever. No such law shall be submitted to be voted on, within three months after its passage, or at any general election when any other law, or any bill, or any amendment to the Constitution, shall be submitted to be voted for or against.

Sec. 5. The sinking funds provided for the payment of interest

and the extinguishment of the principal of the debts of the State shall be separately kept and safely invested, and neither of them shall be appropriated or used in any manner other than for the specific purpose for which it shall have been provided.

Sec. 6. Neither the Legislature, canal board, nor any person or persons acting in behalf of the State, shall audit, allow, or pay any claim which, as between citizens of the State, would be barred by lapse of time. This provision shall not be construed to repeal any statute fixing the time within which claims shall be presented or allowed, nor shall it extend to any claims duly presented within the time allowed by law, and prosecuted with due diligence from the time of such presentment. But if the claimant shall be under legal disability, the claim may be presented within two years after such disability is removed.

Sec. 7. The lands of the State now owned or hereafter acquired, constituting the forest preserve as now fixed by law, shall be forever kept as wild forest lands. They shall not be leased, sold or exchanged, or be taken by any corporation, public or private, nor shall the timber thereon be sold, removed or destroyed.

Sec. 8. The Legislature shall not sell, lease or otherwise dispose of the Erie canal, the Oswego canal, the Champlain canal, the Cayuga and Seneca canal, or the Black River canal; but they shall remain the property of the State and under its management forever. The prohibition of lease, sale or other disposition herein contained, shall not apply to the canal known as the Main and Hamburg street canal, situated in the city of Buffalo, and which extends easterly from the westerly line of Main street to the westerly line of Hamburg street. All funds that may be derived from any lease, sale or other disposition of any canal shall be applied to the improvement, superintendence or repair of the remaining portion of the canals.

Sec. 9. No tolls shall hereafter be imposed on persons or property transported on the canals, but all boats navigating the canals, and the owners and masters thereof, shall be subject to such laws and regulations as have been or may hereafter be enacted concerning the navigation of the canals. The Legislature shall annually, by equitable taxes, make provision for the expenses of the superintendence and repairs of the canals. All contracts for work or materials on any canal shall be made with the persons who shall offer to do or provide the same at the lowest price, with adequate security for their performance. No extra compensation shall be made to any contractor; but if, from any unforeseen cause, the terms of any contract shall prove to be unjust and oppressive,

the canal board may, upon the application of the contractor, cancel such contract.

Sec. 10. The canals may be improved in such manner as the Legislature shall provide by law. A debt may be authorized for that purpose in the mode prescribed by section 4 of this article, or the cost of such improvement may be defrayed by the appropriation of funds from the State treasury, or by equitable annual tax.

ARTICLE VIII.

SECTION 1. Corporations may be formed under general laws; but shall not be created by special act, except for municipal purposes, and in cases where, in the judgment of the Legislature, the objects of the corporation cannot be obtained under general laws. All general laws and special acts passed pursuant to this section may be altered from time to time or repealed.

Sec. 2. Dues from corporations shall be secured by such individual liability of the corporators and other means as may be prescribed by law.

Sec. 3. The term corporations, as used in this article, shall be construed to include all associations and joint-stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships. And all corporations shall have the right to sue and shall be subject to be sued in all courts in like cases as natural persons.

Sec. 4. The Legislature shall, by general law, conform all charters of savings banks, or institutions for savings to a uniformity of powers, rights and liabilities, and all charters hereafter granted for such corporations shall be made to conform to such general law, and to such amendments as may be made thereto. And no such corporation shall have any capital stock, nor shall the trustees thereof, or any of them, have any interest whatever, direct or indirect, in the profits of such corporation; and no director or trustee of any such bank or institution shall be interested in any loan or use of any money or property of such bank or institution for savings. The Legislature shall have no power to pass any act granting any special charter for banking purposes; but corporations or associations may be formed for such purposes under general laws.

Sec. 5. The Legislature shall have no power to pass any law sanctioning in any manner, directly or indirectly, the suspension of specie payments, by any person, association or corporation, issuing bank notes of any description.

Sec. 6. The Legislature shall provide by law for the registry of all bills or notes, issued or put in circulation as money, and shall require ample security for the redemption of the same in specie.

Sec. 7. The stockholders of every corporation and joint-stock association for banking purposes, shall be individually responsible to the amount of their respective share or shares of stock in any such corporation or association, for all its debts and liabilities of every kind.

Sec. 8. In case of the insolvency of any bank or banking association, the billholders thereof shall be entitled to preference in payment, over all other creditors of such bank or association.

Sec. 9. Neither the credit nor the money of the State shall be given or loaned to or in aid of any association, corporation or private undertaking. This section shall not, however, prevent the Legislature from making such provision for the education and support of the blind, the deaf and dumb, and juvenile delinquents, as to it may seem proper. Nor shall it apply to any fund or property now held, or which may hereafter be held, by the State for educational purposes.

Sec. 10. No county, city, town or village shall hereafter give any money or property, or loan its money or credit to or in aid of any individual, association or corporation, or become directly or indirectly the owner of stock in, or bonds of, any association or corporation; nor shall any such county, city, town or village be allowed to incur any indebtedness except for county, city, town or village purposes. This section shall not prevent such county, city, town or village from making such provision for the aid or support of its poor as may be authorized by law. No county or city shall be allowed to become indebted for any purpose or in any manner to an amount which, including existing indebtedness, shall exceed ten per centum of the assessed valuation of the real estate of such county or city subject to taxation, as it appeared by the assessment-rolls of said county or city on the last assessment for State or county taxes prior to the incurring of such indebtedness; and all indebtedness in excess of such limitation, except such as may now exist, shall be absolutely void, except as herein otherwise provided. No county or city whose present indebtedness exceeds ten per centum of the assessed valuation of its real estate subject to taxation, shall be allowed to become indebted in any further amount until such indebtedness shall be reduced within such limit. This section shall not be construed to prevent the issuing of certificates of indebtedness or revenue bonds issued in anticipation of the collection of taxes for amounts

actually contained, or to be contained in the taxes for the year when such certificates or revenue bonds are issued and payable out of such taxes. Nor shall this section be construed to prevent the issue of bonds to provide for the supply of water; but the term of the bonds issued to provide for the supply of water shall not exceed twenty years, and a sinking fund shall be created on the issuing of the said bonds for their redemption, by raising annually a sum which will produce an amount equal to the sum of the principal and interest of said bonds at their maturity. All certificates of indebtedness or revenue bonds issued in anticipation of the collection of taxes, which are not retired within five years after their date of issue, and bonds issued to provide for the supply of water, and any debt hereafter incurred by any portion or part of a city, if there shall be any such debt, shall be included in ascertaining the power of the city to become otherwise indebted. Whenever hereafter the boundaries of any city shall become the same as those of a county, the power of the county to become indebted shall cease, but the debt of the county at that time existing shall not be included as a part of the city debt. The amount hereafter to be raised by tax for county or city purposes, in any county containing a city of over one hundred thousand inhabitants, or any such city of this State, in addition to providing for the principal and interest of existing debt, shall not in the aggregate exceed in any one year two per centum of the assessed valuation of the real and personal estate of such county or city, to be ascertained as prescribed in this section in respect to county or city debt.

Sec. 11. The Legislature shall provide for a State Board of Charities, which shall visit and inspect all institutions, whether State, county, municipal, incorporated or not incorporated, which are of a charitable, eleemosynary, correctional or reformatory character, excepting only such institutions as are hereby made subject to the visitation and inspection of either of the commissions hereinafter mentioned, but including all reformatories except those in which adult males convicted of felony shall be confined; a State Commission in Lunacy which shall visit and inspect all institutions, either public or private, used for the care and treatment of the insane (not including institutions for epileptics or idiots); a State Commission of Prisons which shall visit and inspect all institutions used for the detention of sane adults charged with or convicted of crime, or detained as witnesses or debtors.

Sec. 12. The members of the said board of the said commissions shall be appointed by the Governor, by and with the advice and consent of the Senate; and any member may be removed from

office by the Governor for cause, an opportunity having been given him to be heard in his defense.

Sec. 13. Existing laws relating to institutions referred to in the foregoing sections and to their supervision and inspection, in so far as such laws are not inconsistent with the provisions of the Constitution, shall remain in force until amended or repealed by the Legislature. The visitation and inspection herein provided for, shall not be exclusive of other visitation and inspection now authorized by law.

Sec. 14. Nothing in this Constitution contained shall prevent the Legislature from making such provision for the education and support of the blind, the deaf and dumb, and juvenile delinquents, as to it may seem proper; or prevent any county, city, town or village from providing for the care, support, maintenance and secular education, of inmates of orphan asylums, homes for dependent children or correctional institutions, whether under public or private control. Payments by counties, cities, towns and villages to charitable, eleemosynary, correctional and reformatory institutions, wholly or partly under private control, for care, support and maintenance, may be authorized, but shall not be required by the Legislature. No such payments shall be made for any inmate of such institutions who is not received and retained therein pursuant to rules established by the State Board of Charities. Such rules shall be subject to the control of the Legislature by general laws.

Sec. 15. Commissioners of the State Board of Charities and commissioners of the State Commission in Lunacy, now holding office shall be continued in office for the term for which they were appointed, respectively, unless the Legislature shall otherwise provide. The Legislature may confer upon the commissions and upon the board mentioned in the foregoing sections any additional powers that are not inconsistent with other provisions of the Constitution.

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.

Sec. 2. The corporation created in the year one thousand seven 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.

Sec. 3. The capital of 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.

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.

ARTICLE X.

SECTION 1. Sheriffs, clerks of counties, district attorneys, and registers in counties having registers, shall be chosen by the electors of the respective counties, once in every three years and as often as vacancies shall happen, except in the counties of New York and Kings, and in counties whose boundaries are the same as those of a city, where such officers shall be chosen by the electors once in every two or four years as the Legislature shall direct. Sheriffs shall hold no other office, and be ineligible for the next term after the termination of their offices. They may be required by law to renew their security, from time to time; and in default of giving such new security, their offices shall be deemed vacant. But the county shall never be made responsible for the acts of the sheriff. The Governor may remove any officer, in this section mentioned within the term for which he shall have been elected; giving to such officer a copy of the charges against him, and an opportunity of being heard in his defense.

Sec. 2. 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 such cities, towns and villages, or of some division thereof, or appointed by such authorities thereof, as the Legislature shall designate for that purpose. All other

officers, whose election or appointment is not provided for by this Constitution, and all officers, whose offices may hereafter be created by law, shall be elected by the people, or appointed, as the Legislature may direct.

Sec. 3. When the duration of any office is not provided by this Constitution, it may be declared by law, and if not so declared, such office shall be held during the pleasure of the authority making the appointment.

Sec. 4. The time of electing all officers named in this article shall be prescribed by law.

Sec. 5. The Legislature shall provide for filling vacancies in office, and in case of elective officers, no person appointed to fill a vacancy shall hold his office by virtue of such appointment longer than the commencement of the political year next succeeding the first annual election after the happening of the vacancy.

Sec. 6. The political year and legislative term shall begin on the first day of January, and the Legislature shall, every year, assemble on the first Wednesday in January.

Sec. 7. Provision shall be made by law for the removal for misconduct or malversation in office of all officers, except judicial, whose powers and duties are not local or legislative and who shall be elected at general elections, and also for supplying vacancies created by such removal.

Sec. 8. The Legislature may declare the cases in which any office shall be deemed vacant when no provision is made for that purpose in this Constitution.

Sec. 9. No officer whose salary is fixed by the Constitution, shall receive any additional compensation. Each of the other State officers named in the Constitution shall, during his continuance in office, receive a compensation, to be fixed by law, which shall not be increased or diminished during the term for which he shall have been elected or appointed; nor shall he receive to his use any fees or perquisites of office or other compensation.

ARTICLE XI.

SECTION 1. All able-bodied male citizens between the ages of eighteen and forty-five years, who are residents of the State, shall constitute the militia, subject, however, to such exemptions as are now, or may be hereafter, created by the laws of the United States, or by the Legislature of this State.

Sec. 2. The Legislature may provide for the enlistment into the active force of such other persons as may make application to be so enlisted.

Sec. 3. The militia shall be organized and divided into such land and naval, and active and reserve forces, as the Legislature may deem proper, provided, however, that there shall be maintained at all times a force of not less than ten thousand enlisted men, fully uniformed, armed, equipped, disciplined and ready for active service. And it shall be the duty of the Legislature at each session to make sufficient appropriations for the maintenance thereof.

Sec. 4. The Governor shall appoint the chiefs of the several staff departments, his aides-de-camp and military secretary, all of whom shall hold office during his pleasure, their commissions to expire with the term for which the Governor shall have been elected; he shall also nominate, and with the consent of the Senate appoint, all major-generals.

Sec. 5. All other commissioned and non-commissioned officers shall be chosen or appointed in such manner as the Legislature may deem most conducive to the improvement of the militia, provided, however, that no law shall be passed changing the existing mode of election and appointment unless two-thirds of the members present in each house shall concur therein.

Sec. 6. The commissioned officers shall be commissioned by the Governor as commander-in-chief. No commissioned officer shall be removed from office during the term for which he shall have been appointed or elected, unless by the Senate on the recommendation of the Governor, stating the grounds on which such removal is recommended, or by the sentence of a court-martial, or upon the findings of an examining board organized pursuant to law, or for absence without leave for a period of six months or more.

ARTICLE XII.

Section 1. It shall be the duty of the Legislature to provide for the organization of cities and incorporated villages, and to restrict their power of taxation, assessment, borrowing money, contracting debts, and loaning their credit, so as to prevent abuses in assessments, and in contracting debt by such municipal corporations.

Sec. 2. All cities are classified according to the latest State enumeration, as from time to time made, as follows: The first class includes all cities having a population of two hundred and fifty thousand, or more; the second class, all cities having a population of fifty thousand and less than two hundred and fifty thousand; the third class, all other cities. Laws relating to the property, affairs or government of cities, and the several departments thereof,

are divided into general and special city laws; general city laws are those which relate to all the cities of one or more classes; special city laws are those which relate to a single city, or to less than all the cities of a class. Special city laws shall not be passed except in conformity with the provisions of this section. After any bill for a special city law, relating to a city, 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 such city, and within fifteen days thereafter the mayor shall return such bill to the house from which it was sent, or if the session of the Legislature at which such bill was passed has terminated, to the Governor, with the mayor's certificate thereon, stating whether the city has or has not accepted the same.

In every city of the first class, the mayor, and in every other city, the mayor and the legislative body thereof concurrently, shall act for such city as to such bill; but the Legislature may provide for the concurrence of the legislative body in cities of the first class. The Legislature shall provide for a public notice and opportunity for a public hearing concerning any such bill in every city to which it relates, before action thereon. Such a bill, if it relates to more than one city, shall be transmitted to the mayor of each city to which it relates, and shall not be deemed accepted unless accepted as herein provided, by every such city. Whenever any such bill is accepted as herein provided, it shall be subject as are other bills, to the action of the Governor. Whenever, during the session at which it was passed, any such bill is returned without the acceptance of the city or cities to which it relates, or within such fifteen days is not returned, it may nevertheless again be passed by both branches of the Legislature, and it shall then be subject as are other bills, to the action of the Governor. In every special city law which has been accepted by the city or cities to which it relates, the title shall be followed by the words "accepted by the city," or "cities," as the case may be; in every such law which is passed without such acceptance, by the words "passed without the acceptance of the city," or "cities," as the case may be.

Sec. 3. All elections of city officers, including supervisors and judicial officers of inferior local courts, 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, except to fill vacancies, shall be held on the 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 an 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 under existing laws would expire with an even-numbered year, or in an odd-numbered year and before the end thereof, are extended to and including the last day of December next following the time when such terms would otherwise expire; the terms of office of all such officers, which under existing laws would expire in an even-numbered year, and before the end thereof, are abridged so as to expire at the end of the preceding year. This section shall not apply to any city of the third class, or to elections of any judicial officer, except judges and justices of inferior local courts.

ARTICLE XIII.

SECTION 1. Members of the Legislature, and all officers, executive and judicial, except such inferior officers as shall be by law exempted shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the State of New York, and that I will faithfully discharge the duties of the office of ————————, according to the best of my ability;" and all such officers who shall have been chosen at any election shall, before they enter on the duties of their respective offices, take and subscribe the oath or affirmation above prescribed, together with the following addition thereto, as part thereof:

"And I do further solemnly swear (or affirm) that I have not directly or indirectly paid, offered or promised to pay, contributed, or offered or promised to contribute any money or other valuable thing as a consideration or reward for the giving or withholding a vote at the election at which I was elected to said office, and have not made any promise to influence the giving or withholding any such vote," and no other oath, declaration or test shall be required as a qualification for any office of public trust.

Sec. 2. Any person holding office under the laws of this State, who, except in payment of his legal salary, fees or perquisites, shall receive or consent to receive, directly or indirectly, any thing of value or of personal advantage, or the promise thereof, for performing or omitting to perform any official act, or with the express or implied understanding that his official action or omission to act is to be in any degree influenced thereby, shall be deemed guilty of a felony. This section shall not affect the validity of any existing statute in relation to the offense of bribery.

Sec. 3. Any person who shall offer or promise a bribe to an

officer, if it shall be received, shall be deemed guilty of a felony and liable to punishment, except as herein provided. No person offering a bribe shall, upon any prosecution of the officer for receiving such bribe, be privileged from testifying in relation thereto, and he shall not be liable to civil or criminal prosecution therefor, if he shall testify to the giving or offering of such bribe. Any person who shall offer or promise a bribe, if it be rejected by the officer, to whom it was tendered shall be deemed guilty of an attempt to bribe, which is hereby declared to be a felony.

Sec. 4. Any person charged with receiving a bribe, or with offering or promising a bribe, shall be permitted to testify in his own behalf in any civil or criminal prosecution therefor.

Sec. 5. No public officer, or 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 or benefit, or for the use or benefit of another, any free pass, free transportation, franking privilege or discrimination in passenger, telegraph or telephone rates, from any person or corporation, or make use of the same himself or in conjunction with another. A 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. Any corporation, or officer or agent thereof, who shall offer or promise to a public officer, or person elected or appointed to a public office, any such free pass, free transportation, franking privilege or discrimination, shall also be deemed guilty of a misdemeanor and liable to punishment except as herein provided. No person or officer or agent of a corporation giving any such free pass, free transportation, franking privilege or discrimination hereby prohibited, shall be privileged from testifying in relation thereto, and he shall not be liable to civil or criminal prosecution therefor if he shall testify to the giving of the same.

Sec. 6. Any district attorney who shall fail faithfully to prosecute a person charged with the violation in his county of any provision of this article which may have come to his knowledge, shall be removed from office by the Governor, after due notice and an opportunity of being heard in his defense. The expenses which shall be incurred by any county, in investigating and prosecuting any charge of bribery or attempting to bribe any person holding office under the laws of this State, within such county, or of receiving bribes by any such person in said county, shall be a charge against the State, and their payment by the State shall be provided for by law.

ARTICLE XIV

SECTION 1. Any amendment or amendments to this Constitution may be proposed in the Senate and Assembly; and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals, and the yeas and nays taken thereon, and referred to the Legislature to be chosen at the next general election of Senators, and shall be published for three months previous to the time of making such choice; and if in the Legislature so next chosen, as aforesaid, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the Legislature to submit each proposed amendment or amendments to the people for approval in such manner and at such times as the Legislature shall prescribe; and if the people shall approve and ratify such amendment or amendments by a majority of the electors voting thereon, such amendment or amendments shall become a part of the Constitution from and after the first day of January next after such approval.

Sec. 2. At the general election to be held in the year one thousand nine hundred and sixteen, and every twentieth year thereafter, and also at such times as the Legislature may by law provide, the question, "Shall there be a Convention to revise the Constitution and amend the same?" shall be decided by the electors of the State; and in case a majority of the electors voting thereon shall decide in favor of a Convention, for such purpose, the electors of every Senate district of the State, as then organized, shall elect three delegates at the next ensuing general election at which Members of the Assembly shall be chosen, and the electors of the State voting at the same election shall elect fifteen delegates-at-large. The delegates so elected shall convene at the Capitol on the first Tuesday of April next ensuing after their election and shall continue their session until the business of such Convention shall have been completed. Every delegate shall receive for his services the same compensation and the same mileage as shall then be annually payable to the Members of the Assembly. A majority of the Convention shall constitute a quorum for the transaction of business, and no amendment to the Constitution shall be submitted for approval to the electors as hereinafter provided, unless by the assent of a majority of all the delegates elected to the Convention, the yeas and nays being entered on the journal to be kept. The Convention shall have the power to appoint such

officers, employes and assistants as it may deem necessary, and fix their compensation and to provide for the printing of its documents, journal and proceedings. The Convention shall determine the rules of its own proceedings, choose its own officers, and be the judge of the election, returns and qualifications of its members. In case of a vacancy, by death, resignation or other cause, of any district delegate elected to the Convention, such vacancy shall be filled by a vote of the remaining delegates representing the district in which such vacancy occurs. If such vacancy occurs in the office of a delegate-at-large, such vacancy shall be filled by a vote of the remaining delegates-at-large. Any proposed Constitution or constitutional amendment which shall have been adopted by such Convention, shall be submitted to a vote of the electors of the State at the time and in the manner provided by such Convention, at an election which shall be held not less than six weeks after the adjournment of such Convention. Upon the approval of such Constitution or constitutional amendments, in the manner provided in the last preceding section, such Constitution or constitutional amendment, shall go into effect on the first day of January next after such approval.

Sec. 3. Any amendment proposed by a Constitutional Convention relating to the same subject as an amendment proposed by the Legislature, coincidently submitted to the people for approval at the general election held in the year one thousand eight hundred and ninety-four, or at any subsequent election, shall, if approved, be deemed to supersede the amendment so proposed by the Legislature.

During the reading of the report, and before the hour of ten had arrived, Mr. Root said:

Mr. President, I move that the session be extended sufficiently to permit the Secretary to finish the reading of article 14 of the proposed Constitution, and that we then adjourn to twelve o'clock to-morrow. There are a number of members of the Convention who are now on trains coming from their homes to this place who will not be here until to-morrow, and I think it desirable that they should have an opportunity to be heard.

Mr. McClure—Mr. President, I hope the motion to adjourn until twelve o'clock to-morrow will not be adopted. Certainly notice enough of the intention of this Convention to meet to-night and to proceed promptly to the completion of the work was given, to warn us in going on. Every member of the Convention, I judge, is here at some expense of convenience and comfort and business. Next

week is the opening of the courts, and to the 130 lawyers of this Convention it is important that they should be in attendance, and that they should have some time previously for the preparation of their legal business. I think, sir, it is entirely wrong to ask the members to do nothing for half a day to-morrow, and to wait the convenience of some half a dozen men, perhaps, who have not seen fit to start in time and leave political matters so as to be ready this evening. No reason has been given to this Convention why we should not assemble to-morrow morning at the usual hour and proceed as rapidly as possible with our business. We were given to understand that only formal business, the closing up of the business of the Convention, the doing of something — so far as I am concerned, I have been given no intimation of what it is — but the doing of something which was to finish up the business. Now, sir, as a member of this Convention, who is here at a considerable sacrifice of business, comfort and convenience, I protest against the loss of time which will be incurred by doing nothing for half a day to-morrow. If there is a necessity for conference and caucus, and arrangement and decision as to how to do this thing, which should have been arranged during the recess, let it be done to-night or in the early hours of the morning. It is not a fair or sufficient reason to suggest, not one that appeals to me as sufficient, to say that to meet the convenience of the occupants of the desks that are now vacant, and they are very few, we are to do nothing for a whole half day. I am perfectly willing the motion to the extent of extending the time to finish the reading should be carried, but I move to amend it so as to provide that when we adjourn to-night it shall be to meet to-morrow morning at ten o'clock, and to proceed with the business of the Convention. I will make the time nine, if necessary. I am anxious to get through with it. If there is any merit in this thing, let the people have it at once and be done with it. I ask that the question be divided, and that it be first taken on the extension of the time to-night.

Mr. Bowers — Mr. President, I would be very glad if the majority would recall the fact that when the adjournment was taken until this evening, it was urged that the adjournment be taken until to-morrow morning, and against such suggestions the proposition to adjourn until this evening was pressed and carried. Under these circumstances it seems to me that the majority are not justified in making us waste two hours to-morrow morning. There really is no good reason why the business should not be proceeded with to-night. As usual, the minority do not object to any reason-

able adjournment to facilitate the work of the majority, and if they wish not to vote to-night and prefer to wait until to-morrow morning, I do not suppose any objection will be made. But we do strenuously oppose the delay of two hours to-morrow morning, and particularly in view of our request that we should not be called back until to-morrow.

Mr. Veeder — Mr. President, would it be in order to move that the session be extended until the Secretary shall have finished the reading?

The President — That is Mr. Root's motion.

Mr. Veeder — His motion was to adjourn when the reading of article 14 was completed, as I understood it.

The President — There are only a few lines remaining. The request has been made to have the question divided, but it cannot be divided if Mr. McClure insists upon his amendment.

Mr. McClure — I certainly insist on my amendment, but I yield to the decision that it cannot be divided.

The President put the question on the adoption of Mr. McClure's amendment, and it was determined in the affirmative by a rising vote — ayes 56, noes 48.

The President — The question is now upon the request of Mr. McClure to have the question divided.

Mr. McClure — I withdraw my request, Mr. President.

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

The reading of the proposed Constitution to the end of section 14 being concluded, the Convention adjourned until Friday morning, September twenty-eighth, at ten o'clock.

Friday Morning, September 28, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber, at the Capitol, Albany, N. Y., Friday morning, September 28, 1894.

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

The Rev. M. Woolsey Stryker, D. D., offered prayer.

On motion of Mr. Acker, the reading of the Journal of Thursday evening, September twenty-seventh, was dispensed with.

The President — I propose that the privileges of the floor be extended to the Rev. Dr. Stryker, president of Hamilton College,

who has kindly assisted us this morning in opening the Convention. If there are no objections the privileges of the floor will be accorded him.

The Secretary will proceed with the reading of the last clause of the engrossed Constitution.

The Secretary proceeded to read article 15, as follows:

ARTICLE XV.

SECTION 1. This Constitution shall be in force from and including the first day of January, one thousand eight hundred and ninety-five, except as herein otherwise provided.

Done in Convention, at the Capitol in the city of Albany, the day of September, in the year one thousand eight hundred and ninety-four, and of the independence of the United States of America the one hundred and nineteenth.

In witness whereof, we have hereunto subscribed our names.

Mr. Hottenroth — Mr. President, I desire to call the attention of the Convention to a material variance in Document No. 72, as compared with Document No. 71. There appears to be a difference between these documents and the engrossed Constitution in reference to the amendment as it was passed. I allude to the apportionment amendment. On page 20 of Document No. 72, at the bottom of the first paragraph, we have the words, "and all that part of the county of New York not hereinbefore described." Now, the attention of the Convention was called to the fact that certain blocks in the lower section of the city had been omitted, and in one instance that was corrected. Now, the result of this might be that in the Twenty-first District we might have tacked on certain portions of the city of New York in the lower portion thereof. It appears to me that this is evidently an oversight on the part of the Committee on Revision, and will result in legislation, that is, will result in putting into this Constitution an amendment which was not adopted or not discussed. I think that the Convenion ought to take some action upon it.

Mr. Foote — Mr. President, in reply to the inquiry of the gentleman, I would say that the report which the Revision Committee submitted at the opening of the session last evening, and which was read in the hearing to the Convention and which, perhaps, the gentleman did not hear, gave the reason for that change. It was mainly to conform the description of that section to the form which had been used in the description of the remaining section in

the county of Erie. The form as adopted in the Convention provided that Senate District No. 21 should embrace all the remainder of the county of New York lying north and east of the Harlem river. It was so framed that it would perhaps exclude from the boundaries of that district the bed of that river and the bed of the portion of the East river. The committee thought that there might be some islands which might or might not properly be included in that district, and it thought it wiser and safer to conform the description to the description used in the county of Erie, to embrace the remainder of the county not included in other districts.

Mr. Bowers — Mr. President ——

The President — The Chair would state what the question before the House now is. The question is upon approving the report of the Revision Committee and adopting the form of the Constitution proposed by them.

Mr. Bowers — Mr. President, if I understand the explanation of the chairman of the Committee on Revision, it is this: that, it being well known that there were discrepancies in the county of New York, it was highly probable that portions of districts had been omitted and other errors of that kind, which it was impossible for the Revision Committee to correct, because of the fact that there was no exact census in existence. These gentlemen now propose to cover all errors and deficiencies of every nature by providing that the most northern district of that county shall embrace all portions which by accident or design have not been included in the other senatorial districts. They conclude the description of the Twenty-first Senatorial District with this language: "And all that part of the county of New York not hereinbefore described." I can see no meaning whatever to it unless it is to take a section of the city in some other senatorial district which has been omitted from that district and include it in this Twenty-first District. In other words, it is a confession now, on the part of the Committee on Revision, that the Convention has not and cannot divide properly the county of New York. I am inclined to think that Mr. Hottenroth's criticism is somewhat out of place, because this dealing with the subject is exactly in accordance with all the work of the Committee on Legislative Apportionment as I understand it at the present time. I suppose that they would not think it at all improper to provide that the Fiftieth Senatorial District should include all parts of the State that were not taken care of. If that is the situation, and it is hoped to include in the Twenty-

first District omitted portions of the city of New York, why we of the minority have a right to criticise the careless manner in which the work of this Convention has been done. As this is to cover all those errors why, of course, the majority will put it through, but it is very proper that their attention be called to it by Mr. Hottenroth at this time.

The President — The question is on approving the report of the Committee on Revision and adopting the form of the Constitution recommended and reported by them.

Mr. Bowers — May we have the ayes and noes upon that?

Mr. I. Sam Johnson — Mr. President, I would like to ask information, whether any amendments are now in order?

The President — The Chair supposes that that is within the control of the Convention.

Mr. Johnson — Then, Mr. President, I offer the following amendment.

The President — I think it should be in the form of a motion to recommit with instructions to amend.

Mr. Johnson — Then I would move to recommit to the committee with instructions to add the following.

The President — Which committee?

Mr. Johnson — The Committee on Revision. I know of no other committee.

Mr. McClure — Mr. President, I rise to a point of order. The Committee on Revision has no power to act upon an amendment.

The President — The Convention has the power to act. Mr. Johnson moves to recommit to the Committee on Revision with instructions to amend forthwith by adding a clause and reporting it.

Mr. Veeder — Mr. President, cannot we hear what it is?

The President — The Secretary will read it.

The Secretary read Mr. Johnson's motion, as follows:

Mr. I. Sam Johnson moves to recommit to the Committee on Revision, with instructions to amend by adding at the end of section 3, article 14, the following: "Article 15, section 1. The Legislature, at its first session after the adoption of this Constitution, shall appoint three commissioners, whose duty it shall be to report to the Legislature bills for the assessment and collection of taxes and the exemption of property from taxation throughout the State, and also respecting the rights, duties and liabilities of employers

and employes; such commissioners to hold office for such time as the Legislature shall provide, not exceeding two years."

Mr. Galinger — Mr. President, I move that Mr. Johnson's motion lie upon the table.

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

The President — The question now is on the report of the Revision Committee in the form recommended and adopted by them. Mr. Bowers calls for the ayes and noes. Those in favor of sustaining Mr. Bowers's call for the ayes and noes please rise and be counted to the number of twenty-five.

The call for the ayes and noes was sustained.

The Secretary proceeded to call the roll.

Mr. Goodelle — Mr. President, is it in order to make a motion that this be referred back to the Committee on Revision, with instructions to strike out in section 10 of the article relating to canals the words, "by equitable annual tax?" If so, I would like to have an opportunity to make that motion.

The President — The Chair is of the opinion that at this stage in the proceedings no such motion can be entertained, except by express order of the Convention.

Mr. Hawley — Mr. President, I make the point of order that the roll-call has commenced. The first name has been called, and nothing is in order but the call of the roll.

The President — I think that that point is well taken. The Secretary will proceed with the call.

The Secretary continued the call of the roll.

Mr. McClure — Mr. President, I beg pardon for interrupting the roll-call, but I would ask that the statement of the President in reference to what we are voting upon be repeated, so that we may understand exactly what we are doing.

The President — The final vote is now being taken under rule 74, which the Chair understands is the adoption of the report of the Committee on Revision and on the form of the revised Constitution reported by them.

Mr. McClure — The Chair uses the term "adoption of the Constitution as revised by them." I only wanted to know whether it was the adoption or reception.

The President — The gentleman can study the rule himself.

Mr. Bigelow — Mr. President, if this is an acceptance merely of

the report of the Committee on Revision, I vote aye. If it is a vote also for the adoption of the Constitution, as I propose to oppose some portion of that instrument, when I have an opportunity, I vote no.

The President — The Chair will say this: the amendments incorporated into this Constitution reported by the Committee on Revision have received their final passage by aye and no votes of a majority of all the delegates elected to the Convention. As the Chair understands, this is an adoption of the report and of the form in which the Constitution has been finally placed by the Committee on Revision, and requires only a majority of a quorum.

Mr. Bowers — That, Mr. President, does not answer the question.

Mr. Bigelow — Is it an adoption of the report of the committee or the adoption of the Constitution?

The President — The Chair is of the opinion that it is both.

Mr. Bigelow — Then I vote no.

Mr. Kerwin — Mr. President, I was in hopes that when this Convention assembled for the final adoption of the report of the Committee on Revision ——

The President — Mr. Kerwin is not in order to interrupt the roll-call for any remarks.

Mr. Kerwin — I vote no.

Mr. Nicoll — Mr. President ——

The President — Mr. Nicoll, it is not in order, under the rules as they now stand, to interrupt a roll-call.

Mr. Nicoll — I beg your pardon. I vote no.

Mr. Alvord — Mr. President, I ask the Chair whether or no I have the right to explain my vote,

The President — Not under the present rules, unless by unanimous consent of the House.

If there are no objections unanimous consent will be granted Mr. Alvord.

Mr. Alvord — Mr. President, if this is a question on the adoption of the Constitution, I am in favor of voting no. If it is a mere question of proposing that the Committee on Revision have done their work correctly, I should vote aye. Under the circumstances, not knowing what the facts are and being informed almost universally around me that it is a question on the general adoption of the Constitution, I shall withdraw my request to be excused and vote no.

Mr. I. Sam Johnson — Mr. President, may I have an opportunity to make a few remarks?

The President — Not in order.

Mr. Johnson — I vote no.

Mr. Bowers — I ask, Mr. President, that Mr. Johnson have unanimous consent.

Objection was made.

Mr. Gilbert — Mr. President, I suppose under the rules I have no right to explain my vote, but I would ask unanimous consent to say one explanatory word.

Objection was made.

Mr. Gilbert — I vote aye.

The President — The Constitution is adopted and the work of the Committee on Revision approved by a vote of 93 ayes, to 46 noes. (Applause.)

The following is the vote:

Ayes — Messrs. Abbott, Acker, Ackerly, Arnold, Baker, Barhite, Barnum, Barrow, Becker, Brown, E. A., Brown, E. R., Cady, Carter, Church, Clark, G. W., Clark, H. A., Coleman, Cookinham, Cornwell, Countryman, Crosby, Davies, Davis, Deterling, Dickey, Durfee, Faber, Floyd, Foote, Francis, Frank, Andrew, Frank, Augustus, Fraser, Fuller, C. A., Fuller, O. A., Galinger, Gilbert, Goodelle, Hamlin, Hawley, Hecker, Hedges, Hill, Hirschberg, Holls, Jacobs, Johnson, J., Kellogg, Kinkel, Lauterbach, Lester, Lewis, C. H., Lincoln, Lyon, Manley, Mantanye, Marshall, McArthur, McIntyre, McKinstry, McLaughlin, C. B., McMillan, Mereness, Moore, Morton, Nichols, Nostrand, O'Brien, Parker, Parkhurst, Pashley, Phipps, Pool, Porter, Powell, Putnam, Redman, Root, Spencer, Springweiler, Steele, A. B., Steele, W. H., Storm, Sullivan, T. A., Tibbetts, Turner, Vedder, Vogt, Wellington, Whitmyer, Wiggins, Woodward, President — 93.

Noes — Messrs. Alvord, Banks, Bigelow, Blake, Bowers, Burr, Campbell, Chipp, Jr., Danforth, Davenport, Deady, Dean, Deyo, Durnin, Emmet, Fitzgerald, Forbes, Gibney, Giegerich, Gilleran, Goeller, Green, A. H., Green, J. I., Griswold, Herzberg, Holcomb, Hottenroth, Jenks, Johnson, I. Sam, Kerwin, McClure, Nicoll, Ohmeis, Osborn, Parmenter, Peabody, Peck, Platzek, Roche, Rogers, Rowley, Sandford, Titus, Tucker, Veeder, Williams — 46.

Mr. Veeder — Mr. President, is it possible that we shall not have the names read as to how the vote is?

The President — Have you requested it?

Mr. Veeder — I have tried to.

The President — The Secretary will read.

The Secretary proceeded to give a detailed statement of the vote.

Mr. I. Sam Johnson — Mr. President, I desire to change my vote from the negative to the affirmative.

Mr. McClure — Mr. President, I make the point of order that it is too late to make a change in a vote. This is a simple statement of how members have voted.

The President — The point is well taken. It is too late. Mr. Johnson's statement will be entered upon the Journal. Does any other gentleman who has not voted wish to have it recorded upon the Journal how he would have voted?

Mr. Smith — I vote in the negative.

The President — It is too late to have the gentleman's name recorded. It will be entered upon the Journal that he desired to vote in the negative.

Mr. Vedder — Mr. President, I move the Convention now take a recess until 2 P. M. to-day, and upon that I move the previous question.

Mr. Bowers — Mr. President, may I address a question to the gentleman through the Chair?

Mr. C. B. McLaughlin — I object.

Mr. Bowers — You don't dare discuss it.

Mr. A. H. Green — Mr. President ——

The President — Mr. Green desires to be heard.

The President — If no one desires to be heard, the question will be on Mr. Vedder's motion.

Mr. Bowers — We all desire to be heard.

The President — No one desires to be heard.

Mr. Bowers — Mr. President, I rise to a question of privilege. With all due respect, I challenge the statement of the Chair, that no one desires to be heard.

The President — I understood you to state that no one wanted to be heard.

Mr. Bowers — We said we all wanted to be heard.

The President — That is substantially the same thing. (Laughter.)

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

A count was called for and Mr. Lester and Mr. Schumaker acted as tellers, and announced the vote, 81 to 43.

The President — The previous question is ordered.

The President put the question on Mr. Vedder's motion to take a recess until two o'clock, and it was determined in the affirmative.

Whereupon the Convention stood in recess until 2 P. M.

AFTERNOON SESSION.

Friday Afternoon, September 28, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber, at the Capitol, Albany, N. Y., Friday afternoon, September 28, 1894, at two o'clock.

The President — The Convention will come to order and the Secretary will call the roll, to ascertain the presence of a quorum.

The Secretary called the roll and 102 members responded to their names.

The President — A quorum is present. What is the further pleasure of the Convention?

R. 232.— Mr. Hedges — Mr. President, I move that the Compiler be directed to forward to the members by mail the uncompleted files when printed; that is, the record, Journal and such other matter as will complete the files.

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

The President — Something should be done, probably, as to the document room until the printing is completed.

R. 233.— Mr. Hill — Mr. President, I move you that the document room be kept open until the publication and distribution of the documents ordered by the Convention have been accomplished.

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

Mr. Lester — Mr. President, I move that the sergeant-at-arms of the Convention be left here in charge of the document room, and also with instructions to receive and forward such mail matter as may be sent here to the members, and also forward the Constitution which is to be printed.

The President — I understand a resolution has been prepared, under the direction of the Secretary, that will cover that and more, if you will suspend that for a moment.

The Chair has taken the liberty of requesting the Secretary of State to attend this afternoon upon the signing of the Constitution, and to receive it under the law.

Mr. Holls — Mr. President, I rise for information to ask whether in the absence of a resolution to that effect, the new Constitution is to be signed by any one except the officers of the Convention?

The President — The Chair is of the impression that the precedent of the Convention of 1867 is a safe one to follow, for the Convention to instruct the President and Secretary to attest the copy of the Constitution that was adopted.

Mr. Holls — I make that as a motion.

R. 234.— The President — Mr. Holls moves that the President and Secretary be instructed to attest the engrossed copy which was adopted this morning of the revised Constitution, they to sign in behalf of the Convention.

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

The President — There were some resolutions laid upon the table that were reported by the Committee on Contingent Expenses. Does Mr. Lyon desire to call them up?

Mr. Lyon — I do not think I care to. They were adverse reports of the committee.

Mr. Goodelle — Mr. President, I call up the report in reference to Mr. Seacord.

The President — The Secretary will please find the resolution offered in respect to Mr. Seacord. The Secretary will read it. The gentlemen will give attention.

The Secretary read the resolution as follows:

By Mr. Goodelle: "Whereas, Mr. Edward M. Seacord, of Cortland, was appointed a messenger and has only received pay as such; but by reason of the lack of sufficient clerical force and the necessity of the aid of additional clerks to make the work of committees and of the Convention effective, he has been ordered to act as clerk, and he has acted as such from May 23, 1894, and has been an efficient and faithful clerk, performing with marked ability all additional services put upon him,

"Resolved, That as one of the necessary expenses of the Convention, he be paid for his additional service and responsibility, the further sum of three dollars per day for the services from May 23, 1894, making his pay the same as that of other clerks, and the payment thereof is hereby authorized and directed to be made out of the fund appropriated for the expenses of this Convention."

The President — The Secretary will read the report of the committee on this resolution.

The Secretary read the report as follows:

Mr. Lyon, from the Committee on Contingent Expenses, to which was referred the annexed claim of Edward M. Seacord, a messenger of the Convention, for additional compensation of three dollars per day from May 23, 1894, on account of services performed by him in clerical work as committee clerk, would respectfully report, that in the opinion of three of the members of said committee, Messrs. Faber, Green and Tekulsky, the charge is reasonable and proper and should be allowed and paid by the Convention; and that in the opinion of four of the members of said committee, Messrs. Brown, Whitmyer, Pashley and Lyon, the said charge is not a proper charge and that the Convention has not the power to allow or pay said claim.

GEORGE F. LYON,
Chairman.

Mr. Goodelle — I ask, Mr. President, that the report of the committee be disagreed to, and I desire to say a single word upon the claim that has been put in for Mr. Seacord. Mr. Seacord was appointed as a messenger of this Convention. There are about thirty committees designated by the Convention, and I believe ten clerks were provided by the law to act for the Convention, so that practically every clerk had three committees to attend to, if committees had clerks. A clerk was designated for the Committee on Cities and the Committee on Suffrage. It was absolutely impossible for that clerk to attend to the duties of both committees. Those committees were sitting at the same time, and the Committee on Cities was sitting almost constantly, and the Committee on Suffrage had very many meetings, and the result was that it was utterly impossible for the clerk designated to do the work of those two committees. I called the attention of the President to the situation, and when it was suggested that the Committee on Suffrage would verly likely need a stenographer, I suggested to the President that we could get along without a stenographer, and

that if Mr. Seacord could be designated to act in the capacity of another clerk, that that would relieve the difficulty. Mr. Seacord was designated to act as assistant clerk by the President of the Convention.

He served as such, acting as clerk for the Committee on Suffrage when the regularly-appointed clerk could not act. He has also acted as clerk for the Committee on Cities, the Committee on Legislative Powers and the Committee on Legislative Organization, and his entire time has been spent in performing the work first for one committee and then the other. Now, Mr. Seacord is a gentleman of mature years, about thirty-five years, and I say from personal knowledge that if there is an attendant upon this Convention that has been faithful in his duties and has discharged them well, it has been Mr. Seacord. I know of no reason why, when a person has been appointed for one place and has been assigned by the President to act in another, he should not receive pay for the work he has performed.

In regard to the proposition made by the Committee on Contingent Expenses that this Convention has not the power, or a question of power, to make this additional expense for extra pay, I cannot subscribe to it. It has simply come down to the question that more labor was needed for these committees. There was more labor needed in order to perform the work of this Convention. This Convention had the right, as I have no doubt, to perform the work that was incumbent upon the Convention, and when a person designated to perform the services as messenger has acted as clerk, I do not see why he should not receive pay as clerk. It is only in justice, and I do not believe it is economy in this Convention to split hairs upon servants that have been faithful in the discharge of their duties and have earned all they are asking here to-day. I hope the report of the committee will be disagreed to and the additional allowance of three dollars a day, which is not so much as some of the clerks of the Convention are receiving (some of them are receiving seven dollars per day), that that additional pay be allowed to Mr. Seacord in justice.

Mr. Dean — Mr. President, article 3, section 24 of the Constitution of the State of New York, which we have taken an oath to sustain, provides that the Legislature shall not, nor shall a board of supervisors or common council of any city grant any extra compensation to any servant, agent or contractor. It seems to me that this Convention might, at least, live within the letter of the spirit of the Constitution, and that the majority report of the committee ought to be sustained.

Mr. Lyon — Mr. President, the Committee on Contingent Expenses based their report largely upon these facts: the act of 1894 authorizes the employment of certain assistants, designating them as messengers, pages and other officers. It then provides that the salaries of these employes shall be the same as the salaries of like employes of the Legislature. The salary of a messenger in the Legislature is three dollars per day for seven days in the week, or twenty-one dollars. The section 24 of the Constitution to which Mr. Dean has referred provides that the salary of no employe shall be increased, and the Committee on Contingent Expenses, therefore, the majority of the committee, believed that the Convention had no power to make any increase. Mr. Seacord has, undoubtedly, performed the duties of a clerk, but whether those duties were more arduous than that of a messenger is a question. There is a large number of other messengers that have performed other duties. In addition to that, rule 22 provides that the President may designate a messenger for any other purpose. Mr. Seacord accepted his position, knowing what the salary was and that he could be designated for any other work.

Mr. Alvord — Mr. President, I desire to ask a question of the members of this Convention. I hold (I may be mistaken and I will be corrected if I am wrong) that the Legislature of the State of New York, under the Constitution, is bound to give to the people the right to call a Convention, and that they are further bound to set that Convention in motion. But, supposing that the Legislature undertook to pass a law by which they said we could meet, but could have no service; are we to have no servants? Are we to have no one to help us with our business? I hold, sir, that the Legislature have accomplished their duty under the Constitution when they have put the Convention into being, and there their power ends; and, if we shall see fit, if we come to the conclusion, in reference to having employes enough to carry on our business, it is our business and not the business of the Legislature, and the Legislature has no right to put it into a statute. I ask gentlemen to reflect upon this and see whether or no we are to be bound hand and foot right in the face of the Constitution, which says there shall be a Constitutional Convention once in twenty years, and when that Constitutional Convention has been established by the Legislature it is above and beyond the Legislature.

Mr. Goodelle — Mr. President, I desire to say, in reply to a question that has been asked me, that Mr. Seacord has been paid three dollars a day, and I desire to say that Mr. Seacord has made

up the reports of the Committee on Suffrage, as well as the reports of several other committees.

Mr. McClure — Mr. President, I do not desire to interfere in any way and would ordinarily leave the matter to be disposed of by my friends of the majority. But, in simple justice to the gentleman in question, I desire to state that not only, as stated by the chairman of the Committee on Suffrage, Mr. Seacord gave valuable clerical service to that committee, but also that he rendered services as clerk to the Forestry Committee. While he was not regularly assigned to that committee, another gentleman having been assigned to the committee that was clerk to another committee, yet at the same time he attended to the sending out of invitations of meetings and other clerical work. Because of that fact I believe that I ought to say what I have said, and to add that it seems to me that in justice to him he should receive something more than mere messenger's compensation. It is a small amount, and in a body like this that required immediate, prompt and intelligent service, there ought to be no hesitation on the part of the members to vote to give him this additional sum.

The President put the question on the motion of Mr. Goodelle to disagree with the report of the Committee on Contingent Expenses, and it was disagreed to.

Mr. Goodelle — I have a resolution, Mr. President, but I do not know whether it is necessary.

The President — Nothing more is required, as the matter has been taken care of in the resolution already acted upon.

Mr. McMillan — Mr. President, I desire to call up the resolution in regard to Mr. Rochford, clerk in the Financial Secretary's office.

The President — The Secretary will read the resolution.

The Secretary read the resolution as follows (No. 215):

By Mr. Kurth: "Whereas, Thomas Rochford was, on the 22d day of May, 1894, duly appointed a messenger of this Convention, and duly qualified and entered upon his duties as such; and,

"Whereas, Thereafter, and on the twenty-ninth day of May he was transferred to the office of the Financial Secretary of the Convention and therein required to do clerical work and assist in making up the pay-rolls and receipts of the Convention, and, as well, performed duties as messenger in said office,

"Resolved, That said Thomas Rochford be and he hereby is entitled, since the twenty-ninth day of May, to such pay as is com-

mensurate with such added duties and work required and performed by him."

The President — The report accompanying this resolution will also be read.

The Secretary read the said report as follows:

"Mr. Lyons, from the Committee on Contingent Expenses, to which was referred the amended resolution reciting that Thomas Rochford be and hereby is entitled, since the twenty-ninth day of May last, to such pay as is commensurate with such added duties and work required and performed by him, would respectfully report:

"That Thomas Rochford was appointed a messenger of this Convention on May twenty-second, and was, on May twenty-ninth, assigned by the Secretary of the Convention to assist the Financial Secretary in clerical work, and has so assisted since that time; that Mr. Rochford has received for his services three dollars per day for seven days each week, which is the compensation allowed messengers of the Legislature; that four members of the Committee on Contingent Expenses favor an additional allowance to Mr. Rochford, and three members of the committee are opposed to any additional allowance.

"GEORGE F. LYON,
"*Chairman.*"

Mr. McMillan moved to amend as follows:

Resolved, That the amount of compensation to be paid to Thomas Rochford for extra services rendered as assistant to the Financial Secretary be the sum of two dollars per diem from May 29, 1894, to the final adjournment of this Convention, and that the payment thereof out of the fund appropriated for the expenses of this Convention be and is hereby authorized and directed.

Mr. McMillan — Mr. President, I move the adoption of the report which is in favor of allowing two dollars per day to Mr. Rochford. I wish to state that Mr. Rochford was transferred as messenger to the position of clerk in the Financial Secretary's office, and, as every delegate knows, he has been there in season and out of season, and has performed intelligent and valuable service. I think he is entitled to the extra compensation asked.

Mr. Dean — Mr. President, in the language of the Hon. Timothy J. Campbell, "What is the Constitution among friends?" I withdraw my opposition.

The President — Mr. Dean withdraws any opposition. (Laughter.)

The President put the question on the adoption of the report of the committee allowing Mr. Rochford two dollars a day extra, and it was determined in the affirmative.

Mr. A. B. Steele — Mr. President, I desire to call up the resolution offered by me some days ago concerning Mr. A. B. Crumb.

The President — The Secretary will read the resolution and the report of the Committee on Contingent Expenses. Mr. Crumb presents a bill for extra services rendered by him as assistant postmaster in addition to his duties as messenger.

The Secretary read the following:

"THE PEOPLE OF THE STATE OF NEW YORK to ALBERT B. CRUMB, Dr.

"To extra services rendered by him as assistant postmaster of the Constitutional Convention, in addition to his duties as messenger, from May 21 to September 15, 1894, inclusive, being in all one hundred and seventy days, at three dollars per day, amounting to $351."

On motion of Mr. A. B. Steele (R. 213):

"Whereas, Albert B. Crumb, one of the messengers of this Convention, has continuously acted as assistant postmaster since May twenty-first; now, therefore, it is hereby

"Resolved, That an additional sum of three dollars per day be allowed and paid to said Crumb for his services as assistant postmaster."

"Mr. Lyon, from the Committee on Contingent Expenses, to which was referred the annexed claim of Albert B. Crumb, a messenger of the Convention, for additional compensation of three dollars per day from May 21, 1894, amounting to the sum of $351 on account of services performed by him in the Convention post-office, respectfully report: that in the opinion of three of the members of the committee, Messrs. Faber, Green and Tekulsky, the charge is reasonable and proper, and should be allowed and paid by the Convention; and that in the opinion of four of the members of said committee, Messrs. Brown, Whitmyer, Pashley and Lyon, the said charge is not a proper charge, and that the Convention has not the power to allow or pay said claim.

"GEORGE F. LYON,
"*Chairman.*"

Mr. A. B. Steele — Mr. President, I move to disagree with the report of the committee, and that the resolution offered by me be adopted, extending down to the present time.

Now, it is a fact that Mr. Crumb has been in the post-office since the twenty-first day of May. He, prior to that time, had experience in a post-office, and, therefore, was an efficient man. Without him it would have been impossible for the postmaster to have performed the duties that were necessary to be performed. I believe, Mr. President, that it was an omission on the part of the Legislature, in preparing this bill, that no provision was made for an assistant postmaster. I have been informed that, in the Legislature, there is always, and necessarily always, an assistant postmaster. Mr. Crumb has served faithfully and has performed the duties of assistant postmaster, and has not been paid for that, but only been paid the sum of three dollars per day as messenger. It seems to me that it is no more than right and fair to Mr. Crumb that he should be treated the same as the other gentlemen, and that the additional compensation of three dollars per day be allowed to him from the time he commenced to act, to wit, from the twenty-first day of May up to the present time.

Mr. Lyon — Mr. President, this claim of Mr. Crumb was before the Convention immediately after it opened. The claim was reported adversely upon by the Committee on Contingent Expenses, and the report was unanimously agreed to by the Convention. In my opinion there is no messenger who is more entitled to additional compensation than Mr. Crumb. I have, however, held and the Committee on Contingent Expenses, by a majority vote, held that, in their opinion, the Convention have no authority to allow any such compensation.

Mr. E. A. Brown — Mr. President, as one of the members of the committee who voted against this claim, I desire to say but one word. My decision and the decision arrived at by the other members of the committee who voted against this claim was that constitutionally we could not and had not the power to increase the pay of the employes of this Convention, any more than the Legislature has the power to increase the compensation of any employe of the Legislature. I further voted against the allowance of any of these claims, and I find nothing since to change my reasons for so voting.

The President — The Chair hopes the gentlemen will understand this matter before the vote is taken. It appears by the statement of Mr. Lyon that the question was brought up, and when

Mr. Crumb entered upon these additional duties, if they were additional, and it was decided against paying him. Now, after they have been performed, the motion is made that such additional allowance be paid.

Mr. Dean — Mr. President, I desire to offer a substitute. There is no use of going at this by piece-meal, but it should be attended to so as to include everybody.

The President — Is this offered in all seriousness?

Mr. Dean — It is in all seriousness.

The President — The Secretary will read Mr. Dean's resolution.

"Resolved, That the compensation of all the delegates of the Convention and that of the officers, employes, attaches and page-boys be and the same is hereby doubled, and that this resolution be deemed to take effect on the 8th day of May, 1894."

The President — Mr. Dean having had the pleasure of offering that, does he insist upon it?

Mr. Dean — I withdraw it.

Mr. A. B. Steele — Mr. President, I do not see why any distinction should be made. Precisely the same condition of affairs existed in reference to the other cases.

The President put the question on disagreeing with the report of said committee, and that the resolution offered by him be adopted, and it was determined in the affirmative.

Mr. W. H. Steele — Offered the following resolution:

"Whereas, The compensation of the clerks of the committees was fixed at seven dollars per day, a sum greater than that received by the secretaries of the Convention; therefore, be it

"R. 235.— Resolved, That the Secretary be, and he hereby is, allowed five dollars per day additional, and that each of the assistant secretaries be and they hereby are allowed four dollars per day additional, to date, from the eighth day of May last, and the Comptroller is hereby authorized and directed to pay the same out of the funds set apart for the Convention."

Mr. W. H. Steele — Mr. President, I desire to make a few remarks upon this resolution. During February last I spent about five weeks with the Legislature in my efforts to get the number of employes for this body increased. After much labor, bringing to my assistance all the power that I could in this Capitol, I was able to increase the number of employes in this body, but not as much as I felt it needed. I thought we were honestly entitled to

sufficient clerical assistance to carry on the work of the Convention, and finally managed to have passed through the Assembly and Senate the amendment to the act of 1893, increasing the number of employes in this body by fifteen. The old act gave this Convention no clerk whatever. The amendment was to give the President a clerk, and the Convention a postmaster, nine clerks in committees, striking out four of the doorkeepers, and changing the fifteen messengers to ten messengers and ten pages. This resolution was brought to me about six weeks ago. I said to the gentleman who brought it that I thought this Convention had not the power to increase the pay of any of its employes. I think so still, but I promised to offer it, if the others were adopted. However, the Convention has overruled my opinion, and the judgment of the Convention should be better than that of any one member. I think, sir, it is a great wrong to these gentlemen that the pay of minor officials should be increased and their inadequate compensation not raised accordingly. I take great pride in keeping my promise, even if it hurts me, and, in reference to this claim, I assure you that it is far more just than any claim that has been presented here. The clerk of the Assembly, who does no more work than the Secretary of this Convention, receives thirty-five hundred dollars for a session no longer nor more arduous than ours. The assistant clerk and the journal clerk of the Assembly receive $2,000 per year, and others in proportion. Compare their work with the work of these gentlemen. If any employe is entitled to additional pay, I claim that we should increase the pay of the Secretary and assistant secretaries, in accordance with the action we have taken in reference to minor employes; and I, therefore, move you, sir, that this resolution be committed to the Committee on Contingent Expenses, with instruction that they report forthwith in favor of its adoption.

Mr. C. B. McLaughlin — Mr. President, I move to lay that resolution on the table.

The President put the question on the motion of Mr. McLaughlin, to lay Mr. Steele's motion on the table, and it was determined in the affirmative.

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

The President — The Chair would call the attention of the Convention to the fact that no direction has been given as to the publication of the Constitution.

Mr. Root — I offer the following resolution, and I think that it

will be necessary for me to read it, as it is somewhat difficult to follow from the copy:

R. 236.— Resolved, That the Revised Constitution adopted by this Convention be submitted to the people for their adoption or rejection at the general election, to be held on the sixth day of November, one thousand eight hundred and ninety-four, in the manner following, that is to say:

The submission shall be in three separate propositions as follows:

First. The proposed Revised Constitution, except the proposed amendments to sections 2, 3, 4 and 5 of article 3, providing a new legislative apportionment, and except the proposed new section 10 of article 7 providing for the improvement of canals.

Second. The proposed amendments to sections 2, 3, 4 and 5 of article 3, providing a new legislative apportionment.

Third. The proposed new section of article 7, providing for the improvement of canals.

There shall be three ballot-boxes at each polling place for the reception of ballots on said propositions.

Two kinds of official ballots shall be provided at public expense at each polling place, indorsed on the back with the words "Revised Constitution" and in the form prescribed by law.

There shall be printed on the face thereof below the perforated line upon each of one kind of such official ballots the following words, that is to say:

"FOR

the Revised Constitution, except the provisions thereof relating to Legislative Apportionment and Canal Improvement."

There shall be printed on the face thereof below the perforated line upon each of the other kind of such official ballots the following words, that is to say:

"AGAINST

the Revised Constitution, except the provisions thereof relating to Legislative Apportionment and Canal Improvement."

Two kinds of official ballots shall be in like manner provided at each polling place, indorsed on the back with the words "Constitutional Amendment, Legislative Apportionment" and in the form prescribed by law.

There shall be printed on the face thereof below the perforated line upon each of one kind of such official ballots the following words, that is to say:

"FOR

sections two, three, four and five of article three of the Revised Constitution, relating to Legislative Apportionment."

There shall be printed on the face thereof below the perforated line upon each of the other kinds of such official ballots the following words, that is to say:

"AGAINST

sections two, three, four and five of article three of the Revised Constitution, relating to Legislative Apportionment."

Two kinds of official ballots shall be in like manner provided at each balloting place, indorsed on the back with the words "Constitutional Amendment, Canal Improvement," and in the form prescribed by law.

There shall be printed on the face thereof below the perforated line upon each of one kind of such official ballots the following words, that is to say:

"FOR

section ten of article seven of the Revised Constitution, relating to the Improvement of Canals."

There shall be printed on the face thereof below the perforated line upon each of the other kinds of such official ballots the following words, that is to say:

"AGAINST

section ten of article seven of the Revised Constitution, relating to the Improvement of the Canals."

If a majority of the votes cast indorsed "Revised Constitution" shall contain on the inside the words "For the Revised Constitution, except the provisions thereof relating to Legislative Apportionment, and Canal Improvement," then the proposed Revised Constitution shall be the Constitution of the State of New York, except as the same may be modified by the result of the vote upon the second and third propositions above specified.

If a majority of the votes cast so indorsed shall contain on the inside the words "Against the Revised Constitution, except the provisions thereof relating to Legislative Apportionment and Canal Improvement," then the proposed Revised Constitution shall be declared rejected and the present Constitution shall remain in force, except as the same may be modified by the result of the vote on the second and third propositions above specified.

If a majority of the votes cast indorsed "Constitutional Amendment Legislative Apportionment" shall contain on the inside the words "For sections two, three, four and five of article three of

the Revised Constitution, relating to Legislative Apportionment," then the amended section therein described shall be sections 2, 3, 4 and 5 of article 3 of the Constitution. If a majority of the votes cast so indorsed shall contain on the inside the words "Against sections two, three, four and five of article three of the Revised Constitution, relating to Legislative Apportionment," the said amendment shall be declared rejected and sections 2, 3, 4 and 5 of article 3 of the present Constitution shall remain in force and effect. If a majority of the votes cast indorsed "Constitutional Amendment, Canal Improvement," shall contain on the inside the words "For section ten of article seven of the Revised Constitution, relating to the Improvement of the Canals," then the said proposed amendment shall be section 10 of article 7 of the Revised Constitution or section 15 of article 7 of the existing Constitution, as the case may be.

If a majority of the votes cast indorsed "Constitutional Amendment, Canal Improvement," shall contain on the inside the words "Against section ten of article seven of the Revised Constitution, relating to the Improvement of the Canals," then the said proposed amendment shall be declared rejected. It shall be the duty of the Secretary of State, as soon as practicable after the delivery to him of the Revised Constitution adopted by the Convention and a duly authenticated copy of this resolution, to transmit to the county clerk of each county a notice under his hand and seal, setting forth a copy of the said Revised Constitution, together with a copy of this resolution, and the forms of the ballots herein prescribed, and stating that the said Revised Constitution and the amendments therein provided, will be submitted to the people for their adoption or rejection on the day heretofore fixed as the day of the general election in November, one thousand eight hundred and ninety-four, in accordance with the provisions of this resolution.

It shall be the duty of the Secretary of State to cause the said proposed Revised Constitution, together with a copy of this resolution, to be published in accordance with the provisions of section 7 of chapter 680 of the Laws of 1892, together with a brief statement of the law and proceedings authorizing such submission, the fact that such submission will be made and the forms of the ballots to be voted thereon as herein prescribed. The first publication in each newspaper shall be made as soon as practicable, and such publication shall continue once in each week to the time of the election.

It shall be the duty of each county clerk upon the receipt of the notice from the Secretary of State to file and record it in his office,

and in all respects proceed thereon pursuant to chapter 680 of the Laws of 1892, so far as the same is applicable.

But no failure of such publication, filing or recording shall invalidate or affect the submission of the said propositions to the people as hereinbefore prescribed or the result of their action thereon.

The President — The question will be on the resolution offered by Mr. Root.

Mr. Kerwin — Mr. President, I offer the following amendment:

That two kinds of like ballots shall be provided at the polling places indorsed on the back thereof: "Prison Labor." On one of said ballots below the perforated line on the inside thereof shall be printed the words:

"FOR

the abolition of prison competitive labor."

On the other of said ballots shall be printed below the perforated line on the face thereof the words:

"AGAINST

the abolition of prison competitive labor."

Mr. Kerwin — Mr. President, you have separated the apportionment and you have separated the canal question. I suppose the canal question is separated in order to allow a popular measure to get before the people independent of any other action of this Convention. I ask the same help in favor of the prison labor amendment. Within the past week I have received telegrams and letters from all sections of the State requesting that this Convention send out this amendment separate from all other amendments. I have received telegrams and letters indorsed by over 3,000 people; also indorsed by the leading manufacturing firms in the cities of New York, Brooklyn, Buffalo, Rochester, Amsterdam and Schenectady, all desiring that the people have a chance to vote upon this amendment separately and distinctly. I hope Mr. Root will accept this in his original resolution.

Mr. Root — Mr. President, it would give me great pleasure, so far as I am concerned, to accept the suggestion of the gentleman from Albany. It would give me great pleasure also to accept the suggestions of many other delegates who are particularly interested in special measures which have been adopted by this Convention; but, unfortunately, sir, we are placed in such a situation by the present condition of the law and by the business which must come before the people at the next election that it is wholly impossible

to do what we would like to do, in respect to this submission. I should like, sir, to see every amendment which has been adopted by this Convention put before the people so that they could express their wishes in regard to that upon its own merits, by itself. But, under the existing provisions of law, sir, that would require thirty-three separate propositions and that means sixty-six separate ballots, in addition to those already to be voted on in the hands of every elector. As it stands now, sir, assuming that there will be five State tickets to be printed and furnished to the voters, there will be throughout the State five ballots; there are two constitutional amendments proposed by the Legislature on which there will have to be four ballots, making nine ballots throughout the State to be received, examined, folded and handed back to the election officers by each voter, leaving out our work altogether. I say nine ballots throughout the State. In the city of Brooklyn there are to be two more, because there they are to vote upon the question of Greater New York, making eleven ballots in the city of Brooklyn. In the city of New York there are to be four more, because they are to vote there, not only upon the question of Greater New York, but also upon the question of rapid transit; so that every voter in the city of New York, without reference to our work, will have to receive thirteen of these ballots from which he must make a selection, all of which he must fold up and get back properly into the hands of the election officers.

Now, we have gone so far as to require that three more propositions shall be submitted. To carry it any further, Mr. President, would be to break down the whole system. It is wholly impracticable. I regret it. I think the Convention generally will regret it. I have been trying my very best, Mr. President, to find some way under the law by which we can submit these matters, as they were submitted in 1874, upon a blanket ballot, so that all of these propositions can be enumerated, and the voters can indicate which they prefer, but the clear provisions of the ballot act of 1892, and the conditions imposed upon this Convention by the act of 1893, are expressly and clearly opposed to any such course. If we took that course, then we would be obliged to take it in defiance of the act of the Legislature, and subject our action to all the possibilities of its being a miscarriage, because we have misjudged our power, and because the courts ultimately might declare that the Legislature had the authority to regulate the method of submission, and we were not competent to overrule them. Many gentlemen have been consulted in reference to that subject, and the general consensus of opinion is that we have no right to risk voiding our whole

action. We are, therefore, left in the situation where we must go, so far as we can, but where we must stop when we have reached the point beyond which we cannot go without breaking down the whole election machinery at the coming election. For these reasons I must decline to accept Mr. Kerwin's amendment.

Mr. Peabody — Mr. President, as a farmer, as one of the representatives of the laboring people of this State, sent to this Convention at their request in their interest, I heartily second the resolution offered by my friend, Mr. Kerwin, and trust it will be adopted, and upon that I call for the ayes and noes.

Mr. Nicoll — Mr. President, I appreciate the objections urged by the gentleman from New York (Mr. Root), the multiplication of ballots at the polls. But the scheme, as proposed by him, provides, as I understand it, for six ballots now, three for and three against, on the several propositions or groups of propositions which are to be submitted. Now, that scheme, as it has been adopted, recognizes certain important considerations; that is, it provides for a separate submission of those subjects upon which there appears to have been the greatest division of opinion in this Convention, perhaps, and in the State. One provides for a separate submission of the political proposition of this Convention. Another provides for the separate submission of the subject of canal improvement, amendments to the Constitution concerning which have always been submitted to the people, as it provides for the expenditure of a very large amount of money, and that entitles it to a separate submission. But there is one other question in which thousands and hundreds of thousands of persons in this State, of a class of persons in this State, are desperately concerned, and that is the question with regard to competition between prison labor and free labor. Now, I voted against that proposition and I do not believe in it; that is, I do not believe in constitutionalizing it; but at the same time we have here, clamoring at the doors of this Convention, the representatives of the great labor organizations in the State, and all they ask is that the one proposition of theirs, which this Convention has entertained, should receive a separate submission. If you had given any heed, if you had treated their other propositions with anything but contempt, if you had done anything but evade their consideration in this Convention, why, perhaps, their position might have been different. But it is known to all men that every proposition of the labor organization has been contemptuously rejected and voted down in this Convention. And, if needs be, there is a statement circulated that they were so treated, after they had received a promise that they would receive honorable treatment at our hands.

Mr. Root — Did not the gentleman himself vote not to consider any of those propositions?

Mr. Nicoll — I do not think so. If I did so, I did it at your request. I repent it. I did it at your request. At all events, if I have been led away by the leader of the majority upon one occasion, I am on the right path now, and I want to say that this being the only proposition these labor organizations have received out of the deliberations of this Convention, considering the difference of opinion, the large number of persons that are involved, it seems to me but fairness and justice to give them a separate submission. Now, what is the difference between six and eight ballots? That is the only question involved. Shall we have two more ballots by which they shall have an opportunity of expressing their preference for their amendment without having it linked to the other popular or unpopular propositions contained in the general Constitution? I know that they are deeply interested in this matter; I know that labor organizations throughout the State have applied to the leaders of the majority of this Convention and asked for a separate submission, and I was surprised when you undertook any division whatever that you did not give heed to their request, after your extravagant professions on the floor of this Convention that you were so much interested in the cause of the laboring man and after your advocacy, for no other purpose than that of catching votes, of their prison labor amendment, and after you have done it, you won't give them an opportunity for a separate submission, although their representatives on this floor and the representatives of their organizations are clamoring for it. At the suggestion of Mr. McClure I would say that the amendment was carried by Democratic votes, and they asked this last boon of this reckless majority, to give the laboring men of this State the opportunity they desire of voting separately upon the one single proposition of theirs to which you have given any respectful consideration.

Mr. Becker — Mr. President, I rise to deny the statement made by the gentleman from New York, that this is the only single proposition which the so-called laboring classes of the State have demanded or asked for at the hands of this Convention and which has been granted. They asked that the statutory limitation in cases of deaths arising from accident should be abolished, and that was granted to them, and their other requests which relate to the matter of conspiracy law, and the matter of the regulation of the liability for injury in the case of the negligence of co-employes are matters which even their own representatives, when here before the committees, said were properly subjects for legislation, although

they desired, of course, that there should be an absolute provision made in reference to it in the Constitution itself. It was pointed out to them at that time that those propositions, once put into the Constitution, could never be changed, and the question was asked of several of them, when they were then and there present, if it was satisfactory to them to leave it to the Legislature to be acted upon. I am, and profess to be, as good a friend of the laboring man as there is on this floor; but I do not believe that it would be wise to separate this from the other amendments. The natural effect of this amendment will be to prevent labor in the prisons to a very considerable extent, except the employment of convicts upon public works, such as making good roads, etc., and the making of goods for use in State institutions. Now, we have another matter in the Constitution with which this matter is grouped, providing for the appointment of a prison board to conduct our prison system and not leave it to the mercy of irresponsible politicians. I think those two propositions should go together. If one is submitted, the other should be submitted. For these reasons I hope that the amendment will not be adopted.

Mr. Blake — Mr. President, although numbered with the minority, sir, I do not forget that I am a member of this Constitutional Convention. It is a proud distinction, in my judgment, under any circumstances, and, therefore, sir, I am necessarily desirous that our long and patriotic labor may bear fruit with some portion of our work; may live to commemorate the existence of this constitutional body. I am not so much of a partisan that I desire to see the work of this Convention utterly fail. I think there is something better than partisanship, and that is good citizenship and patriotism. I wish that every man in this Convention might lift himself up to that height that he might be able to sink the party man in the patriot. Some things have been done in this Convention that do not meet the approval of my judgment, some things have also been done that commend themselves to me and my judgment. I know that we are human, and that parties are but human. I know that we have been sometimes stirred by motives and interests that could not commend themselves to the approval of the minority in this Convention. It may be said in reply that if the minority possessed the power, they would not, perhaps, be able to lift themselves up to the loftier plane. I do not know, sir. I hope not, sir. I know parties are very much alike. They will sometimes abuse their power; but, sir, it is the minority that always suffers injustice in these cases. Now, we are creating organic law; not the law of a party; not the law of the Democratic

party nor the law of the Republican party, but the law for all the people of this State; the law that will exist for years, perhaps, for centuries; law that will constitute the grounds upon which will rest, in part, the free institutions of our State and the powers and duties and rights of our public officials; the checks and balances of government; the rights and liberties of the people. Then, gentlement, how momentous the task, how sublime the thought and how great the achievement. I am grateful myself to the majority that they have brought to this last act in the drama we are playing here something of thought and inspiration of good citizenship and patriotism. But I do not think they have lifted themselves up to the best and truest ambition. It is said that it is the "end that crowns the work." Let us take the lesson to heart. If we have lowered the standard at any time in the session, if animated by motives we have voted for measures that have advanced party interest, let us vote upon this matter offered by Mr. Kerwin from patriotic motives. Let us think that we are doing for the people. I may ask the gentlemen on the other side what have you done for the people? I want to put one or two inquiries to you in respect to this amendment. You have taken the pains, gentlemen of the majority, to see to it that the conspiracy act could not be reached in this Convention; that the arbitration act could not be reached; you have killed the anti-trust act of Mr. Burr; and though you had the majority here, an overwhelming majority, you never would have carried this measure through the Convention, if the Democratic members had not stood with those of your side who voted for this prison measure. It only received, I believe, something like ninety votes. I do not know or recollect the exact number of Democratic votes it received. I am informed that it received thirty, thirty odd, so that this measure could never have been carried through this Convention but for Democratic assistance. Now, gentlemen, you have known full well that the people would not support your work, and, therefore, you have separated the canal amendment and the apportionment from the rest of your work. Why have you submitted the canal amendment separately? Why should that be thus distinguished? And yet you refuse to do this much for the working people of the State of New York, the labor organizations of the State of New York, who have been clamoring for years for some relief, and yet you have other amendments that bear upon their interests that you hide behind this prison amendment so that this measure in the interests of the workingmen will go down to destruction. Suppose there are six ballots and six boxes, cannot we very well have two more? The workingmen are perfectly well

satisfied to take the trouble to hand in two more ballots. Why have you substituted the canal for the labor amendment?

Now, Mr. President, I do not wish to occupy too much time at this stage of the proceedings. I assure the gentlemen of the majority that I am sincerely in favor of adopting the splendid work of this Convention. After all, it is splendid; splendid in its origin and in its intents. I sincerely hope that this work will continue on as an imperishable monument of us when our names and our memories have perished from the earth. I ask you, gentlemen of the majority, for the sake of the working people of the State, the labor unions of the State, do that at least for the people. Do not hide behind the pitiable plea that it makes two more ballots and two more boxes. At least give the workingmen of this State that privilege and that prerogative, and, if you do that, I will cheerfully vote for this proposition and this resolution and every portion of it.

Mr. McDonough—Mr. President, when a gentleman who worked as hard as he could work against this proposition, when he induced all of his party that he could induce to vote against it, stands up here to-day and professes to be friendly to him, I distrust him. (Applause.) The two leaders of the Democratic side, one leading one wing, and the other another wing, both opposed this measure, and I am told entered into a combination to beat it, and now to-day, two weeks after it has passed, they propose to support it. They are not honest in this matter. If they are honestly in favor of it, they would have supported it on the day it was here and the day it needed votes. (Applause.) Who ran away? Who had Mr. Kerwin in mind when he got up and said: "Mr. President, I move a call of the House?" Gentlemen on this side, gentlemen who should have been the first to stand here and support this measure, gentlemen who have professed all their lives to be the friends of the working people, and the first time they had an opportunity to do them a real service they ran away from it. On the first call, after they found that Mr. Root was in favor of it, after they found the measure was going through, they came here and voted for it.

Mr. Blake — Does not the gentleman know that I was the fifty-ninth man who voted for that measure?

Mr. McDonough — The gentleman voted for it. He deserves great credit. He did not follow his party into the smoking-room. I understand the object of the gentleman from New York (Mr. Nicoll). He wants to beat it. He cannot make me believe

he is in favor of it to-day, when he was against it two weeks ago. He wants to vote for the gambling act. He wants to save that; but he doesn't want to vote for this. I move the previous question.

Mr. McClure — Does that apply to the whole resolution, or to the amendment?

The President — The Chair is of the opinion that the previous question carries the whole matter.

Mr. McClure — I want to ask ——

Cries of "No!" "No!"

Mr. McClure — I want to ask, not in reference to this matter, not in reference to this convict matter. You will allow a suggestion?

Cries of "No!" "No!"

Mr. McClure — Cannot you allow a suggestion, are you so narrow as that?

Mr. Putnam — I move that the gentleman from New York be permitted to offer a suggestion.

The President — The question is, shall the main question now be put? Mr. Acker and Mr. Burr will act as tellers.

The gentlemen named acted as tellers, and announced the vote as 63 ayes and 49 noes. The previous question was ordered.

Mr. McDonough — Mr. President, I did not understand the effect of the previous question. I meant it simply on the canal amendment.

The President — Unfortunately, it carries the whole matter.

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

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

Mr. Root — My point of order is that when the call for the previous question is expressly limited to the particular motion, that limitation is effective, and Mr. McDonough's call for the previous question was on the amendment.

The President — The point of order is not well taken.

Mr. Root — Mr. President, I do not wish that any gentleman who has a suggestion to make about the merits of this resolution, a matter of so grave importance in this Convention, should be cut off merely because some gentlemen choose to make buncombe and disingenuous speeches about one amendment to it. I move to reconsider the vote by which the previous question was ordered.

Mr. Alvord — Mr. President, I trust that the proposition of the

gentleman from New York (Mr. Root) will prevail. We are now about at the end of the session. The gentleman from New York (Mr. McClure) asked the privilege of this Convention, not to make a speech, but simply to make a suggestion. In all honesty and in all courtesy, and in all the right of the question, I hope and trust that this motion for the previous question will be reconsidered.

The President — The Chair will call attention to the fact that the resolution offered by Mr. Root is in the nature of a statute, with all the solemnity of a statute, and it ought to be carefully considered before being passed. The question is on Mr. Root's motion to reconsider the ordering of the previous question.

The President put the question on the motion to reconsider the vote by which the previous question was ordered, and it was determined in the affirmative.

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

Mr. Kerwin — Mr. President, I have sat here and listened to my colleague from Albany (Mr. McDonough) make his statements in reference to the leaders of the minority of this Convention, who to-day are in favor of the separation of this amendment from the other amendments, and attack them for voting against that measure, and attacking them upon the ground that he is suspicious of their action. Mr. President, I wish to state upon this floor now that the moment this measure was passed every man who voted in favor of the amendment will fight just as hard for its separation from all other amendments. We were told that we could get it out separately; that every endeavor possible would be used to separate our labor amendment from all the other amendments. I never quit working on that line. Separate that prison labor amendment from all other amendments and we will surely win, Mr. President. I have met a good many Republicans and Democrats and I have been told that the prison labor amendment would lose for the Republican party the country vote. That is what I have been told by the leaders of the Republican party. They tell me that the apportionment will be beaten by it. Now, if the Republican party has got any measure they wish to hold the country vote for, we do not wish to interfere with it in any shape or manner. Mr. President, not alone that, but on the first Saturday that we adjourned over the Republican convention, when the representatives of the Republican majority took this floor and offered the resolution to adjourn over the convention, I arose in my place and put to the Republican leader of the Convention the question: "When you

come back from the convention will you take up our anti-conspiracy amendment? Will you take up the employers' liability amendment? Will you take up Mr. Burr's anti-trust amendment?" and I was told across the floor, and it is on the records of this Convention: "Yes, we will stay here and finish the business of the Convention." What way do you propose to finish the business; shutting off debate on the only question the people are interested in? Mr. Hedges, when he offered that resolution, I supposed, spoke for the Republican caucus, when he told me we were coming here and would finish up the business. I desire to say, on behalf of the minority who voted for the separation of this measure to-day, that they did it as an act of courtesy to me, and they are doing it honestly and courageously, and on behalf of the organized working people of the State I return thanks to them for the same.

Mr. McClure — Mr. President, I do not desire to say anything on this prison labor matter, but, as the vote will probably be taken on the main resolution of Mr. Root, I desire to suggest as worthy of consideration that whether the only amendment that was considered of sufficient importance here in the last days of the Convention to warrant the appointment of a special committee to consider it, that received the unanimous vote of this House (at least there were but one or two votes against it, and but one or two members present who did not vote), I rise to ask whether an amendment like that which has no political significance whatever, of the desirability of which there is no question either by the people or by the press, whether it, being devoid of any political tone or touch about it, should not be submitted separately to the people? There is not another matter that has been passed here that was not in some way opposed and passed by a divided vote of this body. I think this Convention will not be true to itself if it places the forestry matter in danger of defeat by reason of its being tacked on with other matters that are objectionable. This convict labor matter, I am told, will be opposed, because the people do not want to be taxed to keep them in idleness. There is a large expenditure of money, perhaps a half million of dollars every year additional to the amount necessary to be expended now, which will be the result of the going into effect of the amendments which are to be bunched together. That fact will induce opposition. I do not think, Mr. President, that having been by the favor of the President of this Convention, placed at the head of a special committee of the importance of the one I refer to, having had the united support of this body, I do not think I would be doing justice to the great subject which was embraced in the action of the committee.

I do not think I would be doing justice to the people of the State, if I did not call the attention of the majority of the Convention to the fact that at least two ballots more should be given to the people in the presenting of the question to them for their suffrage. I do not take the opportunity to offer an amendment, but I think I have performed my duty when I have called attention to the subject.

Mr. Jenks — Mr. President, if I understood the leader of the majority correctly, his objection to the proposition of the gentleman from Albany was wholly based upon the fact that the separation of the article touching prison labor from the Constitution made a multiplicity of ballots; that is, the average voter who came to the ballot-box found himself confronted by such a number of different ballots as to lead to confusion and not distinction. These being the sole grounds urged by the leader of the majority, without discussing the measure present, I make the following motion: I move to amend the article or statute reported by Mr. Root, of New York, by striking out the word "canals" wherever those words appear and inserting in place thereof "the abolition of prison competitive labor." In other words, this overcomes the sole objection made by Mr. Root in his public utterance. It sends back to the Constitution and the other amendments thereof this provision touching the canals of the State, and presents clear, clean, separate and distinct the question of prison labor. The only objection being multiplicity of ballots, the objection is overcome and the happy family can continue.

The President — Mr. Jenks's amendment cannot be put until Mr. Kerwin's amendment is disposed of.

Mr. E. R. Brown — Mr. President, I move the previous question on the whole matter.

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

The President — The question now is on the amendment of Mr. Kerwin.

Mr. Peabody — Mr. President, I call for the ayes and noes on this question.

Mr. Acker — You cannot call for the ayes and noes now. The rules have been changed.

The President — The Chair thinks he can.

The call for the ayes and noes was sustained.

The Secretary called the roll and Mr. Kerwin's amendment was lost by the following vote:

Ayes — Messrs. Banks, Blake, Bowers, Burr, Campbell, Chipp, Jr., Coleman, Danforth, Davenport, Deady, Deyo, Durnin, Emmet, Forbes, Gibney, Giegerich, Gilleran, Goeller, Green, J. I., Hecker, Herzberg, Holcomb, Hottenroth, Jenks, Kerwin, Mantanye, McArthur, McClure, Mulqueen, Nicoll, Ohmeis, Osborn, Parmenter, Peabody, Peck, Platzek, Porter, Roche, Rogers, Sandford, Speer, Springweiler, Titus, Tucker, Turner, Veeder, Williams — 47.

Noes — Messrs. Abbott Acker, Ackerly, Alvord, Arnold, Baker, Barhite, Barnum, Barrow, Becker, Brown, E. A., Brown, E. R., Cady, Carter, Church, Clark, G. W., Clark, H. A., Cookingham, Cornwell, Countryman, Davies, Davis, Dean, Deterling, Dickey, Durfee, Faber, Floyd, Foote, Francis, Frank, Andrew, Frank, Augustus, Fraser, Fuller, C. A., Fuller, O. A., Galinger, Gilbert, Goodelle, Hamlin, Hawley, Hedges, Hill, Holls, Jacobs, Johnson, I. Sam, Johnson, J., Johnston, Kellogg, Kinkel, Lauterbach, Lester, Lewis, C. H., Lincoln, Lyon, Manley, Marshall, McDonough, McIntyre, McKinstry, McLaughlin, C. B., McMillan, Mereness, Moore, Nichols, Nostrand, O'Brien, Parker, Parkhurst, Pool, Powell, Putnam, Root, Spencer, Steele, A. B., Steele, W. H., Storm, Sullivan, T. A., Vedder, Vogt, Wellington, Whitmyer, Woodward, President — 83.

The President — The question now is on Mr. Jenks's amendment to Mr. Root's resolution, to substitute the word "labor" for the word "canal," so as to secure the separate submission of the prison labor amendment, and the submission of the canal amendment in bulk with the rest.

Mr. Holcomb — Ayes and noes on that, Mr. President.

Mr. Storm — Mr. President, I, for one, have come to the end of buncombe. I am disgusted with the performances of the gentlemen on the other side.

Mr. Veeder — I think the dose is a little bitter for them. It is not very palatable.

The call for the ayes and noes was sustained.

The Secretary called the roll, and the amendment of Mr. Jenks was lost by the following vote:

Ayes — Messrs. Banks, Blake, Bowers, Burr, Campbell, Chipp, Jr., Countryman, Danforth, Davenport, Deady, Deyo, Durnin, Emmet, Forbes, Gibney, Giegerich, Gilleran, Goeller,

Green, J. I., Hecker, Herzberg, Holcomb, Hottenroth, Jenks, Kerwin, Mantanye, McArthur, McClure, Mulqueen, Nicoll, Ohmeis, Osborn, Parmenter, Peabody, Peck, Platzek, Roche, Rogers, Sandford, Speer, Titus, Tucker, Veeder, Williams — 45.

Noes — Messrs. Abbott, Acker, Ackerly, Alvord, Arnold, Baker, Barhite, Barnum, Barrow, Becker, Brown, E. A., Brown, E. R., Cady, Carter, Church, Clark, G. W., Clark, H. A., Coleman, Cookinham, Cornwell, Davies, Davis, Dean, Deterling, Dickey, Durfee, Faber, Floyd, Foote, Francis, Frank, Andrew, Frank, Augustus, Fraser, Fuller, C. A., Fuller, O. A., Galinger, Goodelle, Hamlin, Hawley, Hedges, Hill, Holls, Jacobs, Johnson, I. Sam, Johnson, J., Johnston, Kellogg, Kinkel, Lauterbach, Lester, Lewis, C. H., Lincoln, Lyon, Manley, Marshall, Maybee, McDonough, McIntyre, McKinstry, McLaughlin, C. B., McMillan, Mereness, Moore, Nichols, O'Brien, Parker, Parkhurst, Pool, Porter, Powell, Putnam, Root, Spencer, Springweiler, Steele, A. B., Steele, W. H., Storm, Tibbetts, Turner, Vedder, Vogt, Wellington, Whitmyer, Woodward, President — 85.

The President — The question is now on the resolution of Mr. Root (R. 236).

Mr. Holcomb — I demand the ayes and noes on the main proposition.

The call for the ayes and noes was sustained.

The Secretary called the roll, and the resolution of Mr. Root was adopted by the following vote:

Ayes — Messrs. Abbott, Acker, Ackerly, Alvord, Arnold, Baker, Barhite, Barnum, Barrow, Becker, Brown, E. A., Brown, E. R., Cady, Carter, Church, Clark, G. W., Clark, H. A., Coleman, Cookinham, Cornwell, Countryman, Davies, Davis, Deterling, Dickey, Durfee, Faber, Floyd, Foote, Francis, Frank, Andrew, Frank, Augustus, Fuller, C. A., Fuller, O. A., Galinger, Goodelle, Hamlin, Hawley, Hecker, Hedges, Hill, Holls, Jenks, Johnson, I. Sam, Johnson, J., Johnston, Kellogg, Kinkel, Lauterbach, Lester, Lewis, C. H., Lincoln, Manley, Marshall, Maybee, McDonough, McIntyre, McKinstry, McLaughlin, C. B., McMillan, Mereness, Moore, Nichols, Nicoll, Nostrand, O'Brien, Parker, Parkhurst, Phipps, Pool, Porter, Powell, Putnam, Roche, Root, Spencer, Springweiler, Steele, A. B., Steele, W. H., Storm, Sullivan, T. A., Tibbetts, Turner, Vedder, Vogt, Wellington, Whitmyer, Woodward, President — 89.

Noes — Messrs. Banks, Blake, Bowers, Burr, Campbell, Chipp, Jr., Danforth, Davenport, Deady, Dean, Deyo, Durnin,

Emmet, Forbes, Gibney, Giegerich, Gilleran, Goeller, Green, J. I., Griswold, Herzberg, Holcomb, Hottenroth, Kerwin, McArthur, McClure, Mulqueen, Ohmeis, Osborn, Parmenter, Peabody, Peck, Platzek, Rogers, Sandford, Smith, Speer, Titus, Tucker, Veeder, Williams — 41.

Mr. Root — Mr. President, I desire to offer a supplementary resolution.

The President — The Secretary will read the resolution.

The Secretary read the resolution as follows:

"R. 237.— Resolved, That the President and Secretary of the Convention are hereby directed to certify and deliver to the Secretary of State, and cause to be filed and recorded in his office, a copy of the foregoing resolution."

The President — Does Mr. Root understand that that must be done before the final adjournment of the Convention? In the opinion of the Chair, after the adjournment of the Convention there will be no such officers.

Mr. Root — Yes, sir; before the final adjournment of the Convention.

The President put the question on the adoption of the resolution, and it was determined in the affirmative.

Mr. E. R. Brown — Mr. President, I desire to call up for consideration the resolution offered by me, relating to Joseph Fayel.

Mr. Becker — Will Mr. Brown withdraw, so that I can offer a resolution in line with the resolution of Mr. Root?

Mr. Brown — I will yield to Mr. Becker.

Mr. Becker — Will the Secretary read my resolution in reference to printing?

The President — The Secretary will read Mr. Becker's resolution.

The Secretary read the resolution as follows:

"R. 238.— Resolved, That the Secretary of State be and he hereby is requested to cause the revision and amendments proposed by this Convention to be printed and published, as required by law, and the resolution introduced this day and adopted, in such form and type that the proposed new constitutional provisions shall be distinguishable from the provisions of the present Constitution proposed to be revised or amended."

Mr. Root — Was the word "requested?"

The Secretary—"Be requested," yes, sir.

Mr. Becker—Mr. President, the document prepared by the Committee on Revision is all in one solid type of one kind and character. There is nothing to distinguish the present Constitution from the proposed revision and amendments. It seems to me very important that when the matter is published, at least in the newspapers, that it shall be published in such form that the people may understand what are the existing provisions of the Constitution and what are the amendments. For that reason I offer the resolution. It is not drawn so as to be mandatory, but so as to be permissive.

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

Mr. E. R. Brown—Mr. President, I would like to call up now the resolution (R. 228), relating to the pay of Joseph Fayel, a messenger.

The President—The Secretary will read the report of the Committee on Contingent Expenses.

The Secretary read such report as follows:

"The Committee on Contingent Expenses, to which was referred the annexed resolution providing for the payment to Joseph Fayel of the sum of six dollars per day during the session on account of services performed by him in the document room, would respectfully report that said Joseph Fayel was appointed a messenger of the Convention, and as such became entitled to three dollars per day for his services; that he was thereafter assigned to assist in the work of the document room in accordance with the provisions of rule 72, authorizing the President of the Convention to detail messengers to render such assistance as might be necessary. The Committee on Contingent Expenses is of the opinion that the Convention has not the power to allow the additional compensation asked for, and report adversely upon such application.

"GEORGE F. LYON,
"*Chairman.*"

Mr. E. R. Brown—Mr. President, this claim is one precisely on the same ground as the other claims that have been before this Convention. It is certainly as meritorious as any of them, and I move to disagree with the report of the committee, and to adopt the resolution.

The President put the question on the motion of Mr. Brown,

and it was determined in the affirmative by a rising vote of 55 ayes and 23 noes.

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

The President — The Secretary will read the resolution.

The Secretary read the resolution, as follows:

R. 239.— "Resolved, That the thanks of the Convention are hereby extended to Hon. M. Delehanty, Superintendent of the Capitol, and to the attaches of his department, for his kindness and courtesy towards the Convention and the faithful discharge of the duties assigned them during the sessions of the Convention.

The President put the question on the adoption of the resolution, and it was determined in the affirmative.

Mr. Cookinham — Mr. President, I desire to offer the following report from the Committee on Address.

The President — The Chair calls attention to the fact that the report is not signed by Mr. Bigelow, Mr. Jenks, Mr. Maybee or Mr. Osborn. The Secretary will read the report.

The Secretary read the report of the Committee on Address, as follows:

IN CONVENTION.

ALBANY, *September* 28, 1894.

The Delegates of the People in Convention assembled to revise and amend the Constitution of the State, present to the People a revised and amended Constitution of fifteen articles.

In this instrument we have retained the general frame-work and substance of the existing Constitution, and have sought only to make such modifications as experience has shown to be desirable, without venturing upon undue experiments.

Out of more than four hundred amendments proposed and considered, we have adopted thirty-one, besides striking out obsolete matter.

The main features are as follows:

1. We renew the recommendation of the Convention of 1867, providing for progress in agriculture by requiring general laws giving the right of drainage across adjoining lands.

2. We seek to separate the larger cities, municipal elections from State and national elections, to the end that the business affairs of our great municipal corporations may be managed upon their own merits, uncontrolled by national and State politics, and to the end, also, that the great issues of national and State politics

may be determined upon their merits, free from the disturbing and often demoralizing effect of local contests. For this purpose it has been necessary by a series of amendments to rearrange the terms of office and times of elections of the Governor, State officers, Senators and municipal officers so that the elections for State officers will occur in the even-numbered years and the elections for municipal officers in the odd-numbered years.

3. We have provided further safeguards against abuses in legislative procedure, by requiring that all bills shall be printed in their final form at least three days before their passage; prohibiting riders on appropriation bills; providing for notice to municipal authorities before special acts relating to the larger cities can take effect; prohibiting the issue of passes by railroad, telegraph and telephone companies to public officers; enlarging the express constitutional powers of the President of the Senate, and changing the date for the annual meeting of the Legislature from Tuesday to Wednesday, for the better convenience of the members of the Legislature.

4. We have removed the prohibition against the sale of the Onondaga Salt Springs which are a source of annual loss to the State. We have also removed the prohibition against the sale of the Hamburg canal in Buffalo, which is about one mile in length and which serves no purpose except to breathe pestilence. We have also provided that the public lands in the Forest Preserve shall never be sold or leased, and that the timber thereon shall never be cut. This amendment is deemed important as it will preserve the water supply of our principal streams and a health resort for the people of the State.

5. We have removed from the Constitution all mention of the office of coroner, so that the Legislature may deal freely with that branch of the public service now in such an unsatisfactory condition.

6. The passion for gambling, to which the system of lotteries formerly ministered, has found fresh opportunity under the so-called Ives Pool Bill; and under color and pretext of betting upon horse races, is working widespread demoralization and ruin among the young and weak throughout the community. We have extended the prohibition against lotteries so as to include all pool selling, bookmaking and other forms of gambling.

It is claimed that this provision will array in opposition to the proposed Constitution a great and unscrupulous money power, but we appeal to the virtue and sound judgment of the people to sustain the position which we have taken.

7. We have abolished the statutory provision limiting the right of recovery for injuries causing death to $5,000. There is little or no attempt to defend the justness of this limitation. There seems no adequate reason for fixing a limit by statute upon damages to be recovered in case of death, while for an injury which does not produce death they are unlimited. The control of courts over excessive verdicts furnishes ample protection in either case.

8. We have sought to throw greater safeguards around the elective franchise by prescribing a period of ninety instead of ten days of citizenship before that right can be exercised, so that naturalization may be taken out of the hands of campaign committees and removed from the period immediately before election.

We have found that in some cases, upon the eve of an important election, a single judge has naturalized citizens at the rate of more than five hundred a day. Such a procedure, of course, precludes all inquiry into the qualifications of the applicant. It is degrading to citizenship and an injury to every citizen, whether native or foreign born. We think the simple provision which we propose will do much to prevent its recurrence.

We have also included institutions supported by private charity among those whose inmates do not acquire or lose a residence for the purpose of voting.

We have modified the language relating to elections so that if any mechanical device for recording and counting votes is so perfected as to be superior to the present system, the Legislature may make trial of it.

We have established in the Constitution the well-tried and satisfactory system of registration of votes, forbidding, however, any requirement of personal attendance on the first day of registration in the thinly-settled regions outside of the cities and large villages, where voters would have long distances to travel to the place of registration. And we have provided for securing an honest and fair election, by requiring that on all election boards, election officers shall equally represent the two principal parties of the State.

9. We have provided for a new apportionment of Senate and Assembly districts, and for that purpose have fixed the number of the Senate at fifty and that of the Assembly at 150.

The number of Senators was first fixed at thirty-two in 1801. With this number the Senate districts, as formed under the Constitution of 1846, were of reasonable and convenient size, so that each Senator could come in contact with his constituents and readily represent them. In 1846 the only county in the State

which had more than one Senator was New York, which had three.

In 1846 the citizen population of the State was 2,450,778, and in 1892 it was 5,790,865. In 1846 the ratio of population for a Senator was 76,586, and in 1892 it was fixed at 180,899. In 1894 we have fixed the ratio at 115,817.

Since 1846 the great increase of population in the cities, entitling them to additional representation in the Senate, has required a corresponding decrease in the representation of the country districts, so that those districts have been constantly enlarged and their representation in the Senate has been constantly decreased. The object of the proposed increase is to restore the country districts to substantially the same position in which they were in 1846, and to provide for the increased representation of the cities by the increase in number, so that there will be effective representation of the country as well as of the city districts.

The increase of the number of the Assembly was deemed necessary to maintain a due proportion between the members of the two houses, and to permit in the apportionment of members a more reasonable recognition of the great difference in population in the smaller counties of the State. Under the present apportionment, St. Lawrence county, with 80,679 citizen inhabitants, has one Member of Assembly, or the same representation accorded to Putnam county, with 13,325 citizen inhabitants. Such wide differences in representation are undesirable and unjust, and have been greatly reduced by the increase from 128 to 150, while the effectiveness of the body has not been impaired.

It is believed that the distribution both of Senators and Assemblymen by this arrangement has been made with absolute fairness. In both cases they are distributed in exact accordance with population, so far as the maintenance of county lines permit, and no change in the distribution has been asked or suggested by any one.

Attack has been made upon two rules laid down in the proposed measure for the guidance of the Legislature in future apportionments. One of these is the rule that no county shall have more than three Senators unless it shall have a full ratio for each Senator, although smaller counties may receive a Senator, or an additional Senator, on a major fraction of a ratio. The reasonableness of this rule is manifest when we consider that in the large counties, which include many Senate districts, the surplus population of all those districts is to be taken together as a whole in determining whether another Senator shall be awarded to that county, while the surplus population of the smaller counties is not taken together

for that purpose, but it is considered separately; so that an equal number of Senate districts outside of a great city might have many times a surplus population, which would entitle the city to another Senator and still receive no additional representation.

Even with this limitation, the advantage is still greatly on the side of the city as against the country districts on account of their small territory, and the fact that all their representatives stand for the entire city.

The other rule attacked is that no one county shall have more than one-third of all the Senators and New York and Kings county together shall not have more than one-half of all the Senators.

We submit this to the people of the State without a doubt as to its propriety and fairness, and in confident expectation of their approval.

Before another Constitutional Convention presents its work to the people, it is probable that the cities of New York and Brooklyn, or the greater city formed by their union, will contain a majority of the inhabitants of the State. If the present system continues, they will be able to elect the Governor, the State officers, a majority of the Senate and a majority of the Assembly. Both by force of numbers and by the multiplied power of compact organization and cohesion among the representatives from a single county, responsible to a single local political organization, they will be able absolutely to control the government of the State. What will be the consequence of compelling the vast region extending from the city of New York to St. Lawrence and to Lake Erie, with its varied interests, sentiments and opinions, not over well understood by the inhabitants of the city, to submit to such a domination? Would such an arrangement conduce to the permanent welfare of the State? Our opinion is that it would not; and that the provision which secures to the whole State outside of the city a bare half of one house of the Legislature, leaving to the city such control as its members may give over the other house and over the executive department, is a slender enough safeguard against so unfortunate a result.

We believe the provision to be sound in principle, that somewhere in every representative government there should be a recognition of variety of interest and extent of territory as well as of mere numbers united in interest and location.

Such a departure from the rule of strict numerical representation is recognized by the Constitution of the United States in the organization of the Senate, by the Constitution of the State of

Pennsylvania in limiting the representation which the city of Philadelphia may have in its Senate to one-sixth of its members, and by the Constitution of the State of Maryland in limiting the representation which the city of Baltimore may have.

Similar provisions have been adopted by the State of Ohio affecting Cincinnati and Cleveland, the State of Missouri affecting St. Louis, the State of Rhode Island affecting Providence, and by other States of the Union having large cities. It is the rule, rather than the exception, throughout the Union.

10. We have declared in the Constitution the principle of civil service reform, that appointments and promotions are to be based upon merit, and ascertained, so far as practicable, by competitive examination.

We have sought by this to secure not merely the advantage derived from declaring the principle, but the practical benefit of its extension to the State prisons, canals and other public works of the State to which, under the existing Constitution, the court of last resort has decided that civil service rules cannot be applied.

11. In addition to the foregoing provision for the improvement of the State prison administration, we have prohibited the contract system of convict labor. By these two provisions we have adopted, in full, the recommendations of the commissioners of the prison association in their report of 1867, and declared a settled policy in accordance with the most enlightened views of our time, with the belief that the application of these provisions will go far to prevent such jobbery and scandals as have affected their administration in the past.

12. We have authorized the Legislature to provide for the improvement of the canals; without, however, borrowing money for that purpose unless the people expressly authorize it pursuant to the provisions of article 7, section 12, of the present Constitution. Unless such authority for borrowing money is given any improvement made must be paid for as it progresses in the same manner as the present expense of maintenance and repair, and the expenditure will thus remain always under the control of the people.

13. We have required the Legislature to provide for free public schools in which all the children of the State may be educated; and we have prohibited absolutely the use of public money in aid of sectarian schools.

We have provided, also, for regulating and limiting the payment of public money to private institutions for the support of the poor by depriving the Legislature of the power to pass mandatory

laws requiring such payments from counties, cities, towns and villages, and by subjecting such expenditures to the control of the State Board of Charities.

14. The revision of the judiciary article is designed to remedy existing evils arising from the overcrowding of the trial calendars, especially in the large cities, and of the calendar of the Court of Appeals. It seeks to accomplish the former by consolidating the Superior City Courts with the Supreme Courts, thus securing greater economy of judicial force, and by a moderate increase in the number of justices, not however making the number as great in proportion to the population of the State as it was at the time of the last increase which the people approved in 1882.

We expect to obviate the overcrowding of the Court of Appeals calendar by establishing more effective and satisfactory courts of intermediate appeal and enlarging their power and jurisdiction. In place of the nine General Terms now existing, five in the Supreme Court and four in the Superior City Courts, we provide that the State shall be divided into four departments, and that in each there shall be a tribunal composed of five justices of the Supreme Court, who shall perform substantially no other duties, and shall be the court of last resort for that department upon all questions of fact and upon all interlocutory proceedings.

The Court of Appeals is limited to its proper function of declaring and settling the law; believing that under the operation of the proposed Appellate Division of the Supreme Court, and with the distribution of duties and jurisdiction above indicated strictly observed, the Court of Appeals will have no difficulty in meeting all demands upon it. We have done away with the make-shift of a second division, and have prohibited the imposition of a money limit upon the right of appeal to the Court of Appeals.

We have also abrogated the provision for judicial pensions, done away with the justices of sessions, abolished the Court of Sessions and conferred their jurisdiction upon the County Courts; abolished Courts of Oyer and Terminer and Circuit Courts, and conferred their jurisdiction upon the Supreme Court; enlarged and defined the jurisdiction of County Courts, prohibited county judges and surrogates in counties of over 120,000 from practicing law, forbidden the Legislature to further enlarge the jurisdiction of local and inferior courts of its own creation, and in various other ways simplified and strengthened the judiciary system.

The general object of the judiciary article, as proposed, is to secure the more speedy, uniform and effective administration of justice throughout the State.

15. We have so amended the present Constitution as to provide for a naval as well as a land force of militia; that the militia shall not be reduced below 10,000 men, and that the Legislature shall provide for their support.

H. J. COOKINHAM.
ELIHU ROOT.
ELON R. BROWN.
CHESTER B. McLAUGHLIN.
MILO M. ACKER.
DANIEL H. McMILLAN.
M. H. HIRSCHBERG.
JOSEPH H. CHOATE.

Mr. Jenks — Mr. President, I think I state the position of the members of the minority when I say there is no desire on their part, at the present time, to discuss or debate this address. I think I also state their position rightly when I say that they dissent from much of the statements and from almost all of the conclusions drawn from those statements; but this is not the time and not the occasion to precipitate the hot hectic of debate. It is the purpose of the minority, I think, to register their formal opposition to this address, if it come to a vote in the Convention, and not, as I have said, to debate or discuss it, for the reason that swiftly, in a proper time and in a dignified, serious way, it is the purpose of the minority to address the people of the State as to the work done by this Convention, in order that the people, reading soberly, quietly and thoughtfully, may decide and determine the measures, which, after all, are nothing more than mere chaff unless they receive the sanction of the popular will at the ballot-box.

Mr. Blake — If it be in order, sir, I move you that the address just read be laid upon the table.

The President — It is in order, of course.

The President put the question on the motion of Mr. Blake, that the address lie on the table, and it was determined in the negative.

The President — The question is on the adoption of the address, and then there will have to be a further question as to how it shall be authenticated for publication.

The President put the question on the adoption of the address, and it was determined in the affirmative.

Mr. Cookinham — I move that it be authenticated by being signed by the President and by the Secretary.

Mr. Bowers — What was that; I did not hear the motion?

The President — Mr. Cookinham moves that the address be authenticated by being signed by the President and Secretary.

Mr. Bowers — What will be done with it then?

The President — It will go on the wings of the morning to the farthest parts of the State. (Laughter.)

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

Mr. Smith — I move that the address be entitled "The address of the majority of the Convention."

The President — The motion is out of order, inasmuch as it has already been adopted as the address of the Convention to the people of the State.

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

The President — The Secretary will read the resolution.

The Secretary read the resolution, as follows:

R. 240.— "Resolved, That the number of copies of the address prepared by the committee of the Convention appointed for that purpose correspond to the number of copies of the proposed Constitution printed."

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

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

Mr. Veeder — My point of order is that this Convention has no power to spend the money of the State in printing a stump speech. (Laughter.)

The President — The Chair is of the opinion that the point of order, however well intended, is not well taken.

Mr. Peabody — Mr. President, I move as an amendment that the printing be paid for by the majority members of this Convention.

The President — The Chair is of the opinion that the motion is not in order. The question is on Mr. Lyon's resolution, that there be printed an equivalent number of the copies of this address with the copies of the Constitution ordered to be printed.

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

Mr. Lester — Mr. President, I desire to offer this resolution:

R. 241.— "Resolved, That the sergeant-at-arms remain at Albany for ten days after the final adjournment of the Convention to receive and forward mail matter addressed to the members of the Convention, answer calls for documents and to attend to

other matters as may be required by the members of the Convention."

I desire to say that this resolution is similar to one which is invariably adopted by the Legislature at the time of its adjournment, and seems to be a necessity.

Mr. Smith — I move as an amendment that it be made twenty days. The documents will not be printed in ten days.

Mr. Francis — Mr. President, I suggest that that is the postmaster's duty, and not the sergeant-at-arms, and I move as an amendment that the postmaster be requested to remain during the time and attend to this work.

Mr. Lester — Mr. President, I am willing to accept the amendment extending the period to twenty days, if the Convention deem it necessary, and I should think, from the condition of the printing, that it would be necessary.

The President put the question on the motion of Mr. Francis, that the postmaster be the person instead of the sergeant-at-arms to remain in charge of the documents and their distribution for the next twenty days after the adjournment of the Convention, and it was determined in the negative.

The President then put the question on Mr. Lester's resolution, that the sergeant-at-arms remain in custody of the documents and charged with the duty of their distribution for twenty days after the final adjournment of the Convention, and it was determined in the affirmative.

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

The President — The Secretary will read the resolution.

The Secretary read the resolution as follows:

R. 242.— "Resolved, That the services of the Secretary and his assistants, of the janitor and one messenger and one page, to be designated by the Secretary, be retained for two weeks after the adjournment of the Convention for the purpose of finishing the work of the Convention under the orders heretofore made."

Mr. Root — Mr. President, the labors already imposed upon the Secretary and his assistants, under the orders of the Convention, will fully require that time.

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

Mr. Putnam — Mr. President, I sent a resolution to the desk a few moments ago, which I would like to have read.

The President — The Secretary will read Mr. Putnam's resolution.

The Secretary read Mr. Putnam's resolution as follows:

R. 243.— "Resolved, That F. C. Loomis, messenger, be allowed the sum of two dollars per day from May 21, 1894, for extra services performed in the document room since that date, and that the Comptroller be authorized to pay the same upon the certificates of the President.

Mr. Root — Mr. President, I move to lay that on the table.

The President put the question on the motion of Mr. Root to lay Mr. Putnam's resolution on the table, and it was determined in the affirmative.

Mr. Roche — Mr. President, during the past two weeks the Revision Committee have performed work of the most exacting character. Even when the rest of the Convention had a little rest these gentlemen were compelled to stay here and continue their work night and day. Whatever difference of opinion there may be as to some of the propositions that go into the Constitution, I believe there can be no difference as to the faithfulness and intelligence with which this committee has prepared this Constitution and the activity and diligence they have shown in performing their work. The revisions which they have had to make, the skill which has been shown in copying this Constitution, the large amount of work done in revising and preparing the proofs of this Constitution, are testimony of the faithfulness with which they have performed their work.

I desire to offer the following resolution.

The President — The Secretary will read the resolution.

The Secretary read the resolution as follows:

R. 244.— "Resolved, That the thanks of this Convention be and they are hereby tendered to the Revision Committee for their painstaking, exacting and arduous labors in their work in connection with the Constitution."

The President put the question on the adoption of the resolution, and it was determined in the affirmative.

Mr. Vedder — Mr. President, I move that when this Convention adjourns it be until ten o'clock to-morrow. Now, Mr. Chairman, I desire to explain why that seems to be necessary and it is this: the resolutions passed by this Convention this afternoon in regard to the manner in which our work shall be submitted to the people

must be engrossed by the Committee on Revision. It is a very important matter. It must be engrossed very carefully, and the father of that resolution, Mr. Root, will have to examine it very carefully all the while to see that it is exactly right. The Committee on Revision say that it is absolutely impossible to have that matter engrossed properly before twelve o'clock to-morrow. That is their decision. That being so, I have suggested and moved that we adjourn until ten o'clock to-morrow morning, because if delegates think there is a little matter of importance between us as men, that ought to be done between the hours of ten and twelve o'clock to-morrow. The gentlemen will all, I think, understand what matter I refer to. Under these circumstances, I think it proper that we adjourn until to-morrow at ten o'clock, and at that time the hour will be fixed by this committee when the work will be completed, when we can adjourn without date. By this method we can do it in decency and in order, and I can see no other proper way.

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

Mr. Moore — Mr. President, I move that one complete set of the proceedings of this Convention be sent each to the Plattsburgh High School library and to the Y. M. C. A. library at Plattsburgh.

The President put the question on Mr. Moore's motion.

A count was called for.

The President appointed Mr. McDonough and Mr. Smith tellers.

The gentlemen named acted as such and announced the vote as 61 ayes and 20 noes.

The President — The motion prevails.

Mr. Ackerly — Mr. President, I supposed this Convention would adjourn to-day, and I have made an important engagement for to-morrow. I, therefore, ask to be excused from attendance.

The President — Under the orders of the Convention the motion cannot be put.

Mr. Cookinham — Mr. President, I move that we do now adjourn.

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

Whereupon the Convention adjourned until Saturday morning at ten o'clock.

Saturday Morning, September 29, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber, at the Capitol, Saturday morning, September 29, 1894, at ten o'clock.

President Choate — The Convention will come to order. I am very happy to state that on this, the last day of our session, the Bishop of Albany has kindly consented to assist us in opening the Convention.

Rt. Rev. William Croswell Doane, D. D., offered prayer.

The President — In the opinion of the Chair, the Journal of yesterday should be read through, inasmuch as it contains matters of very great importance. Gentlemen will please give their attention to the reading of the Journal.

The Secretary proceeded to read the Journal.

When the Secretary reached Mr. Holls's motion in reference to the attestation of the engrossed copy of the Constitution, the President said: "Will gentlemen consider whether they are satisfied with that resolution as the orderly form of attestation? The Secretary will read Mr. Holls's motion again."

The Secretary read Mr. Holls's motion as follows:

"Mr. Holls moved that the President and Secretary attest the engrossed copy of the Constitution, as adopted this day, in behalf of the Convention."

Mr. Holls — Mr. President, ought there not to be an addition there, to deliver it to the Secretary of State?

The President — That is according to the law.

Mr. Goodelle — I would suggest that it be, in behalf of the delegates.

Mr. Veeder — Oh, no; you can make it a majority of the delegates.

The President — The point is, before approving this resolution, whether the authority given there is ample and sufficient?

Mr. Veeder — May it be read again, Mr. President?

The President — The Secretary will read it again.

The Secretary read as follows:

"Mr. Holls moved that the President and Secretary attest the engrossed copy of the Constitution, as adopted this day, in behalf of the Convention."

Mr. Holls — Mr. President, I would move to amend that they attest by their signatures.

Mr. Francis — It is my strong impression that the policy was pursued at the close of the Convention of 1867 and 1868.

Mr. Veeder — I think the words "in behalf of the Convention" are a mere technicality, a surplusage. They are wholly unnecessary.

The President — That has already been passed.

Mr. Holls — I would suggest that it would be more formal to say that "the President and Secretary be and they hereby are authorized and directed to attest."

The President — These minutes of yesterday, as read, will stand approved, unless objection is made. The Chair is of the opinion that any alteration made to Mr. Holls's motion should be made by a new resolution this morning.

Mr. Holls — Very well, I will offer a new resolution.

Mr. Goodelle offered the following resolution:

R. 246.— "Resolved, That the thanks of this Convention are due, and hereby are tendered, to Melvil Dewey, director of the State Library, and to his assistants, for their uniform courtesy and kindness to the delegates of the Convention during its session."

The President put the question on the adoption of the resolution, and it was determined in the affirmative.

Mr. Putnam — Mr. President, yesterday I offered a resolution, which, on motion of Mr. Root, was laid upon the table. I ask that that resolution be taken from the table and action taken thereon. All I have to say in connection therewith is that I ask this Convention to be consistent in their action.

The President — Mr. Putnam's resolution will be read by the Secretary. While he is looking for it an announcement by the sergeant-at-arms will be read.

The Secretary read the following announcement:

ALBANY, *September* 29, 1894.

Hon. Joseph H. Choate, President Constitutional Convention:

In pursuance of a resolution adopted by the Convention September 28, 1894, J. S. Saunders and George D. Weeks are hereby designated to remain twenty days after the final adjournment of the Convention to perform the duties specified in said resolution.

W. W. BENNETT,
Sergeant-at-Arms.

The Secretary also read the following announcement:

The Secretary designates, pursuant to the resolution of September twenty-eighth, Messenger A. D. Taylor and Page J. H. Millard to remain for two weeks and assist in finishing the work of the Convention.

The President — The Secretary will now read Mr. Putnam's resolution.

The Secretary read said resolution as follows (No. 243):

"Resolved, That F. C. Loomis, messenger, be allowed the sum of two dollars per day since May 21, 1894, for extra services performed in the document room since that date, and the Comptroller be authorized to pay the same upon the certificate of the Secretary."

Mr. Becker — As I understand it, Mr. Putnam now moves to take that resolution from the table.

The President — Yes, sir; it requires a motion.

The President put the question on the motion to take said resolution from the table, and it was determined in the affirmative.

Mr. Becker — Mr. President, I hope this resolution will prevail. Mr. Loomis is the only one of the messengers who performed extra services who has not received some extra compensation for them. He has performed extra services from the beginning of the Convention in the document room, and I know, of my own knowledge, that his services there have been very valuable. Many times when I have needed documents for use on the floor of this Convention or otherwise I have always found Mr. Loomis one of the most courteous attendants there. Besides that, he has been messenger of one of the committees. It seems quite invidious that he, being one of the representatives of the labor organization, having been recommended for appointment by the labor organizations of Buffalo, that others should have their pay advanced and he not. If any one should have extra pay, he should have it. It is only two dollars a day extra, while the others have had three dollars extra given them. I think the resolution should prevail.

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

Mr. Holls — Mr. President, I now move to reconsider the resolution offered by me yesterday, with reference to the attestation of the Constitution, for the purpose of offering another resolution more formal.

The President — If we pass this resolution, and it is satisfactory, no matter about the other. Mr. Holls will read his resolution.

R. 247.— "Resolved, That the President and Secretary be and they are hereby authorized and directed to attest, by their signatures, the Constitution adopted by this Convention, and deliver the same to the Secretary of State, as required by law."

The President put the question on the adoption of the resolution, and it was determined in the affirmative.

The President — There is one matter which has been brought to my attention by the Secretary, which requires the action of the Convention. It appears that 30,000 copies of this Constitution have been ordered to be printed. By another resolution members were directed, or permitted to hand to the Secretary a statement of the numbers which they would require. Those aggregate amounts already exceed very considerably the number of copies ordered to be printed. What action will the Convention take on the matter?

Mr. Lyon — Mr. President, I have a resolution on that subject.

The President — The Secretary will read the resolution.

The Secretary read the resolution as follows:

R. 248.— "Resolved, That the Secretary of this Convention be, and hereby is, directed to have printed such number of copies of the proposed Constitution additional to those already ordered, as may be necessary to supply members of the Convention with such number of copies for distribution as may be desired by members, not, however, exceeding in the aggregate 20,000 copies; and, in the event of the demand exceeding the number of copies provided for by this and the preceding resolution relating to printing copies of the proposed Constitution for distribution, the Secretary is directed to apportion the same among the members requesting copies in such manner as shall be just."

Mr. Becker — Mr. President, I found, on consultation with the printer last evening, that if the Revision Committee or Secretary will indicate what portion of this revised Constitution is new matter in proper form, that he will be able to print it so that the new parts will be separated from the old parts. For that reason I move that, in printing this new Constitution, the Secretary see to it that the portions of the Constitution which are proposed by this Convention to be amended be distinguished from the Constitution as it now exists.

The President — Do you make any motion to that effect?

Mr. Becker — I do make such a motion.

Mr. Hawley — Mr. President, the gentleman states that the printer say that the new matter can be printed separately. I suppose he does not mean that. It is to be printed so that the new matter can be distinguished.

Mr. Becker — I said "distinguishable."

Mr Hawley — You said "separated."

Mr. Becker — I meant "distinguished." I suppose the new matter will be either underscored or italicized.

The President — Will Mr. Hawley and Mr. Becker agree upon the form in which that should be put, so that there will be no misunderstanding?

Mr. Spencer — Mr. President, I move to amend by striking out the words "twenty thousand" and substituting therefor the words "fifty thousand."

The President — Does Mr. Lyon accept that amendment?

Mr. Lyon — Yes, sir.

The President — Mr. Lyon accepts Mr. Spencer's amendment making the number fifty thousand.

Mr. E. R. Brown — Mr. President, unless some provision is made for the delivery of these copies of the Constitution within a reasonable time by our expeditious printer, they will not likely be of very great use to the State. It seems to me that the resolution ought to provide that they be delivered by a certain date. I trust that the mover of the resolution will accept this suggestion and make it conform thereto.

The President — Mr. Brown will confer with Mr. Becker who is preparing a resolution on the subject.

Mr. Vedder — Mr. President, can we do any business while they are fixing this thing up?

The President — I think so.

Mr. Vedder — I would then move to take from the table the resolution offered by Mr. Steele, in reference to the compensation of clerks and deputies.

Mr. Spencer — I rise to a point of order, that a motion is now before the House.

The President — It cannot be done, except by unanimous consent.

Mr. Spencer — I make that point.

R. 249.— Mr. E. A. Brown — Mr. President, I desire to move that the compensation of Mr. E. W. Parkill, who has acted as financial secretary of this Convention, be increased to ten dollars per day from the beginning of the Convention. The Convention has voted to his assistant within a dollar a day of what he received. Now, Mr. Parkill gives a bond of $25,000 for the faithful performance of his duty. He has distributed over $200,000 of the funds of the State, and it seems to me that, as a matter of justice, this Convention ought to vote him an increase in salary. I believe that, having gone as far as we have in this matter, that we should increase Mr. Parkill's compensation to the amount asked for. It was never intended, when he was appointed financial secretary, that a bond would be required, and I think, if any gentleman will take the trouble to go to the Comptroller's office, he will be informed there that no financial officer's accounts have been as correct and as satisfactorily rendered to the Comptroller as have been the accounts of Mr. Parkill. I move that his compensation be increased to ten dollars per day.

Mr. Moore — Mr. President, are remarks in order upon Mr. Brown's motion?

The President — Not until Mr. Lyon's resolution is disposed of. There is an amendment by Mr. Becker pending. The Secretary will read Mr. Becker's amendment.

The Secretary read said amendment as follows:

"Amended by adding to the end of Mr. Lyon's resolution 'and that the Secretary cause the proposed amendments and revision to be printed in such manner that the new matter proposed by this Convention shall be distinguishable from the provisions of the present Constitution. The Secretary is hereby authorized and directed to notify the printer that this matter is entitled to precedence over all other printing of the Convention, and that it must be completed and delivered on or before October 10, 1894, or it will not be accepted or paid for.'"

The President — Does Mr. Lyon accept the amendment?

Mr. Lyon — Yes, sir.

The President — The Secretary will read Mr. Lyon's resolution.

The Secretary read said resolution as follows (R. 248):

"By Mr. Lyon: Resolved, That the Secretary of this Convention be and hereby is directed to have printed such number of copies of the proposed Constitution additional to those already ordered as may be necessary to supply members of the Convention

with such number of copies for distribution as may be desired by members, not, however, exceeding in the aggregate fifty thousand copies; and in the event of the demand exceeding the number of copies provided for by this and the preceding resolution relating to printing copies of the proposed Constitution for distribution, the Secretary is directed to apportion the same among the members requesting copies in such manner as may be just."

Mr. Spencer — Mr. President, I move further to amend by inserting the words "and address" after the words Constitution where it appears.

Mr. Lyon accepted the amendment.

Mr. Durfee — Mr. President, this resolution contemplates, as I understand it, the printing of the revised Constitution in a manner so that the new matter may be distinguishable from the old?

The President — Yes.

Mr. Durfee — Now, Mr. President, that will, undoubtedly, involve the resetting of a very considerable part of the revised Constitution, if it is put in italics (and, I presume, likely it would have to be reset in order to be underscored), calling attention to the new matter. The Committee on Revision have been over the printed copy time and time again, with the utmost pains, to secure as nearly as possible absolute accuracy, and every error that has been detected by the most patient and careful reading has been reported to the printer, and it is, as we suppose, finally correct. To impose that labor upon the Secretary, as it would be imposed upon him by this resolution, to incur the risk of error in the printing, unless the same care were exercised by the Secretary, and to incur the additional expense which will be involved in the carrying out of this proposed resolution, seems to be certainly not expedient. The new matter in this Constitution, while it would be under the eye of those who might read it, after all, would not be understood without comparison with the old. It really would be, it seems to me, of very little help to a man who wanted to know what the changes were and what the effect of them would be. That assistance must be afforded through the press, and it has already been done in a great degree, and by the address which has been adopted by this Convention. The address which we have adopted calling attention to the different propositions which we have passed here, supplemented by the comments of the newspapers of this State, will bring our action to the intelligent consideration of the people in a far more satisfactory manner than can be done by the printing proposed by this resolution. I, there-

fore, Mr. President, move to amend by striking out that part of the resolution which requires the new matter in the revised Constitution to be printed differently from the rest.

The President — The Secretary calls attention to the fact that the index to Document No. 72, as it is already printed, points out exactly where each amendment is.

Mr. Durfee — It does. It has been prepared with great care, so that anybody can take that index, with a copy of the old Constitution, and compare the new with the old, section by section, and ascertain exactly what the changes are. It seems to me that the work and expense contemplated by this resolution are entirely unnecessary.

Mr. Becker — Mr. President, I dislike very much to differ with Mr. Durfee about this matter; but let us look at it a moment and see whether he is right. In his desire to be accurate, it seems to me that he would put us in a position where the people will be able to know little or nothing about what we have done. Now, there are a large number of amendments made to this Constitution. In revising them the committee has printed a document which contains the new matter and old matter in the same kind of type. There is nothing in this document that anybody, I do not care whether he be a lawyer or a layman, cannot take and tell what is new matter or what is old, except by going back to the index and tracing it line by line. Now, who is going to take the trouble to do that? Now, why not have it distinguished here which is the old and which is the new? It may cost a little more. It may take a little more time. I think it will pay in the end. The Secretary is here with his assistants under pay, and I take it there will not be very great difficulty in having it printed as called for by the resolution, which is that the new matter can be distinguished from the old matter. The printer informed me that this can be done by underscoring, without resetting the type or italicizing. That is sufficient. All the bills that we have had here have had the amendments underscored. Under the rules the new matter was required to be underscored. The Committee on Revision, in its haste to get through, did not report in that form, as they should, as required by the rule. Our rules require that all matter should be underscored, so as to distinguish the old matter from the new. I do not wish to put any additional burden upon the committee, but Mr. Hawley has gone through with it and marked his copy on the margin. It seems to me that it is more important that the people of this State should

have something before them that would indicate plainly what is the new and what is the old than that a few dollars' expense would be saved.

Mr. Hawley — Mr. President, I think, upon reflection, that the operation of this proposed resolution is, if not impracticable, disastrous. Many of the amendments are the simple dropping out of matter, which cannot be indicated in the manner proposed by the resolution. Many of the amendments are changes of phraseology of one part of a section, so that a word here and there would have to be distinguished, and would form no more sure guide to the reader as to exactly what the change was. We have had this experience: the forms upon which this Constitution is printed have been unlocked repeatedly for the purpose of amendment and correction, and I think in no single instance has that ever been done without somewhere some letter, some word, some part of a line has dropped in the transfer, and unlocked all the forms, and some erroneous letter, or word, or part of a line has been inserted. An example of that appears upon page 62, second line of the paper now before the Convention. It appeared in repeated instances in the first document that we submitted, and there is no assurance that if this experiment be entered upon, that we shall submit to the people an absolutely correct copy of the Constitution. That will be no fault of the printer. It is inevitable that those things should happen. Then, further, it will occasion what we must, by all means, avoid. It will occasion further delay. It will take considerable time to go through this. I do not believe that the thing can be done so that it will be an accurate guide to the reader, and I do not think it can be done without great danger of errors intervening, and I do not think it can be done without the expenditure of a good deal of time, and, therefore, I think that it is better to rely upon the index, upon the address and upon the observation and examination which the people shall give to the document.

The President — The question is on Mr. Durfee's motion, to strike out those parts in this resolution which require the printing of the additional copies to be altered so as to make the new parts distinguishable from the old. The Secretary will read the part covered by the amendment to strike out.

The Secretary read Mr. Durfee's amendment as follows:

Mr. Durfee moves to strike out "and the Secretary cause the proposed amendments and revision to be printed in such manner that the new matter proposed by this Convention shall be distinguishable from the provisions of the old Constitution."

The President put the question on the adoption of Mr. Durfee's amendment, and it was determined in the affirmative.

The President then put the question on Mr. Lyon's resolution (No. 248), as amended, and it was determined in the affirmative.

The President — The question now is on the adoption of Mr. E. A. Brown's resolution (No. 249), in reference to increasing the pay of the financial secretary. The Secretary will read Mr. Brown's resolution.

The Secretary read said resolution as follows (No. 249):

"Mr. E. A. Brown moved that the compensation of E. W. Parkhill, financial secretary, be increased to ten dollars per day from the date of the beginning of the session."

Mr. Root — Mr. President, I hope that motion will not prevail. It is true that yesterday several motions were adopted by this Convention giving additional compensation to a number of employes, upon the ground that, although appointed to minor positions and employed ostensibly in duties of an inferior order, owing to the lack of sufficient assistants of the higher character, they have been transferred and have rendered a different kind of service from that to which they were appointed. It may well be that an exception of that description is well founded, and that the Convention is justified in paying for a different kind of service than that for which the person was appointed. But, sir, the matter which is now presented has no such characteristic. The gentleman named was appointed to do the very kind of work which he has done. He has done his work admirably. He has proved himself to be a faithful and efficient officer. No one can say more than I would say for the way that he has discharged his duties, but he has discharged them under an appointment which fixed his salary, and we have no right whatever to give away the money of the State to him for performing those services. I do not believe, sir, that we have any power whatever to do it. I hope, Mr. President, that the Convention will proceed no further in the business of attempting to give away money that does not belong to it. Let us stop here and leave the employes of this Convention upon the basis of their legal rights and not present to the State the spectacle of the Convention framing a Constitution and at the same time overriding it.

Mr. E. A. Brown — Mr. President, I take the gentleman at his word. He says where there was any different and additional service rendered from that which was contemplated at the time of appointment, that such a case was a meritorious one. In the case of Mr. Parkhill he was appointed an assistant secretary. He was

assigned to the duties of financial secretary. He gave a bond of $25,000. He performed the duties of financial secretary. He has accounted for over $200,000 of the funds of the Convention.

I am surprised that the gentleman, while I respect his ability and attainments, should sit still all day yesterday, when less meritorious applications were made to this Convention. He remained silent. He did not put the obstacle of his immense power against the granting of extra compensation to other officers; but now, when a most deserving application is made, he rises and lends his power to a refusal.

Mr. Nicoll — Mr. President, are there any means of ascertaining what the surplus money of this Convention is, and whether it has all been divided?

The President — The Chair is unable to give the desired information.

Mr. Dean — Mr. President, I simply desire to congratulate this Convention for its return to the Constitution. After sitting here all day yesterday and granting extra compensation to every officer in the Convention, I see a gentleman rising here protesting against any more violations of the Constitution. I am glad that he is willing to subscribe to the Constitution.

Mr. Lyon — Mr. President, I want to say that I subscribe to all that Mr. Root has said. I believe that if extra compensation is to be given to any of the assistant secretaries, it should be given those at the desk, rather than the financial secretary.

The President — It seems to me that there is no power in the Convention, in reference to this matter, and that this resolution will be ineffective.

Mr. Spencer — I move to lay the resolution on the table.

Mr. Root — I wish to ask the Secretary if it was not true that Mr. Parkill was appointed as financial secretary?

The Secretary — It certainly is true.

Mr. Root — And he has acted as financial secretary.

The President put the question on the motion of Mr. Spencer to lay Mr. Brown's resolution on the table, and it was determined in the affirmative.

Mr. Smith — Mr. President, I have a resolution, which I will read:

R. 250.— "Resolved, That the pages of the Convention be allowed and paid at the rate of three dollars per day from May

22, 1894, and that the Comptroller pay such additional allowance to them, respectively."

Mr. Spencer — Mr. President, I move to lay that resolution on the table.

Mr. Smith — Mr. President, I wish to be heard. I have not yielded the floor.

The President — Very well, you have the floor.

Mr. Smith — Mr. President, we have but ten pages. We have 170 members of the Convention. The Assembly is composed of 128 members. The Assembly has twenty-five pages. These pages have served from eight o'clock in the morning until ten at night, a large part of the session since May twenty-second. That is the date I propose to give them the pay from. Now, all these young men are striving to become delegates, and Members of Assembly, and statesmen. They have earned this additional dollar. They have been paid up to this time but two dollars per day. Nearly all of them are here away from their homes. They have been here under an expense. If anybody is to be paid for extra service, if anybody is to be encouraged by extra pay, I think these boys are entitled to it. They have been attentive and polite. Certainly they are entitled to extra pay, if anybody is. I am in favor of helping the boys.

Mr. Spencer — I move to lay the resolution on the table.

The President put the question on the motion of Mr. Spencer to lay said resolution on the table, and it was determined in the affirmative.

Mr. Vedder — Mr. President, I move that this Convention take a recess until twelve o'clock noon to-day.

The President — The signing of the Constitution and the resolutions will take place at twelve o'clock.

Mr. Vedder — I give notice that we would like all the delegates of the Convention to meet at once in the Assembly parlor.

The President put the question on Mr. Vedder's motion to take a recess until twelve o'clock noon, and it was determined in the affirmative.

Whereupon the Convention stood in recess until twelve o'clock.

NOON SESSION.

Saturday Noon, September 29, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber, at Albany, N. Y., Saturday noon, September 29, 1894.

President Choate called the Convention to order at 12 M.

The President — The signing of the Constitution will now take place in front of the Secretary's desk, and I will ask Mr. Deyo to take the chair.

Mr. Deyo assumed the chair.

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

The President *pro tempore* — The Secretary will read the resolution.

The Secretary read the resolution as follows:

R. 251.— "Resolved, That the thanks of this Convention be tendered to the Hon. Joseph H. Choate for the ability, fairness and courtesy which have distinguished his services as President of this Convention."

The President *pro tempore* put the question on the adoption of the resolution, and it was determined in the affirmative.

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

The President *pro tempore* — The Secretary will read the resolution.

The Secretary read the resolution as follows:

R. 252.— "Resolved, That the thanks of the Convention be tendered to the Hon. Thomas G. Alvord and the Hon. William H. Steele for their efficient and impartial services as Vice-Presidents of this Convention."

The President *pro tempore* put the question on the adoption of resolution, and it was determined in the affirmative.

Mr. Alvord — Mr. President, I am under great obligation to this Convention and to its presiding officer for that magnificent tribute that he paid to me an hour ago, which was much beyond my deserts, and to the members of this Convention in the honor they have done me now in the passing of the resolution which has just gone through this body. I desire to say, sir, that, although I have spent sixty years of a life of eighty-four in the public eye, more than half of that in a position official in its character, I have

in that whole time not collected together much of the filthy dross of this world. I have accumulated to myself, I trust and hope, an approbation on the part of the people in my own constituency, who have always responded to my anxiety for public position. I have experienced that kindness and appreciation far beyond what I deserve, which shall be, I think, a priceless treasure to leave to those children who are to come after me.

I thank you, gentlemen, for the honor you have done me, both in the treatment you have accorded me during my whole term in this body and for the resolution which you have upon this occasion adopted. (Applause.)

Mr. W. H. Steele — Mr. President, the words of commendation in the resolution, coming, as they do, from the minority of this Convention, are extremely pleasing to me. I have always, through life, felt that a certificate attesting to my fairness and impartiality in any capacity was of greater moment to me than one which testified to my ability. This one certifies to both, and, being adopted by the Convention, is ample reward for the services which I have been fortunate enough to render the Convention in my capacity as its Second Vice-President. I am grateful to the Convention for all its kindness and courtesy. (Applause.)

Mr. Blake — Mr. President, I now offer the following resolution.

Second Vice-President W. H. Steele took the chair.

The President *pro tempore* — The Secretary will read the resolution.

The Secretary read the resolution as follows:

R. 253.— "Resolved, That the thanks of the Convention be tendered to Charles E. Fitch, Secretary, and Edward M. Johnson, Assistant Secretary, and the several clerks of the Convention, for their able and efficient services, and the very satisfactory manner in which they have discharged the duties of their several offices."

The President *pro tempore* put the question on the adoption of the resolution, and it was determined in the affirmative.

Mr. Choate — Mr. Secretary of State, I now deliver into your charge the revised Constitution of the State of New York, as it has been proposed and adopted by this Constitutional Convention, to be recorded and remain in your office among the archives of the State, and also, accompanying it, I deliver to you the resolutions of this Convention, prescribing the manner in which it shall be submitted to the people and the duties in carrying out the resolutions which you are expected to perform. (Applause.)

Secretary of State Palmer — Mr. President, it was my pleasure to preside over the deliberations of this Convention at its organization. It will be one of the pleasantest memories of my life to think that I have had the honor of having been the Secretary of the great Empire State during the work of this Convention. I will accept, Mr. President, this revised Constitution, and assure you and the gentlemen of the Convention that it will be safely deposited in the archives of the great State of New York. (Applause.)

President Choate resumed the chair.

Mr. McDonough — Mr. President, if there is no further business, I move we do now adjourn.

The President — Gentlemen, before the motion to adjourn is put, it may be proper for me to say a few words to you in the nature of a farewell. It is now nearly five months since we came together and mutually interchanged our oaths to perform with fidelity the duties intrusted to us as delegates to this Convention, and I think we may look back upon that long period of protracted and arduous labor, and, without any pride or boasting, with our hands upon our hearts, say that we have faithfully attempted to discharge the duties so assumed. We found great responsibility and difficult duties intrusted to us. We were to decide, in the first place, the great question whether we should devise a new Constitution for the State of New York or merely repair, enlarge and improve that ancient structure under which its people had prospered and lived in happiness so long. There could be but one answer to that question. We had only to go over this venerable structure to discover the defects which the ravages of time had made, the improvements and additions which the progress of civilization demanded, and to apply our wisdom, so far as we might, to the work of improvement and repair.

More than four hundred amendments were proposed to us from the teeming brains, not only of the delegates, but of large numbers of citizens, who thought that they could aid in the work. In my judgment, one of the greatest services that we have rendered, one of the greatest claims to the gratitude of the people of the State which we can put forth is that out of those more than four hundred we have adopted only thirty-three. We have demonstrated that this, at least, was a conservative Convention, mindful of the value of the experience of the past, of the precious value of the institutions which our fathers had handed down to us.

We found, at the outset, four or five great subjects upon which the public mind had been exercised, and in regard to which it

seemed necessary that we should apply the improving hand. We have done it to the best of our ability. With one exception, all of these have received the joint support of the delegates, I may say, without regard to political or party consideration.

There was the renovation of our judicial system, the system upon which the happiness and welfare of the people more truly depends than upon any other part of the Constitution of the State. We have endeavored to give to the people of the State a judicial system which shall answer their purposes, at least, for the next twenty years. We believe that if they will take up the judiciary article and examine it, they will find that the object of this Convention has been successfully accomplished, namely, by means of it to bring justice home to the doors of the people throughout the State more completely, more promptly, more efficiently than it has ever been before.

And then there was our common school system, that other foundation of civilization itself, of which the people of this State so proudly boast. We have done much for that. We have secured the establishment throughout the State of common schools in which all the children of the State may receive, at the public expense, an adequate education. We have guarded against that danger which had excited so much apprehension within the borders of this commonwealth, that, perhaps, there was already beginning, and likely to continue and to grow, a diversion of money raised by taxation for educational purposes into sectarian hands and control. All that we have successfully, and, as I believe, absolutely accomplished by our educational article.

There was another subject which deeply agitated the minds of the people of this State, and that was the application of public money in the way of private charity. By many who had not carefully examined the subject, it was believed to be inherently an evil which could only be cured by cutting it out by the roots. We have, through our Charities Committee, most carefully examined that question, and, I think, we came to the conclusion that the system which the State had deliberately adopted and carefully followed now for more than twenty years, of employing the aid of honest, faithful, devoted private charitable institutions for the care of certain wards of the State, that could not otherwise be as well cared for, ought not to be departed from; but, at the same time, there were abuses incident to the conduct of that mode of charity to which, at least, a stop should be put, and we have deprived the Legislature of all compulsory power in the matter. Hereafter, if this Constitution is adopted, no subordinate division of the State

can be compelled, by the central power of the State, to devote a dollar of its money, against its will, to any particular form of charity. Besides that, we have secured the regulation of the State Board of Charities to this effect, that wherever any public money is devoted to a private charity for the public service, it shall continue under public control, and the vigilant eye and the strong arm of the people shall be able to follow every dollar of the public money into every institution to which it is so devoted.

There is one subject of vast importance upon which we have not been able in like manner to agree without distinction of political preferences. But this, let me say: that while, as I believe, upon the one side, which happens to be the majority, the scheme of apportionment has been devised with a pure and patriotic eye for the public good, believing that the best welfare of all the people of this State demanded it; we give credit for equal good faith, equal honesty, equal patriotism to those in this Convention who cannot accept that view, and who believe, in other words, that it is unnecessary, unwise and infected with political and partisan spirit. Gentlemen, upon that subject we have agreed to disagree, and we lay this part of our work before the people separately, and, in my judgment, it was a most magnanimous and generous act on the part of the majority of this body to separate that political question from all the others that are non-political, and not to attempt, as it would not have been right or fair to attempt, to say to the voters of this State: if you wish to have these wise, and great, and useful reforms that this Constitution contains, you can only have them at the price of voting for this apportionment scheme, and, on the other hand, to say to them, you can only have this apportionment scheme by voting for these ten, twenty, thirty constitutional amendments, as to many of which you may have personal and honest objections.

In the remarks which I had the pleasure to address to you at the opening of this Convention, I referred to these subjects as those which were of great, pressing and special importance. Besides these, we have been able to contribute many other wise provisions of reform, which it is no time for me now to enumerate. I believe if they are adopted, they will contribute to the welfare of the people of this State, and it seems to me that it is the duty of the members of this Convention who have taken such an active, such an ardent, such a patriotic part in framing and passing them, to go their way among the people, explaining, instructing, advocating these various measures intended for the public good, so that when the sixth day of November comes our people throughout the length and

breadth of the State will, at least, understand our work, and, if they like it, they will approve of it.

Gentlemen, I have to thank you for all your kindness and courtesy to me throughout all the trying days of this Convention. I was aware from the beginning to the end of my inadequacy for the duties that you had imposed upon me. The friendships that I have formed in this body will last throughout my life. I thank you for your special kindness manifested an hour ago. It overwhelmed me with emotions of gratitude. And let me, in closing, express the fond hope that all the members of this Convention may look with pride and satisfaction, each upon his own labors in this Convention, that it will be to him, to the last moment of his life, a precious honor to have occupied a seat here and to have his name enrolled upon its list. I trust, gentlemen, you may go to your various homes and enjoy to the end of your days peace, prosperity and happiness. (Applause.)

The President — Unless any other business is presented to the Convention, it will be the duty of the Chair to pronounce it adjourned *sine die.*

Mr. Vedder — Has a motion been made, Mr. President, to that effect?

The President — No motion has been made.

Mr. Vedder — I move you then, Mr. President, that this Convention adjourn without day.

The President — Has any gentleman any matter to propose before this motion is put? If not, those in favor of the motion that this Convention be now adjourned without date will manifest it by saying aye, and those opposed will say no.

The motion prevailed, and the Convention adjourned *sine die.*

CHARLES ELLIOTT FITCH,
Secretary.

DATE DUE

GAYLORD			PRINTED IN U.S.A.

UC SOUTHERN REGIONAL LIBRARY FACILITY

A 001 013 022 7