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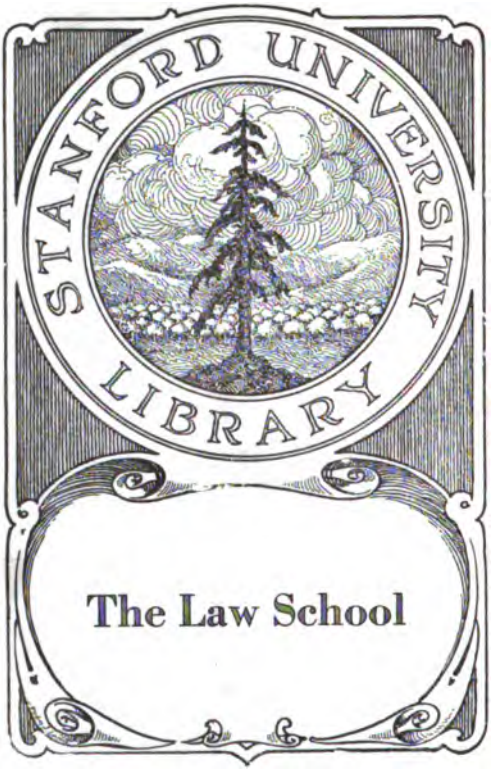
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REVISED RECORD

OF THE

CONSTITUTIONAL CONVENTION

OF THE

STATE OF NEW YORK

May 8, 1894, to September 29, 1894

REVISED BY

HON. WILLIAM H. STEELE,
VICE-PRESIDENT OF THE CONSTITUTIONAL CONVENTION OF 1894,

Pursuant to Chap. 21, Laws of 1898.

PUBLISHED UNDER DIRECTION OF

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REVISED RECORD

OF THE

CONSTITUTIONAL CONVENTION

OF THE

STATE OF NEW YORK.

MAY 8, 1894, TO SEPTEMBER 29, 1894.

Tuesday Morning, May 8, 1894.

The Constitutional Convention of the State of New York met at the Assembly Chamber, Albany, N. Y., May 8, 1894, at 11 A. M.

The Hon. John Palmer, Secretary of State, called the Convention to order.

The Rev. Walton W. Battershall, D. D., of St. Peter's church, Albany, N. Y., offered the following prayer:

"Oh, God, who has instituted Thy throne in righteousness, vouchsafe Thy presence in this assembly and give us Thy guidance in its deliberations for the enactment of just and equal laws, which shall preserve liberty and protect virtue and build up the structure of the State upon strong and enduring foundations. Preserve them from error, ignorance, prejudice and from evil passion which darkens our souls and is the hiding of Thy face. Grant in strict wisdom and sound judgment that they may so interpret that the law as constituted shall be Thy desire, whose voice is the harmony of the world, that they may promote peace and good will; dissolve the bands of strife and dissension; right the wrongs of the injured and maintain the cause of the innocent; punish the wrongdoer, but defend them that do well; that so Thy righteousness may prevail in the land, through Jesus Christ, Our Lord. The grace of our Lord, Jesus Christ, and the love of God, and the fellowship of the Holy Ghost be with us all forever. Amen."

The Secretary of State — Gentlemen of the Convention, it becomes my duty, under the statute, to preside over the preliminary organization of this Convention until you have elected a permanent presiding officer. To avoid calling the roll twice, I will swear in the members in groups of ten, and, as your names are called, you will present yourselves at the table and after the roll has been completed we shall be able to tell who are present and who are absent. The Deputy Secretary of State will commence the calling of the roll, beginning with the delegates-at-large.

The delegates answered to their names and the constitutional oath of office was administered by the Secretary of State to the following delegates:

Joseph H. Choate, Elihu Root, Edward Lauterbach, Jesse Johnson, Frederick W. Holls, Michael H. Hirschberg, J. Rider Cady, John T. McDonough, John M. Francis, John F. Parkhurst, Commodore P. Vedder, John I. Gilbert, Augustus Frank, William P. Goodelle, Daniel H. McMillan, Lucius N. Manley, Frederick Storm, Charles L. Phipps, Nicoll Floyd, Nathaniel S. Ackerley, Mirabeau Lamar Towns, William H. Cochran, John G. Schumaker, John B. Meyenborg, Almet F. Jenks, Stephen B. Jacobs, Henry A. Powell, William H. Allaben, Solomon Galinger, Charles B. Morton, Joseph C. Hecker, Frank H. Vogt, William A. Faber, Andrew Frank, Robert M. Johnston, William D. Veeder, William Sullivan, Thomas J. Farrell, William B. Davenport, James W. Riggs, Eugene A. Curran, George W. Roderick, William M. Mullen, Thomas W. Fitzgerald, Wright Holcomb, De Lancey Nicoll, John M. Bowers, Arthur D. Williams, John Bigelow, Frank T. Fitzgerald, Elliot Sandford, Morris Tekulsky, Joseph M. Ohmeis, Charles Goeller, Aaron Herzberg, Henry D. Hotchkiss, Gideon J. Tucker, Delos McCurdy, Charles H. Truax, William Q. Titus, James W. McLaughlin, Robert E. Deyo, M. Warley Platzek, Francis Forbes, William P. Burr, Nelson Smith, William McM. Speer, Jacob Marks, John D. Crimmins, David McClure, Andrew H. Green, James P. Campbell, Joseph I. Green, Eugene Durnin, Thomas Gilleran, Charles W. Dayton, Michael J. Mulqueen, John A. Deady, Stephen S. Blake, Chauncey S. Truax, Andrew C. Fields, William Church Osborn, William T. Emmet, Adolph C. Hottenroth, John Gibney, William D. Dickey, Henry W. Wiggins, Charles W. H. Arnold, Ira M. Hedges, John A. Griswold, George L. Danforth, Jacob M. Maybee, Howard Chipp, Jr., George H. Bush, Roswell A. Parmenter, John H. Peck, William J. Roche, Amos H. Peabody, Edwin C. Rowley, A. Bleecker Banks, Edwin Countryman, Peter Rogers, William Kimmey, Den-

nis P. Kerwin, Abram B. Steele, Edward A. Brown, Walter L. Van Denbergh, Charles C. Lester, Edward C. Whitmyer, Chester B. McLaughlin, Charles H. Moore, Edgar A. Spencer, Frederick Fraser, Thomas W. McArthur, Vasco P. Abbott, John G. McIntyre, William H. Baker, William H. Steele, Elon R. Brown, Henry J. Cookinham, John C. Davies, Charles S. Mereness, James W. Barnum, Abraham L. Kellogg, D. Gerry Wellington, Ceylon H. Lewis, Louis Marshall, George Barrow, Thomas G. Alvord, Charles A. Fuller, William J. Mantanye, Abram C. Crosby, H. Austin Clark, George F. Lyon, John W. O'Brien, Henry R. Durfee, Frank H. Hamlin, Frank E. Tibbetts, George R. Cornwell, William H. Nichols, Milo M. Acker, Charles R. Pratt, Owen Cassidy, Charles A. Hawley, Nathaniel Foote, Merton E. Lewis, John A. Barhite, George W. Clark, James H. Redman, Nathan A. Woodward, Lockwood R. Doty, Myron L. Parker, William Pool, I. Sam Johnson, Herman F. Trapper, William Turner, James S. Porter, Philip W. Springweiler, Henry W. Hill, Tracy C. Becker, John Coleman, George A. Davis, Jonathan W. Carter, Benjamin S. Dean, Louis McKinstry, Charles Z. Lincoln, Oscar A. Fuller, Frank B. Church.

The Secretary of State — Gentlemen, a quorum of the Constitutional Convention being present, and having taken the constitutional oath, the Convention is now in order for business.

Mr. Root of New York — I move that the Convention now proceed to elect a President by ballot, and that two tellers be appointed by the chair to make the count.

The motion was declared carried.

The Secretary of State appointed Mr. Nicoll of New York, and Mr. Vedder of Cattaraugus, tellers.

The Secretary of State — The next in order is the nomination of candidates.

Mr. Root — I have the honor to nominate for President of this Convention, Mr. Joseph H. Choate of New York.

The Secretary of State — Are there any further nominations? If there are no further nominations, the ballot will be taken.

Mr. Alvord — I call the attention of the Convention to the fact that this is an open ballot, and each man will rise in his place and name his choice.

Mr. Bowers — I object.

The Secretary of State — Objection being made, a ballot must be taken.

A ballot was then taken for the office of President of the Convention, which resulted as follows:

Total number of votes cast	160
Joseph H. Choate received	124
Andrew H. Green received	8
John Bigelow received	8
De Lancey Nicoll received	2
Wright Holcomb received	2
Nelson Smith received	2
William D. Veeder received	1
John H. Peck received	1
Mirabeau L. Towns received	1
Edwin Countryman received	1
Gideon J. Tucker received	2
R. A. Parmenter received	1
Charles H. Truax received	1
David McClure received	1
Blank received	6

The Secretary of State — Mr. Joseph H. Choate having received the votes of a majority of all the members of this Constitutional Convention, I declare him duly elected President of this Convention. I appoint Mr. Root of New York and Mr. Countryman of Albany to escort the President to the chair.

Messrs. Root and Countryman escorted the President to the chair, and he was introduced to the Convention by the Secretary of State, after the constitutional oath of office had been administered by that officer.

Mr. Choate, upon taking the chair as President, spoke as follows:

" Gentlemen of the Convention.— I should be false to every manly instinct if I were not overcome with emotions of gratitude at being called upon by such a generous vote by the combined delegates of the State of New York to preside over this Convention to perform the almost impossible duties of the office except as it shall be rendered possible by your confidence, aid and support. Gentlemen, it is a truly momentous event when the delegates of a State of many millions of people gather together after an interval of fifty years almost, for the purpose of revising and amending the fundamental law of the State. It is true that there was an intermediate Convention in 1867, most of whose work was rejected by the people; and so to this day, we have been living and prospering under the Constitution proposed by the Convention of 1846, and then adopted by

a majority of the people. Great changes have taken place since that day; our population has multiplied over and over; the wealth of the State has magnified to an enormous degree; the habits and customs of the people have largely changed. And yet I call your attention to the fact that under this Constitution that we are now called upon to amend there has been a general, uniform, ever advancing prosperity, comfort and well-being of the people of this State. And so, although it may not be for me to indicate or suggest how far the work of this Convention shall be extended, I may, perhaps, be indulged in one or two suggestions that are pertinent to this moment. And, in the first place, as to the spirit in which our deliberations should from this moment be conducted; it is true we come here, sent by different parties, but after all elected only as the servants of the people and to perform their work. And if I am not mistaken, we have met with the purpose to act not as partisans, not as politicians, but only as citizens and servants of the people. And I believe that on the discussion, consideration and decision of the great questions of policy and principle that shall come before us, we shall not be actuated by any partisan spirit whatever.

"This Constitution we are not commissioned, as I understand it, to treat with any rude or sacrilegious hands. To its general features, the statutes, the judicial decisions, the habits of this great people have long been accustomed and adapted, and it seems to me that we should be false to our trust if we entered upon any attempt to tear asunder this structure which, for so many years, has satisfied, in the main, the wants of the people of the State of New York. (Applause.) And yet, gentlemen, there are certain great questions which we are to consider, which stare us in the face at the very outset of the proceedings and will continue to employ our minds until the day of our final adjournment. There is the great and important question of a reapportionment of the districts of the State. I am innocent enough to believe that even upon that question, which might naturally agitate and arouse party feeling, this Convention will be courageous and virtuous enough to unite upon an apportionment which shall be at once honest, fair and just to all the districts and all the people of the State. And then there is that second question, forced upon our attention by the changed condition of our municipal affairs, that is to say, what we can do, if we can do anything, to restore government which shall be Democratic government and truly Republican government to the people of the great cities of this vast commonwealth. It is not for me to suggest any possible measures, but it will be strange indeed if the assembled wisdom of the delegates of this great State shall fail in uniting upon some pro-

visions that shall enable the people of the great cities of this State, each to conduct and govern its own affairs without the necessity of perpetually resorting to legislative interference and aid. (Applause.) The relief of the Court of Appeals is also a most important subject for us to consider. And then there is the great question of the protection of the purity of the suffrage. Strange indeed it will be if we shall meet and sit together for four or five months and separate without being able to throw some new safe-guards around the purity of the ballot and to rescue our people from those shocking scenes, almost amounting to anarchy, which have recently disgraced the polls in various sections of the State. It is very likely that our Committee on Suffrage will be called upon to deal with another very delicate question (laughter); in its nature the most delicate of which human nature admits. I have no doubt that the demands of those who call for an extension of the suffrage to all human beings without regard to sex, will receive at least the respectful attention and consideration of this Convention in its appropriate time.

"And, then, gentlemen, there is one other subject of universal concern; I mean the great subject of education; the protection, the fostering and permanent establishment of our common schools, and the discussion and perhaps the decision of that other delicate and difficult question, whether its due protection requires, and how far it requires the retention of all public moneys from all rival sectarian institutions of learning. (Applause.)

"And will it be a reflection upon that legislative body that usually meets here and in the adjoining hall if I suggest also that it will be possible to devise some methods for the regulation of legislation so that a breathing interval of at least one hour or one day for consideration shall be allowed to the members of the Legislature and the people who are watching their movements at every step in the progress of a bill, from its introduction to its final passage.

"I think it would be beyond my province to make any other suggestions. We have but little time to perform the great duties which are imposed upon us. Would that we could subject ourselves to a self-denying ordinance, so that three-fourths or nine-tenths of that time should not be spent in idle talk. (Applause.) We come here to act, to think, and to vote. Let us put some restraint upon our tongues. I have no doubt that this Convention will be made the place of deposit of a vast number of crude and undigested schemes, projects, ideas, indicating every method of modern thought; all of which will have to be respectfully received. But will it be out of place for me to indulge the hope that no great part of our valuable time will be wasted in the consideration of projects which, at the out-

set, by the vast majority of the convention and the community, must be recognized as utterly impracticable.

"And now, gentlemen, renewing the expression of my thanks for the confidence which you have shown me, invoking your aid and support at every step in the progress of this Convention, urging you as I promise myself, to lay aside all other occupations, all other engagements and to devote the time allotted to the business of this Convention absolutely to its pursuit and performance, let us proceed to the further business of the Convention with this common purpose only, not to act as partisans, but only as citizens and with one heart for the common welfare of the people of this State." (Applause.)

Mr. Goodelle of Onondaga — I move you, sir, that we proceed to elect by ballot a First Vice-President for this Convention, and at this time I suggest for this office the name of Thomas G. Alvord of Onondaga.

The President — Are there any further nominations for First Vice-President?

Mr. Bowers of New York — Mr. President, I nominate the Hon. John Bigelow for the office of First Vice-President. I ask the indulgence of the Convention for a few minutes while I state my reasons for making the nomination. The President of this Convention has been selected without a nomination being made against him, and by a vote very largely in excess of the representation in this Convention of the majority party. It was an appropriate and proper tribute to the high standing which he holds at the bar, not alone in the city of New York, not alone in the State, but before the whole people of the United States. And we have listened with great pleasure to the remarks which he has made upon taking the chair, and, especially, to those suggestions which have emanated from him that we are to meet in a spirit that is in no wise partisan. In that spirit the minority undoubtedly comes here. Speaking only for myself, as the minority have not authorized me to speak for them, it seems to me it would be a proper thing to pay a tribute to such spirit of the minority and select for the position of First Vice-President a man so well and honorably known as the Hon. John Bigelow. We are informed by the public press that there was a meeting of the delegates of the majority party last evening, and that they agreed upon certain candidates for the different offices to be filled in this Convention. I cannot think but that they made a mistake in not considering the fact that it would have been wise, and would have assisted in the deliberations of this Convention and in the carrying

out of the non-partisan spirit in which we have met, if they had been willing to give one place merely of honor to a gentleman who came here among the minority delegates. As I have said, no nomination was made against the President. I feel it my duty to make this nomination, that at least the question may be presented to the Convention at the very outset as to whether that reasonable consideration is to be given to the minority which, it seems, the surroundings of the Convention demand. For the reasons which I have expressed, I make this nomination.

The President — Are there any other nominations for the office of First Vice-President? If not, I declare the nominations closed. I will appoint Mr. Davies, of Oneida, and Mr. Tekulsky, of New York, tellers.

A ballot was then taken for the office of First Vice-President, which resulted as follows:

Total number of votes cast	162
Thomas G. Alvord received	97
John Bigelow received	62
Robert Deyo received	1
Blank received	2

The President — Gentlemen, you have heard the report of the tellers. I declare Mr. Thomas G. Alvord duly elected First Vice-President of this Convention. The next business will be the election of Second Vice-President.

Mr. Baker of Oswego — I rise for the purpose of placing in nomination the Hon. William H. Steele of Oswego, for Second Vice-President.

The President — Are there any other nominations for Second Vice-President? If not, I declare the nominations closed. The same tellers will act.

A ballot was then taken for the office of Second Vice-President of the Convention, which resulted as follows:

Total number of votes cast	95
William H. Steele received	80
Edwin Countryman received	3
John Bigelow received	3
Peter A. Rogers received	1
John A. Griswold received	1
Delos McCurdy received	1

Andrew H. Green received..... 1
Chauncey S. Truax received..... 1
Blank received 4

The President — You have heard the report of the tellers. I declare Mr. W. H. Steele duly elected Second Vice-President. I call upon the First and Second Vice-Presidents elected to come forward and take the oath of office.

The constitutional oath of office was then administered to the Vice-Presidents by the President.

On motion of Mr. Barhite of Monroe, Charles E. Fitch of Rochester was elected Secretary of the Convention by acclamation.

The President then administered the constitutional oath of office to the Secretary.

On motion of Mr. Lincoln of Cattaraugus, Mr. Herbert A. Briggs of Buffalo, was elected stenographer of the Convention by acclamation.

On motion of Mr. Lester of Saratoga, Mr. W. W. Bennett of Saratoga, was elected Sergeant-at-Arms of the Convention by acclamation.

On motion of Mr. Acker of Steuben, John McElroy of Hornellsville, was elected Assistant Sergeant-at-Arms by acclamation.

The President then administered the constitutional oath of office to the Stenographer and the Sergeant-at-Arms.

R. 1.— Resolution of Mr. Johnson of Kings adopted that all propositions and resolutions to amend the Constitution be referred to the appropriate committee, when appointed.

Mr. Morton of Kings rose to a question of high privilege and presented petitions from persons claiming to have been duly and lawfully elected delegates to this Convention from the Second and Sixth Districts, which seats are now occupied by persons not entitled thereto, and moved that those petitions be read by their titles and referred to the appropriate committee, when appointed.

The motion was carried.

Mr. Becker of Erie presented the petition of Thomas A. Sullivan and Harvey W. Putnam, claiming seats in this Convention from the Thirtieth District, which seats are now held by persons not entitled thereto, and on his motion this petition was referred to the Committee on Privileges and Elections, when appointed.

Mr. Lewis of Monroe — Mr. President, I offer the following resolution:

R. 2.— Resolved, That the rules of the Assembly of the State of New York be adopted temporarily as the rules of this Convention, to continue in force until rules are adopted.

Mr. Cochran of Kings — Mr. President, the Assembly rules are not accessible to the larger portion of the Convention. We have in our hands a manual with rules for the future use of this Convention. It seems to me it would be well to use them. I move, as an amendment, that the rules as printed in the manual of this Convention be used until the adoption of permanent rules.

Mr. Nicoll of New York — No one has seen the rules as printed.

The President — They are printed and ready for distribution.

Mr. Nicoll of New York — I propose, as an amendment to the amendment, that a committee of seven be appointed by the Chair to make temporary rules for the Convention, which may be made permanent.

Mr. Alvord of Onondaga — Mr. President, I am decidedly in favor of the proposition which makes the rules now in the manual, prepared for our use, the rules to govern this Convention in its proceedings until such time as the Committee on Rules, which, as I understand, is to be appointed immediately by the presiding officer of this Convention, shall see fit to look them over and see whether they are fit and proper rules for the government of the Convention. The present rules of the Assembly are utterly inadequate for the government of this body. A hurried set of rules gotten up in the way the gentleman from New York desires, would probably not be sufficient for our purpose. I think we are safer standing by the rules that the manual contains, according to the law which has been passed, until such time as the Committee on Rules shall have the power, if necessary, of giving us different ones.

The President — Mr. Nicoll, do you insist upon your motion?

Mr. Nicoll of New York — No; I have no pride of opinion about it one way or the other; all I want to do is to facilitate the work.

The President — These rules are ready. I will put the question on the amendment that the rules that have been printed by the Compiler, as suggested, for the use of the Convention, be adopted as rules until the Committee on Rules shall report permanent rules.

Mr. Lewis of Monroe — I was not aware when I offered the resolution for the adoption of the Assembly rules that rules had been pre-

pared and filed by the Compiler. With that information, I am willing to accept the amendment offered by Mr. Cochran of Kings.

The President — Mr. Cochran's amendment is accepted by the mover.

Mr. —— —Mr. President, I should suggest that they be adopted, except that the Convention may see fit to alter those rules.

Mr. Lewis of Monroe — I accept the suggestion.

The President — The question is that the proposed rules which appear in the manual, as printed by the Compiler, as suggestions to the Convention, except as the Convention shall otherwise order, be accepted as temporary rules until the Committee on Rules shall make a permanent report.

The President then put the question to the Convention on the resolution of Mr. Lewis, and it was adopted unanimously.

Mr. Root of New York — I offer the following resolution:

R. 3.— Resolved, That the President appoint a Committee on Rules, to consist of seven members, and that the President be an additional member and chairman ex officio.

The President put the question to the Convention as to adopting the resolution of Mr. Root, and it was adopted unanimously.

Mr. Hirschberg of Newburgh — Mr. President, I offer the following resolution:

R. 4.— Resolved, That a Committee on Privileges and Elections, to consist of eleven members, be appointed by the President, with full power to investigate and report to the Convention in the contests for seats now existing, or which may arise; that such committee be and they are hereby authorized to appoint one or more sub-committees from among their number, and said committee and sub-committees are hereby empowered to take testimony in such contests, to require and enforce by subpoena the presence of witnesses and the production of papers and documents, to employ the services of a stenographer, and to sit in the district or districts in which said contests may be located, or elsewhere.

The President put the question to the Convention as to the adoption of the resolution, and it was carried unanimously.

The President — The following gentlemen are appointed as the Committee on Rules: Mr. Root, Mr. McMillan, Mr. Davies, Mr. Acker, Mr. Deyo, Mr. Griswold and Mr. Bowers. I also wish to make another announcement. I understand that there is a great deal of accumulated mail in the post-office, awaiting the order of

members, and it will promote their convenience if I appoint, in pursuance of the statute, a postmaster immediately, and I appoint Joseph S. Saunders of Rensselaer, postmaster.

At this point the Convention, on motion of Mr. Lauterbach of New York, took a recess until half-past three P. M.

Recess.

Tuesday Afternoon, May 8, 1894.

The Convention reassembled Tuesday, May 8, 3.30 P. M., the President taking the chair.

R. 5.— Resolution of Mr. Davenport of Kings adopted that the members of this Convention, who were members of the last Constitutional Convention, be allowed to select their seats in advance of any drawing for them.

R. 6.— Resolution of Mr. Brown of Jefferson adopted that the Vice-Presidents of the Convention be allowed to select their seats in advance of the drawing.

R. 7.— Resolution of Mr. Acker of Steuben adopted that Mr. Griswold of Greene county, be given the privilege of selecing his seat before the drawing should begin.

R. 8.— Resolution of Mr. McClure of New York adopted that upon adjourning for the day the members in a body, headed by the President and Vice-Presidents, should proceed to the Executive Chamber, to be presented to the Governor of the State.

R. 9.— Resolution of Mr. Veeder of Brooklyn adopted that the names of those who had been given the privilege of selecting their seats in advance of the drawing should immediately select the same, according as their names might be called in alphabetical order.

The delegates who had been given the privilege of selecting their seats in advance of the drawing, Messrs. Alvord, Francis, Augustus Frank, Schumaker, Tucker and Veeder, members of the Constitutional Convention of 1867, selected their seats.

Vice-President Steele and Mr. Griswold of Greene county, then selected their seats.

Mr. Powell of Kings — Representing a large number, if not the majority of the members of the Convention, I move that the delegates-at-large be allowed to select their seats before we proceed to seat members of the Convention.

Mr. Root of New York — I hope the gentleman will withdraw the motion. I am sure the delegates-at-large to the Convention wish no

such privilege. We are now members of the Convention, arranged in alphabetical order. We wish to continue members of the Convention on the same footing as every district delegate and to take our chances by the lot with them.

Mr. Powell of Kings — I certainly, when I made the motion, had no desire to thrust favors upon those who were not anxious to receive them; but I intended to supplement that motion with another motion, which, I believe, represents the wishes of some of the members, if not all. There is a feeling on the part of some of the delegations from the districts that they would like to be seated together, in order that there might be opportunity for conference, and I move that instead of drawing for individuals, that it be conducted by districts, Senatorial districts; that the districts be drawn and that the delegates for those districts select seats in the order in which they are drawn.

Mr. Kellogg of Otsego — I move to lay that motion upon the table.

The President put the question to the Convention on the motion to lay Mr. Powell's motion on the table, and it was carried.

The President — The Secretary will read the rule adopted this morning for the purpose of the selection of seats.

The Secretary then proceeded to read the rule.

Mr. —— — Mr. President, I move that the rule laid down in the manual be adopted as to the selection of seats.

Mr. Kellogg of Otsego — I rise to a point of order. We have already adopted that rule.

The President declared the point of order not well taken.

Mr. Veeder of Chautauqua — I move, as an amendment, that the last clause, which says that as soon as the drawing is finished, the Convention shall adjourn, be stricken out.

The President put the question to the Convention on the amendment of Mr. Veeder, and it was carried.

Mr. Smith of New York — Mr. President, if not too late, I rise to a point of order, that the statute forbids any game of chance.

The President declared the point of order not well taken.

The President then put the question to the Convention on the motion to adopt the rule laid down in the manual for the selection of seats, and it was carried.

The President then appointed Mr. Marshall of Onondaga and Mr. McClure of New York to supervise the drawing of the seats, in accordance with the rules.

The President then called Vice-President Alvord to the chair.

The drawing for seats then took place according to the rule adopted, with the following result:

No. 19, Mr. Abbott; 2, Mr. Acker; 102, Mr. Ackerly; 94, Mr. Allaben; 46, Mr. Alvord; 67, Mr. Arnold; 134, Mr. Baker; 90, Mr. Banks; 45, Mr. Barhite; 43, Mr. Barnum; 154, Mr. Barrow; 133, Mr. Becker; —, Mr. Beckwith; 26, Mr. Bigelow; 85, Mr. Blake; 77, Mr. Bowers; 141, Mr. Brown, E. A.; 164, Mr. Brown, E. R.; 31, Mr. Burr; 152, Mr. Bush; 173, Mr. Cady; 113, Mr. Campbell; 135, Mr. Carter; 39, Mr. Cassidy; 121, Mr. Chipp, Jr.; —, Mr. Choate; 99, Mr. Church; 63, Mr. Clark, G. W.; 166, Mr. Clark, H. A.; 10, Mr. Cochran; 163, Mr. Coleman; 95, Mr. Cookinham; —, Mr. Cooney; 61, Mr. Cornwell; 123, Mr. Countryman; 119, Mr. Crimmins; 174, Mr. Crosby; 97, Mr. Curran; 75, Mr. Danforth; 129, Mr. Davenport; 130, Mr. Davies, J. C.; 70, Mr. Davis, G. A.; 30, Mr. Dayton; 122, Mr. Deady; 144, Mr. Dean; 56, Mr. Deyo; 137, Mr. Dickey; 35, Mr. Doty; 18, Mr. Durfee; 86, Mr. Durnin; 159, Mr. Emmet; 32, Mr. Faber; 79, Mr. Farrell; 125, Mr. Fields; 81, Mr. Fitzgerald, F. T.; 51, Mr. Fitzgerald, T. W.; 92, Mr. Floyd; 143, Mr. Foote; 83, Mr. Forbes; 23, Mr. Francis; 55, Mr. Frank, Andrew; 22, Mr. Frank, Augustus; 72, Mr. Fraser; 162, Mr. Fuller, C. A.; 132, Mr. Fuller, O. A.; 57, Mr. Galinger; 158, Mr. Gibney; 54, Mr. Giegerich; 96, Mr. Gilbert; 14, Mr. Gilleran; 52, Mr. Goeller; 107, Mr. Goodelle; 4, Mr. Green, A. H.; 88, Mr. Green, J. I.; 7, Mr. Griswold; 148, Mr. Hamlin; 6, Mr. Hawley; 151, Mr. Hecker; 66, Mr. Hedges; 78, Mr. Herzberg, A.; 59, Mr. Hill; 38, Mr. Hirschberg, M. H.; 53, Mr. Holcomb; 17, Mr. Holls; 27, Mr. Hotchkiss; 48, Mr. Hottenroth; 8, Mr. Jacobs; 114, Mr. Jenks; 15, Mr. Johnson, I. Sam; 145, Mr. Johnson, J.; 58, Mr. Johnston, R. M.; 36, Mr. Kellogg; 76, Mr. Kerwin; 126, Mr. Kimmey; 156, Mr. Koch; 131, Mr. Lauterbach; 13, Mr. Lester; 41, Mr. Lewis, C. H.; 44, Mr. Lewis, M. E.; 175, Mr. Lincoln; 40, Mr. Lyon; 105, Mr. Manley; 60, Mr. Mantanye; 80, Mr. Marks; 127, Mr. Marshall; —, Mr. Mase; 108, Mr. Maybee; 73, Mr. McArthur; 24, Mr. McClure; 149, Mr. McCurdy; 3, Mr. McDonough; 62, Mr. McIntyre; 64, Mr. McKinstry; 74, Mr. McLaughlin, C. B.; 49, Mr. McLaughlin, J. W.; 21, Mr. McMillan; 142, Mr. Mereness; 118, Mr. Meyenborg; 14, Mr. Moore; 115, Mr. Morton; 82, Mr. Mullen; 42, Mr. Mulqueen; 93, Mr. Nichols, W. H.; 111, Mr. Nicoll, De L.; 1, Mr. O'Brien; 155, Mr. Ohmeis; 47, Mr. Osborn; 37, Mr. Parker; 139, Mr. Parkhurst; 150, Mr. Parmenter; 117, Mr. Peabody; 5, Mr. Peck; 138, Mr. Phipps; 87, Mr. Platzek; 106, Mr. Pool; 69,

Mr. Porter; 157, Mr. Powell; 177, Mr. Pratt; 168, Mr. Redman; 98, Mr. Riggs; 140, Mr. Roche; 120, Mr. Roderick; 11, Mr. Rogers; 16, Mr. Root; 136, Mr. Rowley; 101, Mr. Sandford; 9, Mr. Schumaker; 103, Mr. Smith; 25, Mr. Speer; 20, Mr. Spencer; 161, Mr. Springweiler; 28, Mr. Steele, A. B.; 65, Mr. Steele, W. H.; 91, Mr. Storm; 116, Mr. Sullivan; 104, Mr. Tekulsky; 71, Mr. Tibbetts; 124, Mr. Titus; 89, Mr. Towns; 165, Mr. Trapper; 112, Mr. Truax, C. H.; 50, Mr. Truax, C. S.; 12, Mr. Tucker; 68, Mr. Turner; 153, Mr. Van Denbergh; 100, Mr. Vedder; 84, Mr. Veeder; 128, Mr. Vogt; —, Mr. Waterbury; 33, Mr. Wellington; 109, Mr. Whitmyer; 34, Mr. Wiggins; 29, Mr. Williams; 110, Mr. Woodward.

When the name of Mr. Lewis was drawn Mr. Barhite was authorized to select a seat for him.

When the name of Mr. J. W. McLaughlin was drawn, Mr. J. I. Green was authorized to select a seat for him.

When the name of Mr. Galinger was drawn Mr. Morton was authorized to select a seat for him.

When the name of Mr. Giegerich was drawn Mr. Holcomb was authorized to select a seat for him.

When the name of Mr. Gibney was drawn Mr. Emmet was authorized to select a seat for him.

When the name of Mr. Koch was drawn Mr. Goeller was authorized to select a seat for him.

Mr. Acker of Steuben — I move that when this Convention adjourn, it be until Tuesday morning, May fifteenth, at ten o'clock.

Mr. Nicoll of New York — It seems to me that an adjournment of ten days would not be too long a time to give the President to make up the committees of the Convention. I move as an amendment that we adjourn to Tuesday, the twenty-second of May, at twelve o'clock, noon.

Mr. Acker of Steuben — With the consent of the gentleman from New York, I withdraw my motion, and move that when this Convention adjourn it be until May 22, 1894, at twelve o'clock, noon.

The Vice-President put the question to the Convention and it was carried.

The President resumed the chair and announced that he had appointed the following-named delegates to be the Committee on Privileges and Elections: Mr. Hirschberg, Mr. Cookinham, Mr. Lester, Mr. Durfee, Mr. Crosby, Mr. Foote, Mr. Lincoln, Mr. Countryman, Mr. Deady, Mr. Gibney and Mr. Chipp.

The President also announced that he had appointed George E. Smith, Janitor, and Edgar L. Murlin, Librarian.

The Secretary announced the appointment of Edward M. Johnson of Otsego county as Assistant Secretary.

Mr. Root — I ask leave to submit a partial report of the Committee on Rules under their direction, the chairman being occupied as Presiding Officer of this Convention. I must ask the indulgence of the Convention for presenting this report in such a form that it would be probably impossible for anyone but myself to read it. Rather than have the Convention detained while the matter was arranged, we have made alterations in the pages of the manual. With the permission of the Convention, instead of sending up the report, I will read it from my place. The committee recommend the adoption of the following rules: The President shall appoint the following standing committees to report upon the subjects named, and such others as may be referred to them, viz.: First, a Committee upon the Preamble and Bill of Rights, to consist of eleven members. Second, a Committee upon the Legislature, its organization and the number, apportionment, election, tenure of office and compensation of its members, to consist of seventeen members. Third, a Committee upon the Powers and Duties of the Legislature, except as to matters otherwise referred, to consist of eleven members. Fourth, a Committee upon the Right of Suffrage and the Qualifications to Hold Office, to consist of seventeen members. Fifth, upon the Governor and Other State Officers, their election or appointment, tenure of office, compensation, powers and duties, except as otherwise referred, to consist of seventeen members. Sixth, a Committee on the Judiciary, to consist of seventeen members. Seventh, a Committee on the State Finances, Revenues and Expenditures and Taxation and Restrictions upon the Powers of the Legislature, to consist of seventeen members. Eighth, a Committee upon Cities, their organization, government and powers, to consist of seventeen members. Ninth, a Committee on Canals, to consist of eleven members. Tenth, a Committee on Railroads, Transportation and Electrical Transmission, to consist of seventeen members. Eleventh, a Committee on Counties, Towns and Villages, their organizations, government and powers, to consist of seventeen members. Twelfth, a Committee on County, Town and Village Officers, other than judicial, their election or appointment, tenure of office, compensation, powers and duties, to consist of seventeen members. Thirteenth, a Committee on State Prisons and Penitentiaries and the Preven-

tion and Punishment of Crime, to consist of eleven members. Fourteenth, a Committee on Corporations and Institutions, not otherwise herein specified, to consist of seventeen members. Fifteenth, a Committee on Currency, Banking and Insurance, to consist of eleven members. Sixteenth, a Committee on the Militia and Military Officers, to consist of seventeen members. Seventeenth, a Committee on Education and the Funds Relating Thereto, to consist of seventeen members. Eighteenth, a Committee on Charities and Charitable Institutions, to consist of seventeen members. Nineteenth, a Committee on Industrial Interests, except those already referred, to consist of seventeen members. Twentieth, a Committee on the Salt Springs of the State, to consist of seven members. Twenty-first, a Committee on the Relations of the State to the Indians Residing Therein, to consist of seven members. Twenty-second, a Committee on Future Revisions and Amendments of the Constitution, to consist of seven members. Twenty-third, a Committee on Revision and Engrossment, to consist of seven members. Twenty-fourth, a Committee on Privileges and Elections, to consist of eleven members. Twenty-fifth, a Committee on Printing, to consist of seven members. Twenty-sixth, a Committee on Contingent Expenses, to consist of seven members. Twenty-seventh, a Committee on Rules, to consist of seven members, and the President of the Convention as Chairman.

This report is submitted by the unanimous action of the entire committee.

Mr. Moore of Clinton — I move the acceptance and adoption of the report of the Committee on Rules.

Mr. Marks of New York — I move, as an amendment, that the Committee on the Governor also take into consideration the pardoning power, which, I see, has been omitted from the printed rules.

The President — I may say that it was the opinion of the Committee on Rules when they made the change, striking out the Committee on the Pardoning Power, that the Committee on the Governor would include that of the Pardoning Power.

Mr. Root of New York — As the Committee on the Governor includes the Governor's powers and duties, and as the powers and duties of the Governor under the present Constitution include the pardoning power, the committee think that that is included.

Mr. Marks of New York — If the committee think that, I will withdraw the amendment.

The President then put the question to the Convention on the motion to adopt the report of the Committee on Rules and it was carried.

Mr. Marshall of Onondaga — I offer the following resolution:

R. 10.— Resolved, That all sessions of this Convention, until its final adjournment, be held in the Assembly Chamber in the Capitol at Albany.

My purpose is that the delegates may be permitted to make arrangements for the Convention, so that they may know whether we are to stay here or to go elsewhere. I think it is fitting we should take some action at this time; therefore, I make this motion at this time.

Mr. McClure of New York — I move that the motion of Mr. Marshall lie upon the table for the present.

The President put the question to the Convention on the motion of Mr. McClure and it was carried.

At this point the Convention adjourned, to meet, pursuant to the motion adopted, at the Assembly Chamber, Albany, Tuesday, May 22, 1894, at twelve o'clock, noon.

Tuesday, May 22, 1894.

The Constitutional Convention of the State of New York met at the Assembly Chamber, Albany, N. Y., May 22, 1894, at 12 M. The Convention was called to order by President Choate. The Rev. Canon Fulcher, of All Saints' Cathedral, Albany, offered prayer.

The President — Are there any delegates present who have not taken the oath at the former sessions? If there are, they will please come forward to the desk, sign the roll and take the oath of office.

Mr. Leonard A. Giegerich was duly sworn in by the President.

The President announced the reading of the Journal of May 8, 1894.

The Assistant Secretary read the Journal.

The President — Unless some amendments are offered to the minutes as read by the Secretary, the Journal will stand approved.

The President — The Secretary will now read the list of employes as appointed by the President, so far as made.

The Secretary read the following appointments by the President:

Librarian — E. L. Murlin, Nineteenth District.

Assistant Librarian — J. W. Jones, Third District.

Postmaster — J. S. Sanders, Eighteenth District.

Clerks — J. W. Titus, First District; C. H. Bassett, Sixteenth District; H. G. Getter, Seventeenth District; J. H. Rathbone, Nineteenth District; J. P. Brenan, Twenty-first District; E. A. Fay, Twenty-second District; J. A. Cook, Twenty-third District; Ray Smith, Twenty-fourth District; George B. Munn, Thirty-first District.

President's Clerk — C. A. de Gersdorff, New York.

Doorkeepers — William Henkel, New York; George D. Wicks, Second District; Hiram Van Tassel, Fifteenth District; Asa P. Fish, Twenty-sixth District.

Janitor — George E. Smith, Nineteenth District.

Assistant Janitor — Thomas Brown, New York.

Messengers — John Seaman, Fourth District; A. B. Crumb, Twentieth District; Joseph Fayel, Twenty-second District; Thomas Cheney, Twenty-fourth District; C. E. Boyden, Twenty-fifth District; H. D. Taylor, Twenty-eighth District; W. T. Poole, Twenty-ninth District; F. C. Loomis, Thirtieth District; T. H. Rochford, Thirtieth District; P. J. Haybyrne, New York.

Pages — John Gueron, Sixth District; William Ross, New York; George Tierman, Nineteenth District; F. M. Moore, Twenty-first District; J. J. Guernsey, Twenty-third District; S. F. Barager, Twenty-fifth District; C. Weddigan, Twenty-sixth District; William Logan, Nineteenth District; James Huested Millard.

The President — The Secretary will now read his list of appointees.

The Secretary read the following appointments:

Assistant Secretaries — James C. Sheldon, Marcus M. Cass, Emmet W. Parkhill.

The President — The Secretary will now read the list of committees as appointed by the chair:

Preamble — Francis, chairman; Alvord, Augustus Frank, Van Denbergh, Woodward, Parker, Bigelow, A. H. Green, Tucker, Schumaker, Veeder.

Legislative Organization — Becker, chairman; Lincoln, Acker, E. R. Brown, Dickey, Crosby, Davies, Root, Morton, Schumaker, Crimmins, Giegerich, Bush, Peck, Osborn, Sullivan.

Legislative Powers — Vedder, chairman; Goodelle, Wellington, Barhite, Dean, Johnston, Mantayne, Moore, Parker, E. A. Brown, Roche, Rogers, Maybee, Kimmey, Mullen, Kirwin, Hottenroth.

Suffrage — Goodelle, chairman; Cookinham, Parkhurst, Lauterbach, Hill, Abbott, Wellington, O'Brien, Wiggins, Alvord, Bigelow, Tucker, McClure, Nicoll, Deady, Towns, Cochran.

Governor and State Officers — McMillan, chairman; Abbott, Pool, O. A. Fuller, Hamlin, Mereness, Pratt, Manley, Vedder, Hedges, McCurdy, Jenks, Smith, Tekulsky, Campbell, Trapper, Marks.

Judiciary — Root, chairman; Marshall, Cookinham, Becker, Cady, Parkhurst, Gilbert, J. Johnson, McMillan, Foote, C. H. Truax, Parmenter, Countryman, Bowers, Nicoll, Jenks, Bush.

State Finances and Taxation — Acker, chairman; Vedder, I. S. Johnson, Cassidy, A. B. Steele, Jacobs, O. A. Fuller, Tibbetts, Pratt, Kellogg, F. T. Fitzgerald, Speer, Smith, Burr, Mulqueen, J. W. McLaughlin, Blake.

Cities — J. Johnson, chairman; Francis, Becker, H. A. Clark, C. H. Lewis, Holls, M. E. Lewis, Spencer, Morton, Coleman, A. H. Green, Davenport, F. T. Fitzgerald, Hotchkiss, Speer, Rowley, Banks.

Canals — Cady, chairman; Porter, Floyd, Fraser, Baker, Nichols, G. W. Clark, Danforth, Williams, Blake, Hottenroth.

Railroads, etc.— Davies, chairman; McIntyre, Cornwell, Dean, Johnston, Baker, Storm, McArthur, Springweiler, Redman, McClure, Hotchkiss, Chipp, Koch, Holcomb, Herzberg, Curran.

County, Town and Village Government — C. B. McLaughlin, chairman; Floyd, Doty, Mereness, Arnold, Nichols, McKinstry, G. W. Clark, Carter, C. A. Fuller, Maybee, Kimmey, Peabody, Titus, Burr, Herzberg, T. W. Fitzgerald.

County, Town and Village Officers — Parkhurst, chairman; Lester, Mantanye, Moore, Barnum, Church, Redman, Vogt, Jacobs, Hecker, Sullivan, Rogers, Emmet, Ohmeis, Titus, Kirwin, Gilleran.

State Prisons and Penitentiaries — McDonough, chairman; Barhite, Koch, Crosby, O'Brien, Allaben, Andrew, Frank, Rowley, Campbell, Meyenborg.

Corporations — Hawley, chairman; Dickey, Barrow, H. A. Clark, W. H. Steele, Lyon, Storm, C. A. Fuller, Van Denbergh, Doty, McCurdy, Veeder, Banks, Davenport, Roche, Forbes, Emmet.

Banking and Insurance — Augustus Frank, chairman; Davis, Whitmyer, M. E. Lewis, Phipps, Barnum, Galinger, Sandford, Fields, Durnin, Riggs.

Military — Hedges, chairman; Davis, Ackerly, Galinger, Gibney, Cochran, Goeller.

Education — Holls, chairman; Durfee, E. R. Brown, Hirschberg, Hill, McDonough, McIntyre, Tibbetts, Cornwell, Fraser, Devo, Sandford, Peck, C. S. Truax, Platzek, Gilleran, Towns.

Charities — Lauterbach, chairman; C. B. McLaughlin, I. S. Johnson, Cassidy, A. B. Steele, Phipps, Powell, Arnold, Manley, Kellogg, Giegerich, Danforth, Durnin, C. S. Truax, Forbes, Peabody, Riggs.

Industrial Interests — Gilbert, chairman; M. E. Lewis, Barhite, Wiggins, Coleman, Faber, Ackerly, Lester, Carter, Hecker, C. H. Truax, Crimmins, Osborn, Ohmeis, Trapper, Roderick, Goeller.

Salt Springs — Alvord, chairman; Williams, Springweiler, Vogt, Allaben, Mulqueen, Farrell.

Indians — C. H. Lewis, chairman; Porter, Church, Turner, Platzek, J. I. Green, Mullen.

Constitutional Amendments — Marshall, chairman; Powell, Spencer, Andrew Frank, Griswold, Parmenter, Meyenborg.

Revision and Engrossing — Foote, chairman; Hawley, W. H. Steele, Woodward, Holcomb, Roderick, Farrell.

Privileges and Elections — Hirschberg, chairman; Cookinham, Lester, Crosby, Foote, Lincoln, Durfee, Deady, Countryman, Chipp, Gibney.

Printing — Hamlin, chairman; Pool, McKinstry, Turner, Marks, Fields, Beckwith.

Contingent Expenses — Lyon, chairman; E. A. Brown, Whitmyer, Faber, J. I. Green, Tekulsky, Curran.

Rules — The President, chairman; Root, Acker, Davies, McMillan, Bowers, Deyo, Griswold.

The President — It will now be in order for the Convention to pass some orders under which rooms may be assigned for the use and occupation of these various committees.

Mr. McMillan — Mr. President, I offer the following resolution:

The President — The Secretary will read the resolution offered by Mr. McMillan for the assignment of rooms for the different committees.

The Secretary read the following resolution:

R. 11.— Resolved, That a committee of one from each judicial department be appointed by the President to assign appropriate committee rooms for the several standing committees of the Convention.

The President put the question and the resolution was adopted.

The President — I will appoint as such committee Mr. Davis of Erie, Mr. Cookinham of Oneida, Mr. Deady of New York, Mr. Johnston of Kings, and Mr. Bush of Ulster.

The President — It is now my duty to call the attention of the Convention to a matter of the highest privilege, and of the first

importance to the Convention, and that is the fact that yesterday I was served with a process from the Supreme Court of the State of New York in the matter of the application of Herman F. Trapper, a member seated in the Convention, and containing the following order:

"On reading and filing the petition of Herman F. Trapper, verified 11th day of May, 1894, and after hearing Frederick Haller, Esq., attorney for the petitioner, no one opposing, it is

Ordered, That a writ of prohibition issue out of this court to the Convention to revise and amend the Constitution, and to Joseph H. Choate, President of the Convention, to revise and amend the Constitution, and to Harvey W. Putnam, and to Thomas A. Sullivan, commanding the said Convention, and the said Joseph H. Choate, President of the said Convention, and the said Harvey W. Putnam and the said Thomas A. Sullivan, and each and every one of them, to desist and refrain from taking any further action touching the rights of the relator and petitioner herein to a seat in the said Convention, and to refrain from any acts interfering with or in any manner abridging the petitioner's rights and privileges as a member of the said Convention so long as the petitioner shall comply with the rules and regulations adopted for the government of the said Convention, except as to the taking of testimony in proceedings already instituted, and that said writ be returnable on the 2d day of June, 1894, at ten o'clock in the forenoon of that day, at a Special Term of the Supreme Court at Hudson, appointed to be held before Justice Edwards. Let said writ and papers be served according to law on or before May 22, 1894."

I believe the same process has been served upon a very large number of the members of the Convention, and under the rules this matter will be referred to the Judiciary Committee with a request that they will report as speedily as possible to the Convention, what action ought to be taken, and how, and by whom.

The President — The first order of business as indicated in the rules which have been temporarily adopted, viz.: Those that are contained in the manual, which will be found in chapter two, page ninety, of the Secretary's manual, is the presentation of memorials, and the Chair will ask that every delegate rise in his place to present a memorial, or any other matter, and announce his name and district, and that the delegates at large, if they have any memorials to present, will be expected to present them as from their own districts. In this matter of memorials, if there are any such, they are not under

this rule to be called for by districts. Has any gentleman any memorials to present?

Mr. Crosby presented a memorial and petition of the Reverend A. M. Smealie and fifty-eight others against taxation for religious and sectarian purposes.

Referred to the Committee on Powers and Duties of the Legislature.

Mr. Moore of Clinton presented a petition.

The President — The rules require that every gentleman before handing up a memorial must put his name upon the back of it before it will be read.

The petition was returned to Mr. Moore for proper endorsement.

Mr. Morton offered a petition of William H. Johnson, editor of the Albany Capitol, praying that the word "color" may be stricken out of the Constitution.

Referred to the Committee on the Right of Suffrage.

Mr. Morton — I suggest that it be referred to the Committee on Apportionment.

The President put the question, as to whether the reference should be changed from the Committee on Suffrage to the Committee on Apportionment, and it was determined in the negative.

The President — If there are no other memorials to be presented, are there any communications from State officers?

The President — The next order of business is notices, motions and resolutions, to be called for by districts and numerically. The Secretary will call the roll by districts, by Senate districts from which the delegates were elected.

The Secretary proceeded to call the roll by districts.

Mr. Roche offered the following resolution, which was read by the Secretary as follows:

R. 12.— Resolved, That the State Comptroller be and is hereby requested to transmit to this Convention a statement of the amount that has been paid each year for the past five fiscal years to judges of the Court of Appeals and justices of the Supreme Court, pursuant to section 13 of article 6 of the Constitution, and also the amount appropriated at the recent session of the Legislature for former judges of said courts, or the family of any deceased judge.

Mr. Roche also offered the following resolution:

R. 13.— Resolved, That the Secretary of this Convention is hereby

requested to correspond with the mayor of each city in this State and obtain from him a statement showing:

1. The total funded debt of said city (after deducting the amount in its sinking fund applicable to the payment of such debt) at the close of the last fiscal year of said city.

2. The total assessed valuation of the real and personal property in said city as appeared by the last assessment rolls.

3. The percentage of valuation at which property is usually assessed in said city for the purposes of taxation.

4. The rate per cent of tax on each one hundred dollars of valuation as shown by the last tax levy.

5. The time of payment of the longest of the present outstanding bonds of said city.

And said Secretary is also hereby requested to correspond with the county treasurers of the several counties of the State, and procure from them a statement showing:

1. The total funded debt of said county.

2. The assessed valuation of the real and personal property in each of said counties, as appears by the last assessment roll.

3. The rate per cent of tax on each one hundred dollars of valuation imposed in said county for county and State purposes.

4. The time of payment of the longest of the outstanding bonds of said county.

And the mayors of the said several cities and the county treasurers of the said several counties respectively, are hereby requested to furnish such statements to the Secretary of this Convention. When such statements are received the Secretary shall cause them to be properly arranged and presented in tabular form to this Convention.

Mr. Roche also offered the following resolution:

R. 14.— Resolved, That the clerks of the several courts in the counties of New York, Kings, Westchester, Albany, Rensselaer, Schenectady, Onondaga, Monroe and Erie, in which persons are naturalized pursuant to the laws of the United States, are hereby required to transmit to this Convention a statement of the number of persons naturalized in the said courts, respectively, during the years 1888, 1891, 1892, 1893, and to specify in said statements how many of such persons were naturalized during the month of October in each of said years, and also the number of females who were naturalized during said years.

The President — These resolutions offered by Mr. Roche will,

under rule 50, lie over for one day for consideration, after which they will be called up for consideration.

Mr. Davis — Mr. President, I desire to give notice that there will be a meeting of the committee appointed on committee rooms immediately upon the adjournment of the Convention this morning.

The President — The next order of business is the reception of overtures, including propositions for Constitutional alterations.

Mr. Holls — Mr. President, I beg to introduce the following amendments.

The President — Are they all endorsed?

Mr. Holls — Yes, sir, they are all endorsed, with the proper committees also to which I would like to have them sent.

The Secretary read the titles of the amendments as follows:

O. 1.— An overture proposing amendment to article 10 of the Constitution, on civil service of the State.

Referred to the Committee on Governor and Other State Officers.

O. 2.— Also proposed amendment to article 8, to protect the free common schools, and to prohibit all sectarian appropriations.

Referred to the Committee on Education.

O. 3.— Also proposed amendment to article 8 of the Constitution, on the separation of city elections from national and State elections.

Referred to the Committee on Cities.

O. 4.— Also proposed amendment to article 4 of the Constitution, changing the term and time of election of Governor so as to separate city, local and State elections.

Referred to the Committee on Governor and Other State Officers.

Mr. Dickey offered the following proposed amendments to the Constitution:

O. 5.— Proposed amendment to section 16, article 6 of the Constitution, doing away with justices of sessions.

Referred to the Committee on Judiciary.

O. 6.— Also proposed amendment to the Constitution doing away with the office of coroner as a constitutional office.

Referred to the Committee on County Officers.

O. 7.— Also proposed amendment to the Constitution providing that jurors shall be six in number, instead of common law jurors of twelve.

Referred to the Committee on Judiciary.

O. 8.— Mr. Gilbert offered an overture in relation to the qualifications of voters.

Referred to the Committee on Suffrage.

O. 9.— Mr. Alvord offered an overture to amend section 7 of article 7 of the Constitution, entitled "Salt Springs."

Referred to the Committee on Salt Springs.

Mr. McMillan offered the following:

O. 10.— Proposed amendment to section 6 of article 7 of the Constitution of the State of New York, relating to canals.

Referred to the Committee on Canals.

O. 11.— Also proposed amendment to section 16 of article 3 of the Constitution of the State of New York, relating to legislation.

Referred to the Committee on Legislative Powers.

O. 12.— Also proposed amendment to section 13 of article 1 of the Constitution of the State of New York, relating to taxation.

Referred to Committee on Finance and Taxation.

Mr. Vedder offered the following:

O. 13.— Proposed constitutional amendment to sections 2, 3, 4 and 5 of article 3, in relation to apportionment.

Referred to Committee on Apportionment.

Mr. Marks offered the following:

O. 14.— Proposed amendment to section 5 of article 4 of the Constitution, providing for a Court of Pardons, consisting of the Governor and three judges.

Referred to the Committee on Governor and Other State Officers.

O. 15.— Also proposed amendment to section 7 of article 3, providing for compensation for taking private property.

Referred to the Committee on Judiciary.

O. 16.— Also proposed amendment to section 6, article 3, providing for increase of salary of Senators and Assemblymen.

Referred to the Committee on Legislative Powers and Duties.

O. 17.— Also amendment to section 2 of article 1, providing for the drawing of additional jurors in criminal and civil cases.

Referred to the Committee on Judiciary.

O. 18.— Also amendments to section 1 of article 3, as to the duration of term of legislative office.

Referred to the Committee on Legislative Organization.

O. 19.— Also proposed amendment to section 2, article 6, as to judges of the Court of Appeals.

Mr. Dean offered the following:

O. 20.— An overture to amend section 7, to extend the right to the Legislature to contract debts and to provide for the completion of the State capitol.

Referred to the Committee on State Finances.

O. 21.— Also an overture to amend article 7, to enfranchise women, to disfranchise mercenary voters, to suspend the suffrage under certain conditions, and to preserve the integrity of the ballot.

Referred to the Committee on Suffrage.

O. 22.— Also an overture to provide home rule for cities and to amend so much of article 8 of the Constitution as may be inconsistent with its provisions.

Referred to the Committee on Cities.

O. 23.— Also an overture to abolish all commissions, except those consisting of elective officers, and to inhibit the power of creating permanent commissions.

Referred to Committee on Powers and Duties of the Legislature.

O. 24.— Also an overture to amend section 3 of article 1, guaranteeing religious freedom, and to restrain the Legislature from making any grants of money, property or credit to or in aid of any sectarian institution, and abolishing all exemptions of church property from taxation.

Referred to the Committee on Powers and Duties of the Legislature, and also to the Committee on Taxation.

O. 25.— Also an overture to amend section 13, article 6, to increase the age limits of judges and justices, and to abolish the pensioning of such judges and justices as may have served ten years.

Referred to the Committee on Judiciary.

O. 26.— Also an overture to add section 15, article 7, to the Constitution, to restore to the people the rights and privileges pretended to have been granted by the Superintendent of Public Works to the Cataract Electrical Company, under the pretended authority of section 2, chapter 499 of the Laws of 1893.

Referred to the Committee on Canals.

Also an argument in support of an overture to add section 15 of article 7 to the Constitution, etc.

The President — The next order of business will be report of standing committees. Mr. Cookinham, has your committee any report to make.

Mr. Cookinham — Not at present.

The President — Has the Committee on Rules any report to make? I call the attention of the Convention to the fact that the time of the sitting has not yet been fixed. That is to say, what hour we are to meet.

R. 15.— Mr. Cookinham — Resolved, That the sitting be at eleven o'clock each day until two o'clock.

Mr. McMillan — I move as an amendment to that, that the Convention begin at ten o'clock in the morning, until further orders.

Mr. Alvord — Mr. President, I desire to say for the information of the gentlemen present, that they will find that the first noon-hour is early enough, at least, for five or six weeks of our session. Almost the entire amount of our work will be done in committees, and cannot be avoided under any circumstances. I, therefore, move to amend the original proposition by saying eleven o'clock, and adjourn at two unless otherwise ordered by the Convention itself. We may get through with our work in fifteen minutes, and may be in ten minutes. Twelve o'clock in the day is the best time for us to come together, and then adjourn in time for lunch. All of our work for the next six weeks will be done in committees.

Mr. Cookinham — Mr. President, I desire, if it is permissible, to accept the amendment of the gentleman from Onondaga (Mr. Alvord).

The President — The chair is of the opinion that the question is still upon Mr. McMillan's amendment.

Mr. McMillan — I think my friend has in mind the winter sessions of the Legislature. We must remember that we now have a good portion of the day before us, before ten o'clock. These sessions, we agree, cannot continue for more than half an hour for four weeks. We can adjourn for lunch an hour, and then have recess in the afternoon.

Mr. H. A. Clark — Mr. President, I wish to make the motion that no session be held on Saturday, Sunday or Monday.

The President — The chair is of the opinion that Mr. Clark's motion should be a separate motion, not being germane to the original motion, but simply fixes the hour. The question is on Mr. McMillan's amendment that the daily session begin at ten o'clock on each day.

The roll-call being demanded, the Secretary called the roll on Mr. McMillan's amendment.

Mr. W. H. Steele — Mr. President, I ask to be excused from vot-

ing, and will briefly state my reasons. I know from experience that June and July render this building far from pleasant by reason of their extreme heat. I believe the best work in committees can be done from nine to eleven, two hours. I believe in the afternoon, after dinner, it will be impossible to get the committees together, especially in the close rooms of the capitol. This room itself is by no means remarkably pleasant in the afternoons of June and July, and the only time that it is bearable, even in this building, I think the gentleman will find, without doubt, is after eleven in the morning. Then, they can leave the close and stuffy committee rooms, for they are close and stuffy, no matter how elegant they may seem, and can come to this room and hold sessions until one, two or three o'clock. Mr. President, I withdraw my request to be excused from voting, and vote no.

Ayes — Mr. Abbott, Mr. Acker, Mr. Arnold, Mr. Barnum, Mr. Barrow, Mr. Becker, Mr. Blake, Mr. Bowers, Mr. Brown, E. A.; Mr. Brown, E. R.; Mr. Carter, Mr. Chipp, Jr.; Mr. Clark, G. W.; Mr. Clark, H. A.; Mr. Cochran, Mr. Coleman, Mr. Cornwell, Mr. Countryman, Mr. Crimmins, Mr. Crosby, Mr. Davenport, Mr. Davies, J. C.; Mr. Davis, G. A.; Mr. Dean, Mr. Deyo, Mr. Doty, Mr. Durfee, Mr. Faber, Mr. Farrell, Mr. Fitzgerald, F. T.; Mr. Foote, Mr. Forbes, Mr. Frank, Augustus; Mr. Fraser, Mr. Fuller, C. A.; Mr. Giegerich, Mr. Goeller, Mr. Green, A. H.; Mr. Green, J. I.; Mr. Griswold, Mr. Hamlin, Mr. Hecker, Mr. Herzberg, A.; Mr. Hill, Mr. Holls, Mr. Hottenroth, Mr. Jenks, Mr. Johnson, I. Sam; Mr. Johnson, J.; Mr. Kerwin, Mr. Lester, Mr. Manley, Mr. Marks, Mr. Marshall, Mr. McArthur, Mr. McCurdy, Mr. McIntyre, Mr. McLaughlin, J. W.; Mr. Mereness, Mr. Moore, Mr. Morton, Mr. O'Brien, Mr. Ohmeis, Mr. Osborn, Mr. Peabody, Mr. Platzek, Mr. Porter, Mr. Redman, Mr. Roderick, Mr. Rogers, Mr. Root, Mr. Springweiler, Mr. Tekulsky, Mr. Truax, C. H.; Mr. Truax, C. S.; Mr. Turner, Mr. Vogt, Mr. Whitmyer, Mr. Wiggins, Mr. Woodward — 80.

Noes — Mr. Ackerley, Mr. Allaben, Mr. Alvord, Mr. Baker, Mr. Banks, Mr. Barhite, Mr. Beckwith, Mr. Bigelow, Mr. Burr, Mr. Cady, Mr. Cassidy, Mr. Church, Mr. Cookinham, Mr. Curran, Mr. Danforth, Mr. Deady, Mr. Dickey, Mr. Durnin, Mr. Emmet, Mr. Fields, Mr. Floyd, Mr. Francis, Mr. Frank, Andrew; Mr. Fuller, O. A.; Mr. Galinger, Mr. Gibney, Mr. Gilbert, Mr. Gilleran, Mr. Goodelle, Mr. Hawley, Mr. Hedges, Mr. Hirschberg, M. H.; Mr. Kellogg, Mr. Kimmey, Mr. Lauterbach, Mr. Lewis, C. H.; Mr. Lincoln, Mr. Mantanye, Mr. Maybee, Mr. McClure, Mr. McDonough, Mr.

McKinstry, Mr. Meyenborg, Mr. Mulqueen, Mr. Nichols, W. H.; Mr. Parker, Mr. Parkhurst, Mr. Parmenter, Mr. Peck, Mr. Phipps, Mr. Pool, Mr. Pratt, Mr. Riggs, Mr. Roche, Mr. Rowley, Mr. Sandford, Mr. Schumaker, Mr. Speer, Mr. Spencer, Mr. Steele, A. B.; Mr. Steele, W. H.; Mr. Storm, Mr. Sullivan, Mr. Tibbetts, Mr. Titus, Mr. Van Denbergh, Mr. Vedder, Mr. Veeder, Mr. Wellington, Mr. Williams — 69.

The Secretary announced the result: Ayes, 80; Noes, 69; and the President called the amendment carried.

The President — The question is now on the resolution as amended, that the Convention hold its session at ten o'clock A. M.

The President put the question, and it was declared in the affirmative.

The President then put the question on the motion of H. A. Clark that no session be held on Saturday, Sunday or Monday.

Mr. A. B. Steele — I move to amend, except on Monday at eight P. M.

Mr. Holls — I move to refer that resolution with the amendments to the Committee on Rules.

Mr. Mullen — I wish to offer an amendment that legal holidays be excluded.

Mr. Clark accepted the amendment of Mr. Mullen.

The President — The pending motion is to refer Mr. Clark's resolution to the Committee on Rules.

Mr. McClure — I do not understand why this Convention cannot decide for itself the particular days as to its sitting. I am very much opposed to this reference. I suggest that the question be divided, and that the motion be put that no sessions be held on Saturdays or Sundays.

The President put the question on Mr. Holls's motion to refer the resolution and amendment to the Committee on Rules, and it was determined in the negative.

Mr. McClure — I now move that the motion be divided, so as to read that there will be no sessions on Saturdays, Sundays or legal holidays.

The President put the question on that part of the resolution which reads that there shall be no session on Saturdays, Sundays or any legal holiday, and it was determined in the affirmative.

The President put the question as to whether there shall be a session on Monday.

Mr. A. B. Steele — I offer an amendment that there be no session on Monday except at eight o'clock P. M.

Mr. H. A. Clark — I accept the amendment.

The President — Mr. Clark accepts the amendment.

Mr. Acker — Mr. President, I think this question of meeting Monday evening compels all the members in the western and northern part of this State to travel all day Monday to come down here and meet for fifteen or twenty minutes Monday evening. Now, if we are to meet on Monday, and make it a business, let us meet here in the morning. If you want to go to work Monday morning, all right, but I want to have that part which relates to Monday evening withdrawn. It seems to me entirely unnecessary at this time to vote as to whether we shall meet on Monday or not. As the Convention progresses it seems to me we can, if need be, meet on Monday evening.

Mr. Tekulsky — Mr. President, I move that the motion be laid on the table, as the previous motion already adopted covers the ground.

The President put the question on the motion of Mr. Tekulsky, and a roll-call being demanded, the Secretary called the roll, and the motion of Mr. Clark was laid on the table. Ayes, 86; noes, 13.

Mr. Ackerly — I move that there be no sessions on Monday until the further order of the Convention.

Mr. Johnson, J.— Mr. President, I have to make this suggestion to the Convention. It will be an advantage and accommodate very many of us from the southern part of the State if the first meeting in the week, whether it be Monday or whether it be Tuesday, would be fixed a little later than ten o'clock. If I was to consult the convenience of those who come from the same section of the State that I do I would prefer that it be eleven or twelve o'clock. I merely suggest an amendment to this motion that if we do meet Monday, that we meet a little later than ten o'clock. I would suggest twelve o'clock.

The President — Mr. Johnson's proposition seems hardly germane to the present one. That will have to be made the subject of a separate motion.

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

Mr. Vedder — Mr. President, I move you that the vote by which we determine not to have any sessions on Saturday or Sunday be reconsidered and that that motion lie on the table. This is not

debatable, but with the permission of the Convention I will give my reasons. We ought never to tie ourselves up to the proposition not to have any session on Saturday, as exigencies may arise when it may be necessary to have sessions on Saturday, and I simply make this motion to lie on the table so that it may be brought up if this exigency does arise. That is the reason for making the motion that the vote be reconsidered and that that motion lie on the table.

The President put the question on the motion to reconsider the vote by which it was determined not to have any sessions on Saturday or Sunday, and that that motion lie on the table, and it was determined in the affirmative.

The President — The order of business is now completed, so far as the Convention is concerned.

Mr. McClure — I move that the resolution by which the Convention decided that this Convention meet at ten o'clock in the morning be reconsidered, and that that motion lie on the table, and if I may be permitted, I would say at this time, as Mr. Vedder has said, the Convention ought not to bind itself to any particular hour, as exigencies of the case may require our meeting at another hour than ten o'clock.

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

Mr. Root — I ask leave to announce a meeting of the Judiciary Committee for the purpose of taking into consideration the writ of prohibition which has been referred to that committee, immediately upon the adjournment of this Convention. If the Judiciary Committee will be good enough to meet in the first instance in the President's room we will then adjourn to such place as may be assigned to us by the committee which has charge of the assignment of rooms.

Mr. Bowers — What hour was named?

Mr. Root — Immediately upon the adjournment to-day.

Mr. Bowers — And where, Mr. Chairman, we could not hear?

Mr. Root — I repeat the whole announcement; it is that the Judiciary Committee is requested to meet in the President's room immediately after the adjournment of this Convention. We will then adjourn to such room as is assigned to us by the committee having charge of the assignment of rooms.

Mr. Davis — I desire to give notice that the committee having charge of the assignment of rooms will meet the chairmen of the different committees and have a consultation with them in reference

to the assignment of rooms immediately upon adjournment, in the room of the President.

Mr. Johnson — I desire to announce a meeting of the Committee on Cities this evening at eight o'clock at such a place as may be assigned, and that we meet temporarily in order to learn the place of assignment in this room.

Mr. Frank — I now move that when this Convention adjourns, it adjourn to meet to-morrow morning at eleven o'clock.

Mr. Root — I move to substitute the word ten for the word eleven.

The President — The chair is of the opinion that the motion is out of order, inasmuch as the previous vote still stands, that the daily sessions be at ten o'clock. A motion to reconsider that has been laid upon the table. That, however, does not alter the effect of the motion already adopted.

Mr. McMillan — I move that this Convention do now adjourn.

The President — The gentlemen will understand that under the previous motion adopted, this Convention will meet to-morrow morning at ten o'clock.

The President then put the question on the motion to adjourn, and it was determined in the affirmative, whereupon the Convention adjourned.

Wednesday, May 23, 1894.

The Constitutional Convention of the State of New York met at the Assembly Chamber, Albany, N. Y., May 23, 1894.

The Convention was called to order by President Choate at 10 A. M.

The Rev. R. H. Shirley of the African M. E. church, Albany, N. Y., offered prayer.

The President — The Secretary will read the Journal of yesterday's meeting.

The Assistant Secretary read the Journal of Tuesday, May twenty-third.

The President — The Journal, as read, will stand approved, unless some amendments are offered. Has any delegate any amendment to offer? If not, the Journal, as read, will stand approved.

Are there any delegates present who have not yet taken the oath? If so, they will please come forward and be sworn.

The Secretary's appointees — are they present to be sworn?

The President administered the oath to the Assistant Secretaries, James C. Sheldon, Marcus M. Cass and Emmet W. Parkhill, and they were duly sworn in.

The President also administered the oath to the Assistant Sergeant-at-Arms, John McElroy.

The President — There are some further appointments of employes to be read.

The Secretary read the following appointments by the President: Messenger, Edward M. Seacord, in place of C. E. Boyden, resigned; page, Samuel Palmer.

The President — A communication has been received from the Postmaster setting forth that it is impossible for him to discharge his duties without further assistance. This will be referred to the Committee on Contingent Expenses, and, in the meantime, and until they report, the Assistant Librarian will assist the Postmaster in the discharge of his duties.

The President — A petition has been sent to the President for the introduction of an amendment prohibiting the traffic of intoxicating liquors, and asking that the Legislature shall by law prescribe regulations for the enforcement of such an article. This will be referred to the Committee on Legislative Powers and Duties.

The order of business now is the presentation of memorials. Has any gentleman any memorial to present?

Mr. Holls—Mr. President, I desire to offer the following memorial, and ask that it be referred to the Committee on Education.

The Secretary read the title of the memorial as follows: Memorial from the National League for the Protection of American Institutions, in behalf of an amendment to protect the common free schools of the State.

The President — The Chair is of the opinion that this memorial should be referred not only to the Committee on Education, but also to the Committee on Charities.

Mr. Davis presented a memorial and petition to amend article 8 of the Constitution, which was referred to the Committees on Education and Charities.

Mr. Springweiler presented a proposed anti-conspiracy amendment to article 8, section 6 of the Constitution.

The President — This should be properly presented under another order of business — presentation of overtures. It will be laid aside until we reach that order.

The President — Are there any communications from State officers? If not, the next order of business is motions and resolutions, to be called for by districts numerically. The Secretary will call the roll by districts.

The Secretary called the roll by districts.

Mr. Kellogg offered the following resolution:

R. 17.— Resolved, That the Comptroller be requested to inform this Convention whether he has any report in his office giving the value of property which is exempt from taxation in this State. If so, to give the value of such property.

The President — The resolution will be laid over under the rule until to-morrow.

Mr. Kellogg also offered the following:

R. 18.— Resolved, That the Secretary of the State Board of Charities be requested to report to this Convention the number of charitable institutions that are in this State and where the same are located, the number of inmates which each institution has, together with a statement of the amount of moneys that has been paid for the support and maintenance of each of such institutions during the last five years.

The President — This resolution will be laid over under the rules.

Mr. A. H. Green offered the following resolution:

R. 19.— Resolved, That a committee of five be appointed to consider and report to the Convention what action, if any, is desirable for the Convention to take for improving the method of transferring and dealing with titles to and interest in lands of this State.

The President — Mr. Green of New York offers this resolution, that a committee of five be appointed to consider and report to the Convention what action, if any, is desirable for the Convention to take relative to improving the method of transferring and dealing with titles in lands in this State, which is now open to the consideration of this Convention. Is the Convention ready for the question for the appointment of a committee of five?

Mr. Moore — I desire to second the resolution.

Mr. McMillan — I would suggest that this is a very proper matter to go to the Judiciary Committee.

Mr. Root — Mr. President ——

The President — The rules prescribe that resolutions giving rise to debate shall lie over for one day. As a matter of course, if this is to be debated, it will take that course.

Mr. Root — I wish to debate the resolution, Mr. President.

The President — The resolution will lie over for one day under rule 50.

Mr. Brown — Mr. President, is a proposed amendment in order now?

The President — Not now.

Mr. Vedder offered the following resolution:

R. 20.— Whereas, Absolute necessity exists for having notices of the committee meetings properly recorded on a bulletin board prepared for that purpose, and to have some person in charge of the same prepared to give such information in regard thereto as is desired by interested persons;

Resolved, That the Secretary of the Constitutional Convention be directed to have all notices of committee meetings duly posted on said bulletin board and have some person in charge of the same to give all necessary information in regard thereto as is desired by members and others, and at an expense of $300 for the entire session, to be paid by the Treasurer, on the warrant of the Comptroller, out of any moneys not otherwise appropriated, on the certificate of the Secretary of the Convention.

The President — You have heard the resolution offered by Mr. Vedder as to keeping a bulletin of committee meetings, and as to the appointment of a person to have charge of the same. Are you ready for the question?

Mr. Moore — I wish to debate the resolution.

The President — Debate being desired, the resolution will lie over, under the rules, until to-morrow.

The President — The next order of business is the presentation of overtures. Before the list is called, I wish to say that the overture offered yesterday by Mr. Morton of Kings, in regard to striking out the word "color," has been returned to me by the Committee on Suffrage, it containing nothing in relation to suffrage, but only to the matter of apportionment, and the enumeration of men of color in such apportionment. It is, therefore, referred to the Committee on Legislative Organization.

The Secretary called the roll by districts.

O. 27.— Mr. Johnston offered an overture regulating the salaries of members of the Legislature.

Referred to Committee on Legislative Powers and Duties.

O. 28.— Mr. Platzek offered an overture to amend section 2 of article 1 of Constitution, so as to permit three-fourths of jurors in civil actions to render a verdict.

Referred to Judiciary Committee.

O. 29.— Mr. Emmet offered a proposition to amend article 2, section 2 of the State Constitution, relating to the exercise of the right of franchise by persons who have been convicted of bribery or any infamous crime.

Referred to the Suffrage Committee.

O. 30.— Mr. Emmet offered a proposition to amend article 4, section 5 of the Constitution, relating to the power of the Governor to restore the right of franchise to persons convicted of bribery or of any infamous crime.

Referred to the Committee on Governor.

O. 31.— Mr. Lauterbach offered a proposition to amend article 2 of the Constitution, in regard to the right of suffrage of naturalized citizens, etc.

Referred to the Suffrage Committee.

O. 32.— Also, a proposed amendment to article 3 of the Constitution, in relation to apportionment.

The President — The Secretary will read it through.

The Secretary proceeded to read the proposed amendment.

Mr. Gilbert — Mr. President, I suggest that the second reading of overtures be by their titles.

The President — Unless it is objected to.

Mr. Gilbert — Unless it is objected to.

The President — Unless it is objected to, that course will hereafter be followed. The overture will be referred to the Committee on Legislative Organization.

O. 33.— Mr. Lauterbach also offered proposed amendments to article 4 of the Constitution of the State of New York, in relation to the judiciary of the State.

Referred to the Judiciary Committee.

O. 34.— Also, proposed amendments to article 12 of the Constitution of the State of New York, as to the oaths of officers, etc.

Referred to the Committee on Legislative Powers and Duties.

O. 35.— Also, proposed amendments to article 4 of the Constitution of the State of New York, amending the powers and duties of the Governor.

Referred to the Committee on Governor and State Officers.

Mr. Kellogg — I call for the reading of the last proposed amendment.

Mr. McMillan — As I understand it, the rule is that these shall be read by title.

The President — Mr. Kellogg asks that it be read.

Mr. Bowers — As I understand it, the rule prescribes that all propositions and resolutions to amend the Constitution shall be referred to the appropriate committee, when appointed, and I suppose that meant, in the first instance, that they should be referred and not read at length. That was a resolution offered by Mr. Johnson of Kings.

Mr. Cochran — The resolution was that they should be referred without debate.

Mr. Bowers — Mr. President, if we have a standing rule, as I understand, that all propositions and resolutions to amend the Constitution be referred to the appropriate committee, when appointed, and the fair meaning of that rule is, without debate, then I submit the mere demand of one member does not require the reading at length of the proposed amendment. If he desires it, he must have the rule changed.

The President — I read from our valuable manual at page 57, the President announces:

"Mr. ——— of ——— (naming the district), introduces the following overture —; first reading of an overture."

"The Secretary then reads the enacting clause of the overture.

"The President then says, second reading of an overture, and by its title, unless objected to.

"The Secretary then reads the title of the overture.

"If objections be made to reading the overture by its title, it must be read through, unless the Convention orders otherwise. After the second reading, it is referred to the appropriate standing committee or to a select committee."

Mr. Bowers — I respectfully submit that the resolution we adopted, which was offered by Mr. Johnson ——

Mr. Alvord — Mr. President, I desire to rise to the point of order. My point of order is that no gentleman has a right to rise on this floor and dispute with the Chair unless he appeals.

Mr. Maybee — I now move that the reading of the overture by more than the title be dispensed with.

Mr. Kellogg -- I desire to withdraw my request.

The President — Mr. Kellogg withdraws his application and Mr. Maybee moves that the second reading by more than the title be dispensed with.

The President thereupon put the question on Mr. Maybee's motion, and it was declared in the affirmative.

Mr. Lauterbach offered the following overtures:

O. 36.— Proposed amendment to article 1 of the Constitution, as to judgments on appeal, protection of witnesses, etc.

Referred to the Judiciary Committee.

O. 37.— Also, proposed amendments to article 5 of the Constitution, in relation to the election of State Engineer, etc.

Referred to the Committee on Governor and State Officers.

O. 38.— Also, proposed amendment to article 10 of the Constitution, in relation to the charters of cities and the election of officers therein, etc.

Referred to the Committee on Cities.

O. 39.— Also, proposed amendment to the Constitution, in respect to the election of Presidential electors.

Referred to the Judiciary Committee.

O. 40.— Mr. Holls offered a proposed amendment to article 11 of the Constitution, regarding the militia.

Referred to the Military Committee.

O. 41.— Mr. Maybee offered a proposed amendment to section 15 of article 6 of the Constitution, so as to enlarge the jurisdiction of the County Courts.

Referred to the Judiciary Committee.

Mr. Moore offered the following proposed amendments:

O. 42.— A proposition to amend the Constitution relating to the Court of Appeals, the judges thereof and appeals thereto.

Referred to the Judiciary Committee.

O. 43.— Also, proposed amendment to section 1 of article 4 of the Constitution, relative to the election of Governor and Lieutenant-Governor, and also relative to the appointment of Secretary of State,

Attorney-General, State Treasurer, Comptroller, Superintendent of Public Instruction, Bank Department, Insurance Department and of the State Engineer and Surveyor; also the Commissioners of the Land Office, the Canal Fund and Canal Board.

Referred to the Committee on the Governor and State Officers.

O. 44.— Also, to amend section 15 of article 6 of the Constitution, relating to County Courts and Surrogates' Courts.

Referred to the Judiciary Committee.

O. 45.— Also, proposed amendment to section 1 of article 2 of the Constitution, relative to female voters.

Referred to the Suffrage Committee.

O. 46.— Also, overture to amend section 1 of article 8 of the Constitution, relative to the formation of corporations.

Referred to the Committee on Corporations.

O. 47.— Mr. E. R. Brown proposed an additional section to article 1 of the Constitution against public officers riding on passes.

Referred to the Committee on the Governor and State Officers.

O. 48.— Mr. Cookinham offered a proposed amendment to sections 4 and 5 of article 3.

Referred to the Committee on Apportionment.

Mr. Mereness offered the following overtures:

O. 49.— Proposed new section of article 3 of the Constitution, relating to compensation of public officers.

Referred to the Committee on the Governor and State Officers.

O. 50.— Also, a proposed amendment to section 1, article 8 of the Constitution.

Referred to the Committee on Corporations.

O. 51.— Also, a proposed amendment to section 12 of article 8 of the Constitution.

Referred to the Committee on Counties, Towns and Villages.

O. 52.— Mr. Kellogg offered a proposed amendment to the Constitution, relative to the liability of employer to employes.

Referred to the Industrial Committee.

O. 53.— Mr. Goodelle offered an overture to amend section 2, article 1 of the Constitution, relating to trials by jury.

Referred to the Judiciary Committee.

O. 54.— Mr. Marshall offered an overture to amend the Constitution by affording free transportation over railroads to the Governor and certain other public officers while engaged in the

performance of official duties, and making it unlawful for any other public officers to accept or request a free pass.

Referred to the Committee on Railroads, and also to the Committee on the Governor and State Officers.

O. 55.— Mr. Mantanye offered an overture to change or amend section 22 of article 3 of the Constitution as to Boards of Supervisors of counties.

Referred to the Committee on Counties, Towns and Villages.

O. 56.— Mr. Tibbetts offered an overture amending section 1 of article 10 of the Constitution, by striking out the words "and shall be ineligible for the next three years after the termination of their office."

Referred to the Committee on Counties, Towns and Villages.

Mr. Barhite — While we have passed the order of business, I ask unanimous consent to present a petition which was laid upon my desk too late to be presented under the proper order.

The President — Mr. Barhite asks unanimous consent to present a petition which was not received in time by him to be presented under the order of petition. If there are no objections it will be received.

The Secretary announced the petition presented by Mr. Barhite of 24,344 citizens of Rochester, requesting that the word "male" be stricken from article 2, section 1 of the Constitution of the State.

Referred to the Committee on Suffrage.

Mr. Redman — I desire to present a petition from the citizens outside of the city of Rochester.

The President — Unless objection is made the same will be received.

The Secretary announced the petition presented by Mr. Redman of 8,300 citizens of Monroe county, outside the city of Rochester.

Referred to the Committee on Suffrage.

Mr. Alvord — I desire to present a protest upon this subject, which I have held in my hands for the purpose of first having something in favor of the proposition offered. It seems I ought to have the right to introduce a protest upon the same subject. I ask the consent of the Convention to introduce this protest.

The President — If there are no objections the protest will be received.

The Secretary announced the protest presented by Mr. Alvord, of Mrs. Charles Andrews, Mrs. Frank Hiscock, Mrs. James J. Belden,

Mrs. George B. Spalding, Mrs. Allen Butler and eighty-seven other women of Syracuse against striking out the word "male" from article 2, section 1 of the Constitution of the State of New York.

Mr. Kellogg — I would like to ask that my overture in relation to the liability of employers for the death of employes be also referred to the Committee on Railroads. It has been referred to the Committee on Industries. They are affected by the railroad.

The President — The Chair thinks it properly belongs to the Committee on Industries.

Mr. Kellogg — I ask that it also be referred to the Committee on Railroads besides the Committee on Industries.

The President — It will take that course.

O. 57.— Mr. Porter presented an overture to amend article 2, section 1 of the Constitution, entitled qualification of voters.

Referred to the Committee on Suffrage.

Mr. Springweiler — I sent an overture up to the desk a while ago, and I believe the Secretary has not read it.

O. 58.— The Secretary read the overture offered by Mr. Springweiler, entitled a proposed anti-conspiracy amendment to article 1, section 6.

Referred to the Committees on Industries and State Prisons.

O. 59.— Mr. Lincoln offered an overture amending section 11, article 13, making the Constitutional Convention judge of the election of its members.

Referred to the Committee on Constitutional Amendments.

O. 60.— Mr. Lincoln also offered an overture amending section 1, article 11, providing for educational qualifications for voters.

Referred to the Committee on Suffrage.

The President — The Chair is of the opinion that Mr. Kellogg's overture is not properly referable to the Committee on Railroads.

Mr. Springweiler's overture it seems proper also to refer to the Committee on State Prisons, as it includes the subject of the prevention and punishment of crime.

In respect to Mr. Vedder's resolution which was laid over until to-morrow, I find that it calls for an appropriation of money for the uses of the Convention and must, therefore, be referred to the Committee on Contingent Expenses under the rule.

Mr. Kerwin — Mr. President, do I understand that Mr. Springweiler's overture has been changed and sent to the Committee on Prisons?

The President — It has been sent to two committees. It contains two subjects, one as to the punishment of crime, and one as to the relation of employer to employe.

Mr. Holls — Mr. President, the Committee on Education has unanimously instructed me to report the following resolution to the Convention:

The President — The Secretary will read it.

The Secretary read the resolution as follows:

R. 21.— Resolved, That the State Comptroller be requested to furnish to the Convention a statement in detail of the sources, extent, nature and present investment and income of every fund and property belonging to or controlled by the State of which either the principal or interest is devoted to educational uses.

Mr. Holls — I understand from the State Comptroller that the information called for in that resolution is practically ready, and, inasmuch as it will enable the Committee on Education to go to work at once, I ask unanimous consent that this resolution do not lie over under the rules, but be passed immediately.

The President — Does any delegate object?

Mr. Alvord — I rise to a point of order. My point of order is that it is not included in the ordinary way as a resolution that lies over. Coming from a committee it is immediately available.

Mr. Holls — In that case I ask that it be passed immediately.

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

Mr. Holls — The Committee on Education has further unanimously authorized me to present the following resolution:

R. 22.— Resolved, That the State Comptroller be requested by the Secretary of the Convention to furnish a detailed statement of all moneys paid by the State during the past three years by way of direct or indirect appropriations, as salaries or otherwise, to institutions not owned by the State or a political division thereof, whether under sectarian control or not, giving the name of the institution and the religious denomination or denominations wholly or partly in control, and

That a like request be made of the chief fiscal officer of every city and county of the State as to payments by such city or county to such institutions.

The President — Unless objection is made to the passage of this resolution, the question will be put.

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

The President — Has any other standing committee any application or report to make?

Has the committee appointed yesterday on the assignment of rooms to the various committees a report to make?

Mr. Davis — I offer the following report:

The Secretary read the report as follows:

To the Constitutional Convention:

Your committee to assign committee rooms to the various committees, do respectfully report the following assignments:

Preamble — Assembly room 2, second floor.
Legislature, Organization — Assembly room 3, second floor.
Legislative Powers and Duties — Assembly room 3, second floor.
Governor and State Officers — Assembly Ways and Means.
Judiciary — Senate library.
State Finance and Taxation — Court of Appeals lawyers' room.
Cities — Assembly parlor.
Canals — Assembly room 2, second floor.
Railroads — Assembly library.
Corporations — Assembly library.
County, Town and Village Government — Assembly room 4.
County, Town and Village Officers — Assembly room 5.
State Prisons and Penitentiaries — Assembly room 7.
Banking and Insurance — Assembly room 1, second floor.
Militia — Senate room 1, second floor.
Education — Assembly room 6, second floor.
Charities — Assembly room 6, second floor.
Industrial Interests — Court of Appeals lawyers' room.
Salt Springs — Senate room 5.
Indians — Senate room 1, second floor.
Constitutional Amendments — Senate room 6.
Revision and Engrossment — Senate room 2.
Privileges and Elections — Senate room 3.
Printing — Senate room 4.
Contingent Expenses — Senate room 4.
Rules — President's room.
Suffrage — Assembly parlor.

Dated May 23, 1894.

All of which is respectfully submitted,

GEORGE A. DAVIS,

Chairman.

Mr. Davis — I move the adoption of the report of the committee.

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

The President — An important petition has been presented in reference to the contested seats of Messrs. Giegerich and Fitzgerald. The Secretary will read the petition.

The Secretary read the petition as follows:

To the Constitutional Convention of the State of New York, Elected for the Year 1894, etc.:

The undersigned represents:

That he is and has been a citizen of the city of New York all his life, and a legal voter of the now Sixth Assembly District of the city of New York for the past fifteen years and more, and now residing, since May 1, 1894, at No. 266 Seventh street, in the said city of New York, and that prior thereto he resided at No. 261 Seventh street for several years.

That your petitioner was eligible to become and be a delegate to the Convention to amend, etc., the Constitution of the State of New York, as declared by law of said State, for such purpose, and under and in pursuance thereof a general election to select delegates to a general Convention to revise, etc., said Constitution was had on the 7th day of November, 1893.

That certain parties were presented to the voters of the Eighth Senatorial District in said city of New York, delegates, to wit: Leonard A. Giegerich and Frank T. Fitzgerald, among others, receiving a greater vote than your petitioner, who was also a candidate, as officialy returned.

That said Leonard A. Giegerich is, and at and prior to the time aforesaid was and still is, a judge of the Court of Common Pleas in and for the city and county of New York, elected by the legally qualified voters of the city and county of New York for the full term of fourteen years, which will not expire for years hence, which he held and holds, and is a salaried position.

That Frank T. Fitzgerald was at and before the time aforesaid, and still is, a surrogate of said city and county, whose term will not expire for years hence, with a salary during his elective term.

That your petitioner does not hold and did not hold or occupy, directly or remotely, any elective or appointive office at the time of said election, and was wholly legally eligible to the position of a delegate to this said Constitutional Convention.

That your petitioner hereby represents and insists that he was

duly and legally qualified and was elected to said Convention as such delegate from aforesaid district, and demands to be sworn in and recognized as such forthwith, and hereby protests against the claims of the claimant and claimants aforesaid, for the reason of their and each of their disabilities aforesaid, to wit: Each occupying an elective official position at the time of said election, prior to, since and now continuing in said respective positions, from which during all said period they have and now are receiving a compensatory consideration from the people.

Your petitioner respectfully insists upon his rights as delegate aforesaid from aforesaid district, and hereby demands to be sworn as such delegate and lawfully recognized as such, and now is ready and offers to discharge his duties as by law required.

Your petitioner has duly complied with the laws applicable, and is ready to be heard at the speediest time, he hereby objecting to any action of the aforesaid Giegerich and Fitzgerald, as such delegates.

With great respect yours,

CHAS. L. HALBERSTADT,
Eighth Senatorial District.

No. 266 E. Seventh street, New York city.

The President — The petition will be referred to the Committee on Privileges and Elections.

I wish to state to the Convention that immediately after the session of the eighth instant, being informed by the Sergeant-at-Arms that twelve members were without desks, I took the responsibility of ordering their purchase, and I will refer that matter to the Committee on Contingent Expenses.

Mr. Vedder — If there are no objections, I would like to give notice that the Committee on Legislative Powers will meet in room No. 3 immediately upon the Convention adjourning to-day.

Mr. Goodelle — The Committee on Suffrage will meet in the Assembly parlor at three o'clock this afternoon.

Mr. Lauterbach — The Committee on Charities will meet in room No. 6 at half-past three.

Mr. Hirschberg — I would like to announce a meeting of the Committee on Privileges and Elections immediately on adjournment of the Convention in room No. 3, to which they have been assigned.

Mr. Hamlin — I would like to give notice that the Committee on Printing will meet immediately on adjournment in Senate room No. 4.

Mr. Hawley — I would like to give notice that the Committee on Corporations will meet in the Assembly library immediately after the adjournment.

Mr. McDonough — I desire to give notice that the Committee on State Prisons will meet immediately on adjournment in Senate room No. 6.

Mr. Acker also desired me to give notice that the Committee on State Finances and Taxation will meet immediately after adjournment in the Court of Appeals lawyers' room.

Mr. Becker — I desire to give notice that the Committee on Legislative Organization will meet immediately after the adjournment to-day in room No. 3.

Mr. McMillan — I desire to give notice that the Committee on Governor and State Officers will meet in the Ways and Means Committee room, adjoining the Assembly parlor, immediately after the adjournment.

The President — The Committee on Rules will meet in the President's room immediately after adjournment.

Mr. Davies — I desire to give notice that the Committee on Railroads will meet in the Assembly library at half past nine to-morrow morning.

The President — I am requested to announce that those delegates who have not received duplicate manuals can obtain them in the Secretary's room.

Mr. Parkhurst — I desire to give notice that the Committee on County and Town Officers will meet in Assembly room No. 5 at half past three this afternoon.

Mr. Bowers — I ask leave to be excused from the session of the Convention to-morrow.

The President — Mr. Bowers will be excused unless objection is made.

Mr. Moore — I ask leave to be excused from attendance to-morrow.

The President — Mr. Moore is excused unless there is objection.

Mr. Gilbert — I ask leave to be excused from attendance to-morrow.

The President — Mr. Gilbert will be excused unless objection is made.

Mr. Crosby — I ask leave to be excused from attendance on the

floor of the Convention until the close of the work of the Committee on Privileges and Elections.

The President — If there is no objection Mr. Crosby will be excused.

Mr. Clark — I ask leave to be excused from attendance upon the Convention for the rest of the week.

The President — If there is no objection Mr. Clark will be excused.

Mr. Maybee — I ask leave to be excused from the sessions of next week.

The President — If there is no objection Mr. Maybee will be excused.

Mr. Barhite — Mr. M. E. Lewis, of the Twenty-eighth District, will be detained at home on account of the very serious illness of his wife, and he asked me to obtain an excuse of one week for him.

The President — If there is no objection Mr. Lewis is excused.

Mr. Roche — I desire to call up the resolutions which I offered yesterday. Is this the proper order of business to call up these resolutions?

The President — Calling for information from the departments?

Mr. Roche — Calling for information from public officers.

The President — It is a little out of order, but if there is no objection they will be considered. The Secretary will read the resolutions.

The Secretary read the following resolution (No. 12):

Resolved, That the State Comptroller be and is hereby requested to transmit to this Convention a statement of the amount that has been paid each year for the past five fiscal years to judges of the Court of Appeals and justices of the Supreme Court pursuant to section 13 of article 6 of the Constitution, and also the amount appropriated at the recent session of the Legislature for former judges of said courts, or the family of any deceased judge.

Mr. Roche — I move the adoption of the resolution.

Mr. W. H. Steele — I would like to make a remark in reference to that resolution. I have just had a conversation with Mr. Roche, and am of the opinion that all the information asked for by that resolution is already in the hands of the printer. The information has been gathered under the direction of the Compiler, and will come before this Convention as soon as it can be printed. I would, therefore, suggest to the gentleman that the resolution should read

" unless the information called for has already been received by the Compiler."

The President — The gentleman will understand the resolution which is, as read by the Secretary, and as amended by Mr. Steele, " unless the information is already found to be in the hands of the Compiler."

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

The Secretary also read the following resolution (No. 14):

Resolved, That the clerks of the several courts in the counties of New York, Kings, Westchester, Albany, Rensselaer, Schenectady, Onondaga, Monroe and Erie, in which persons are naturalized pursuant to the laws of the United States, are hereby required to transmit to this Convention a statement of the number of persons naturalized in the said courts, respectively, during the years 1888, 1891, 1892, 1893, and to specify in said statements how many of such persons were naturalized during the month of October in each of said years, and also the number of females who were naturalized during said years.

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

The Secretary also read the following resolution (No. 13):

Resolved, That the Secretary of this Convention is hereby requested to correspond with the mayor of each city in this State and obtain from him a statement showing:

1. The total funded debt of said city (after deducting the amount in its sinking fund applicable to the payment of such debt) at the close of the last fiscal year of said city.

2. The total assessed valuation of the real and personal property in said city as appeared by the last assessment rolls.

3. The percentage of valuation at which property is usually assessed in said city for the purposes of taxation.

4. The rate per cent of tax on each one hundred dollars of valuation as shown by the last tax levy.

5. The time of payment of the longest of the present outstanding bonds of said city.

And said Secretary is also hereby requested to correspond with the county treasurers of the several counties of this State and procure from them a statement showing:

1. The total funded debt of said counties.

2. The assessed valuation of the real and personal property in each of said counties, as appears by the last assessment roll.

3. The rate per cent of tax on each one hundred dollars of valuation imposed in said county for county and State purposes.

4. The time of payment of the longest of the outstanding bonds of said county.

And the mayors of the said several cities and the county treasurers of the said several counties respectively, are hereby requested to furnish such statements to the Secretary of this Convention. When such statements are received the Secretary shall cause them to be properly arranged and presented in tabular form to this Convention.

Mr. Rogers — I move to amend by adding thereto the words "presidents of incorporated villages."

The President — Is that amendment accepted by Mr. Roche?

Mr. Roche — It is going to make it an enormous work, Mr. President. We have so many incorporated villages. I would prefer that it be a separate resolution.

The President — The question is on the amendment of Mr Rogers, unless he withdraws the same, the effect of which will be to call for the information desired in the resolution not only from the mayor of every city, but from the president of every incorporated village in the State.

The President put the question on the amendment of Mr. Rogers and a viva voce vote being had, declared it lost.

A count was called for and ordered, and the amendment prevailed by a vote of 60 ayes and 36 noes.

The President put the question on the resolution as amended.

Mr. Alvord — Mr. President, I desire to say that the resolution as amended will unquestionably take longer than this Convention desires to sit. There is no question about that whatever. The more important matter is in the resolution offered by the gentleman from Rensselaer in regard to large cities. If there is any real desire on the part of any party to be informed in regard to incorporated villages, let them make it in a separate resolution. Under the circumstances it does seem to me that we are frittering away the money of the State, and the time of the parties engaged in getting the information. Under the circumstances, I think upon mature reflection, the gentlemen will reconsider what they have done, and I, therefore, move to lay the resolution on the table.

Mr. Roche — I was going to propose an amendment to the reso-

lution as now adopted which I think would obviate the difficulties stated by Mr. Alvord.

The President — Does Mr. Alvord withdraw his motion?

Mr. Alvord — I will, if he will renew it.

Mr. Roche — I move that the resolution now before the Convention be amended in such wise that when this information is obtained from the mayors of the cities, and the county treasurers of the several counties, that it be printed and presented by the Secretary to the Convention, without waiting to secure the information that is also called for from the presidents of the incorporated villages. That will give us the more important information at an early day.

Mr. Bowers — Why should not that resolution include all returns as they come in? In that form it will be acceptable. That the information be given, no matter from what source it comes, as fast as it is received; that is, if you receive returns from the villages there is no reason why you should not give it to the members as well as that received from the cities.

Mr. Roche — The point is that there are so many villages, and it will take so much time to get all this information that I do not think it is wise to wait for the publication of the information received from the mayors of cities or county treasurers, until all the information is received from the villages.

Mr. Bowers — What I suggested, Mr. President, was that all returns be given to the Convention as fast as received, and that we do not wait until all the returns from the incorporated villages come in, because, if the gentleman is correct, we will never get all the returns. We may get a large number of them, and there is no reason why we should not have what we do get.

Mr. Root — Mr. President, it seems to me that we would be establishing a precedent by the adoption of this resolution in either form, which would be unfortunate. We are liable to run into very great expense in the printing of a great number of documents for the use of this Convention. Now I do not wish to express any opinion. I have no opinion, as to whether the reports referred to in the resolution should or should not be printed, and it seems to me that we should, at least, receive the first that come, in order to judge whether they ought to be printed. It may well be that when these reports come, the information they contain may be digested and put into a summary form by the committee to which they are referred, so that the information may come to the Convention printed on a few pages at a slight expense, instead of printing a great mass of state-

ments and facts which the members of the Convention would simply have to digest themselves. I suppose it is not possible now to offer any further amendment, but I beg to suggest to the gentleman who has control of the last amendment, that it should so provide that there shall be no order for the printing of these reports until the first, at least, has come before the Convention, and we may know whether they ought to be printed in full. Mr. President, I am just informed that the first amendment was accepted by the mover, or was about to be, and there is but one amendment now before the Convention. In that case, I move to amend by providing that the reports called for be presented to the Convention for its further order, without printing.

The President — The question will be on Mr. Root's amendment.

Mr. Moore — I second that amendment.

Mr. Roche — Mr. President, I am opposed to this amendment. The purpose of this resolution is to get the information before all the delegates and not before a particular committee or committees. The resolution calls for so few things that I do not see how there will be any considerable expenses incurred in printing it in the usual form, so that it will be available for all the delegates. It calls for the assessed valuation of cities, their tax rate, their indebtedness and the longest period of their outstanding bonds, four items, which can be very easily tabulated, and which any mayor of a city can give on a page of type-written matter, and which can be arranged by the Secretary in a form that will be easily understood by the delegates. Now, as this information will be useful in a half dozen ways on propositions that will come before this Convention, that is the reason I call for it, and call for it at an early day.

Mr. Dickey — Mr. President, the amendment of Mr. Roche is subject to the criticism that it assumes that the presidents of villages will be slower in making their reports than the mayors of cities. I do not think it is warranted, and we should not, in adopting that amendment, assume that they will be slower than the mayors of cities. We should assume that they will be equally vigilant in making these reports.

Mr. Root — Mr. President, I wish to say a word in response to what the gentleman who has moved the preceding amendment has said. I do not wish, and the object of my amendment is not to prevent the information from coming before this Convention, or to confine it to any committee. It is to avoid printing hundreds of documents without our knowing what they are. If the documents are brought before us we may find that all the information can be

put before the Convention in a tabulated form, at one-tenth the expense of printing, and it seems to me that we should not give authority for an enormous amount of printing, and an enormous increase of the documents on our file without knowing what we are about. I submit, Mr. President, that we should treat this as a precedent, and that we should begin now to limit the expenses of the Convention, and exclude those things which we do not know to be matters of material interest.

Mr. Roche — Will Mr. Root permit me to ask him a question? I think he misunderstands the resolution. It does not call for the printing of a single document. On the contrary, it meets the objections which he has made. It provides that when this information is obtained by the Secretary he shall tabulate it in proper form and present it to the Convention. There is not a single letter or document to be printed.

The President — The Secretary will read the resolution as presented. The Chair desires to call the attention of the Convention to Rule 71, already adopted, which calls for the printing of one thousand copies of all reports of committees on the subject of constitutional revision, and of all reports and communications made in pursuance of the order or request of the Convention, so that it is a matter of involving very considerable expense.

The Secretary again read the resolution as amended by Mr. Rogers.

Mr. W. H. Steele — Mr. President, I have the same suggestion to offer as I have offered before. I have just been informed by the gentleman who has control of the performance of that part of the work, the deputy for the Compiler, that he has every part of the information which is called for by this resolution, and Mr. Root is perfectly right in suggesting the enormous amount of expense called for. In addition to that there is this difficulty: The officers who have already furnished the information to the Compiler will not again respond when called upon to furnish the information under this resolution. The information is already available to the Convention. The same thing occurred in the last Convention. They doubled and doubled it until the expense reached for printing was enormous. I have been informed by the gentleman that all that information is in his hands, except as to the judges, and so for the purpose of avoiding the offering of any further resolution calling for information, I would suggest that they consult Mr. Glynn or Mr. Fuller, his deputy, who is a reporter in this room. This work which is now in the hands of the printer, contains information from over

sixty departments in this State. It is very apt to contain all the information asked for in this resolution. I think, therefore, that it is advisable to amend this resolution, or else offer a substitute that this motion or resolution prevail as it stands now, upon the condition that it has not already been asked for and obtained by the Compiler.

Mr. Lester — I move to lay the original resolution with its amendment upon the table.

The President put the question, and the motion to lay the resolution on the table prevailed.

Mr. Kerwin — I now move that the Compiler be instructed to present all information in his possession to the Convention to-morrow.

Mr. J. Johnson — I would also move to amend that he report at what time it will be printed for the use of the Convention.

Mr. Kerwin — I accept that amendment.

Mr. Becker — Mr. President, I think that amendment is an eminently proper one. It looks to me, reading from this act which is to govern the deliberations of this Convention, and the preparation of the manual, as if somebody had crowded into it pretty elaborate provisions for printing. It looks to me as if before we get through with this manual we will incur obligations for more printing than was absolutely necessary for our purpose. Therefore, it seems entirely proper that this Convention be informed at this time by this gentleman who is getting up this manual, not only for the information of the Convention, but also for the information of the State officers, who will audit his bill, how much of labor either for love or profit he is to undertake. I do not understand that the resolution before the house calls for all the information the Compiler has asked for, but he should tell us when the information will be necessary. With that understanding, I heartily favor this resolution.

The President — The question is on the resolution of Mr. Kerwin as amended, calling upon the Compiler to furnish to-morrow what information he has received, and when it will be printed and laid before the Convention.

Mr. Moore — Are we to understand that that resolution excludes the report of the Compiler as to what contracts he has made for printing?

The President — Not at all.

Mr. Davies — I would like to amend the resolution of the gentle-

man from Albany by adding the further statement of what expense has already been incurred by the Compiler in this connection.

The President — Does Mr. Kerwin accept that amendment?

Mr. Kerwin — I cannot accept that amendment, because I think it is too much work for the Compiler to find out just what the expense of the manual will be, in addition to his other work. There is an immense amount of work about that.

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

R. 24.— Mr. Davies — I will put my amendment in the form of a separate resolution, that the Compiler inform the Convention what expense has been incurred by him and in what way.

Mr. McClure — I move to amend that the Compiler state in what manner he has made such expenditure.

Mr. Davies — I accept that amendment.

The President put the question on the motion of Mr. Davies.

Mr. Maybee — I move to amend the pending resolution by substituting in place of the words " as early as possible," the words " on or before Tuesday of next week."

Mr. Davies — I cannot accept that amendment, because I think it would be asking too much of the Compiler. I am satisfied that we will have it as soon as practicable.

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

The President then put the question on the resolution of Mr. Davies.

Mr. W. H. Steele — Mr. President, I do not like to talk to this Convention more than is necessary, but I desire to say that the Compiler has no more to do with the expense of this Convention than the President of the Convention himself. The contract for printing was made by the Secretary of State, the Attorney-General and the Comptroller, before this Convention came into existence. It is held by The Argus Company, of this city, and the Compiler cannot find out until the bill of The Argus Company is presented, and audited by the Comptroller, just what the expense is. The gentleman who has the contract is in this Convention, but is not in his seat at present, and he will state that the Convention has no power to compel him to state what the expense will be. The contract is in the hands of the Comptroller, and any gentleman of the Convention can see how much per em he is to receive for printing,

and how much he is to receive for binding. I simply state this for the information of the Convention. If you ask the Compiler he will tell you he is unable to furnish the information desired until the bills of the printers are presented.

Mr. Root — Mr. President, I feel compelled to agree with what the gentleman from Oswego (Mr. Steele) has said, that the Compiler has nothing to do with the Convention. I think that was an unfortunate provision of the law, but it is the law. Nevertheless, sir, it may be that the Convention has something to do with the Compiler. The Convention has something to do with the expenses of the Compiler, because he is to be paid out of the appropriation for the expenses of the Convention, and it is our duty to confine the expenses within the appropriation, and we cannot do that unless we know what drafts are made upon the appropriation. It seems to me, with entire respect to the Compiler, and without assuming to criticise him, or assuming to exercise any control, that it is our duty to find out what expenses have been incurred, and what call will be made upon the appropriation for the Convention, so that we may limit our expenses for printing.

Mr. McDonough — Mr. President, unless an injustice may be done to a gentleman who is a member of this Convention, and is not in his seat at present, I would state that he has not the contract for this printing. The contract, as I understand it, has been left to The Argus Company. The gentleman who is a member of this Convention is simply the editor of The Argus newspaper. I wish to make this correction for his benefit.

R. 25.— Mr. Vedder — Mr. President, I would suggest to the gentlemen who have been moving substantially this resolution, but in various forms, that they put it in proper form, and ask for all the information this Convention feels it ought to have, and refer the matter to the proper standing committee, the Committee on Printing, to investigate and report to this Convention the status of this contract. The act of 1894 is quite peculiar in its provisions, and I have discovered no one who seems to know just how far it goes, or what it means. We have a Committee on Printing, which was formed for the express purpose of finding out all about such matters, and I suggest that all of these inquiries be referred to that committee to investigate and to report thereon.

The President — Does Mr. Vedder make that as a resolution.

Mr. Vedder — I do.

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

Mr. Moore — If in order, I desire to submit the following resolution:

The President — If there is no objection, the resolution will be received.

The Secretary will read the resolution.

The Secretary read the resolution as follows:

R. 26.— Resolved, That when the several committees report, all memorials, papers, and petitions presented to them shall be presented with the report of each to the Convention.

The President — Under the rules the resolution will lie over until to-morrow.

Mr. Cookinham — Mr. President, I move that this Convention do now adjourn.

The President put the question, and it was determined in the affirmative. Whereupon the Convention adjourned until to-morrow morning at ten A. M.

Thursday, May 24, 1894.

The Constitutional Convention of the State of New York met at the Assembly Chamber, Albany, N. Y., May 24, 1894.

The Convention was called to order by President Choate at ten A. M.

The Rev. A. Kennedy Duff of Albany, N. Y., offered prayer.

The President — The Secretary will read the Journal of yesterday's proceedings.

Mr. Kellogg — I move you, sir, that we dispense with the reading of the Journal.

The President — The Chair is of the opinion that that should properly be a motion to suspend the rules. Without unanimous consent, the reading of the Journal cannot be dispensed with.

Mr. Kellogg — That is what I asked for.

The President — Mr. Kellogg askes for unanimous consent that the reading of the Journal of yesterday's proceedings be dispensed with.

Mr. Cochran — I object, Mr. President, on the ground that it establishes a bad precedent.

The President — The Secretary will read the Journal of yesterday.

The Assistant Secretary read the Journal of yesterday, May 23, 1894.

The President — The Journal, as read, will stand approved unless some amendments are offered. Has any delegate any amendments to offer to the Journal? If not, the Journal will be approved as read.

Are there any delegates present who have not as yet taken the oath of office?

The next order of business will be the presentation of memorials.

Under this order of business the following memorials were presented:

Mr. Pool presented the petition of Abbie E. Huffstader and 6,151 others of Niagara county, praying that the word " male " be stricken from the Constitution. It was signed by 3,787 women and 2,364 men. The vote of the county in 1893 was 12,234.

Mr. Church presented the petition of Elisa Fries and 8,938 others of Allegany county; women, 5,019; men, 3,917; total, 8,936. Vote of Allegany for 1893, 7,759.

Mr. Doty presented the petition of Ellen R. Durfee and 3,314 others of Livingston county; women, 2,198; men, 1,116; total, 3,314. Vote of Livingston county in 1893, 7,140.

Mr. O'Brien presented the petition of Emily Howland, Zobedia Alleman and 7,574 others of Cayuga county; women, 4,915; men, 2,659; total, 7,574. Vote of Cayuga county in 1893, 11,824; taxpaying women, with assessed valuation of property, 3,788, $6,160,424.

Mr. Parker presented the petition of John Biddleman, the Rev. Dr. Osborn and 5,954 others of Orleans county, praying that the word " male " be stricken from article 2, section 1 of the Constitution; women, 3,321; men, 2,633; total, 5,954. Vote of Orleans county in 1893, 6,150; taxpaying women, 1,128; assessed valuation of property, $2,387,251.

Mr. Tibbetts presented the petition of Carrie E. Bouton and 3,319 others of Tompkins county; women, 2,075; men, 1,244; total, 3,319. Vote of Tompkins county in 1893 was 7,236.

Mr. Lincoln presented the petition of Jesse L. Allen and Mathilda E. Howe and 9,868 others; women, 5,747; men, 4,121; total, 9,868. Vote of 1893, 11,514; taxpaying women, with assessed valuation of property, 2,599, $2,799,548.

Mr. Louis McKinstry presented the petition of Eveline R. Clark, Elenor M. Babcock and 12,498 others of Chautauqua county;

women, 6,628; men, 5,870; total, 12,498. Vote of 1893, 13,993. Taxpaying women, with assessed valuation, 4,627, $4,618,665.

Mr. Cornwell presented the petition of Julia Sheppard, Marv Gridley and 4,108 others of Yates county; women, 2,269; men, 1,839; total, 4,108. Vote of 1893, 4,416.

Mr. Vedder, in behalf of Mr. Durfee, presented the petition of Mrs. T. W. Collins, Mary E. Bradley and 2,575 others of Wayne county; women, 1,505; men, 1,070; total, 2,575. Vote of 1893, 9,143.

Mr. Bush presented the petition of Mrs. A. E. Searing, Mrs. Charles Burham and 4,824 others of Ulster county; women, 2,939; men, 1,885; total, 4,824. Vote of 1893, 16,342.

Mr. Rowley presented the petition of Marcia C. Powell, Lerella D. Smith and 5,021 others of Columbia county; women, 2,960; men, 2,061; total, 5,021. Vote of 1893, 10,430. Property assessed to women, $3,665,247.

Mr. Holls presented a protest against striking out the word " male " from article 2, section 1 of the Constitution, from women of Yonkers, Westchester county, New York.

Mr. Johnston presented the memorial of women citizens of the State of New York (over twenty-one years of age), protesting against striking out the word " male " from article 2, section 1 of the Constitution.

Mr. Dean presented a memorial on sectarian appropriations, with statistics from Rev. E. B. Burrows.

Referred to Committee on Charities.

Mr. Pool presented a memorial and petition of residents of Suspension Bridge on same subject.

Referred to Committee on Charities.

Also, memorial and petition of residents of Niagara Falls on same subject.

Referred to Committee on Charities.

The President — The next order of business is communications from State officers. Are there any such communications to be presented by any delegate?

The next order of business is motions and resolutions, to be called for by districts numerically.

The Secretary called the roll by districts.

Mr. Bigelow offered the following overture:

An addition to section 16 of article 3 of the Constitution, regulating the introduction and passage of local and private bills.

The President — This is not quite yet in order. If you will leave it on the Clerk's desk, it will be taken up under the proper order.

Mr. Tekulsky offered the following resolution:

R. 27.— Resolved, That when we adjourn on Friday of this week, we adjourn to meet Tuesday, June fifth, at twelve o'clock.

The President — Is the resolution to be debated?

Mr. Vedder — Mr. President, I think so.

The President — That being a resolution calling for debate, it will stand over under the rules until to-morrow.

Mr. Cochran — I rise to a point of order. I think that is a question that requires immediate decision, so that all the members of the Convention may know what time during the coming week will be at their disposal. I think under rule 50 that that does not lie over, being a resolution relating to adjournment. I think we should take a vote on that resolution immediately.

The President — Mr. Cochran seems to be correct in his reference to rule 50, it being a resolution, although giving rise to debate, relating to adjournment or recess, so that matter is now open to debate.

Mr. Tekulsky — Mr. President, the reason I offered that resolution is that we have a legal holiday on next Wednesday, and a great many of the delegates will want to go home to attend the celebration. In consequence thereof, there will be a very slim attendance on Tuesday. There will be nobody here on Tuesday, Wednesday and Thursday.

Mr. Goodelle — Mr. President, I would like to hear that resolution read again.

The Secretary read the resolution.

Mr. Root — Mr. President, I hope the members of the Convention will not agree to this postponement of our duties. It will present to the people of the State who have sent us here to perform what they deem to be important services, the spectacle of this Convention drawing pay for about four weeks and doing work for about four days. I submit, sir, that we should now be ready to subordinate our personal convenience and pleasure to the commands of the duty which we have assumed; that we should return to our places here at the customary time next week and proceed with the work of this Convention, and I apprehend if we do not, we will subject ourselves to the well-deserved censure of the people of the State.

Mr. Goodelle — Mr. President, I move that that resolution be laid upon the table.

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

R. 28.— Mr. Moore — I move, Mr. President, that all overtures, when they are presented, be read in full to this Convention. This Convention, in my opinion, has already done work without knowing exactly what they are doing it upon long enough, and, therefore, I make this motion. I do not wish to include in it petitions or memorials, or anything of that kind, but as overtures are, most of them, short, I move that they be read in full by the Secretary as they are presented.

Mr. Davies — Mr. President, I regret to make a proposition in variance with that of my distinguished friend from Clinton, but I must move to lay that resolution upon the table.

The President — Mr. Davies moves to lay Mr. Moore's resolution that all overtures and memorials be read in full, on the table.

Mr. Moore — I beg your pardon, Mr. President; overtures, simply overtures.

Mr. Peck — Does not this resolution go over under the rules?

The President — I cannot find any rule on the subject.

Mr. Peck — It is a resolution which provokes debate, and not relating to recess or adjournment.

The President — A motion to lay on the table takes precedence of everything else. The question is on Mr. Davies's motion to lay on the table.

The President put the question, and the resolution was laid on the table by a vote of seventy ayes and fifty-five noes.

R. 29.— Mr. Moore — I move you, sir, that all overtures be printed and be laid on the desks of the delegates the next morning after they are read.

The motion was made to amend so as to include the overtures that have already been presented.

Mr. Moore accepted the amendment.

Mr. C. H. Lewis — Is not this a matter which will, probably, be provided for by the new rules when presented to the house? It is a matter that should be provided for by the rules.

Mr. Moore — It may be called a resolution, but probably it comes under the head of motions, and it is a motion to expedite the busi-

ness of this Convention. I beg to submit to the Convention, Mr. President, that very many members of the Convention do not know anything about the overtures which have been thus far presented here. I submit that we ought not to go on with the business of the Convention until we know what has been done. Now, these overtures are not being printed in The Argus, which, I understand, has the contract for the printing of these things. I ask it simply that the Convention may know what it is about. Some time or other there is going to come a reckoning of what is being done here.

The President — My opinion is, under the second clause of rule 50, this motion is now to be disposed of as a motion relating to the business of the day.

Mr. Root — Mr. President, is the motion now before the Convention for debate?

The President — It is.

Mr. Root — Mr. President, I hope that the resolution will prevail. The Committee on Rules has taken no action in reference to this matter. In the course of their consideration of the subject of printing, I have consulted the several members of that committee, and they all agree that the overtures should be printed. I find among all the delegates of the Convention a feeling that they were not sufficiently advised as to what was going on, and as to what measures were being sent to the different committees, and that it was difficult by mere hearing of titles read to know to what committee proposed amendments had been sent. It seems to me that, although it will involve a great deal of printing, it will be much better to have these different amendments, under consideration, printed, in order to know what we are about than to print all the talk which we have here every day.

Mr. Bush — Mr. President, this is a matter which pertains properly to the business of the Convention, and it should properly be referred to the Committee on Rules. It seems to me that when that committee reports the rules it should make some provision for the printing of the overtures. If we adopt this resolution now, it is an isolated proposition. The whole matter can be left to the Committee on Rules, and if they see fit they can take care of it in their report, which, I understand, will be made in a day or two.

Mr. Moore — Will the gentleman allow me to ask him a question? How long does the gentleman suppose it will be before the Committee on Rules will be ready to report?

Mr. Bush — I cannot answer the gentleman, as I am not a member of that committee, but I was in hopes they would be soon ready, so that we would have some rules for our guidance.

Mr. Root — If the gentleman will allow me, I will state that the Committee on Rules hopes to be able to report in about fifteen minutes.

Mr. Mulqueen — I move as an amendment that the Committee on Rules be instructed to report a rule covering this subject.

The President — Mr. Mulqueen moves that this matter be referred to the Committee on Rules, with instructions to report a rule on this subject, for the consideration of the Convention.

Mr. Moore — I accept the amendment.

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

Mr. Moore — I desire to call up my resolution offered yesterday, and which was laid over for one day, if this is the proper time for doing so.

The Secretary read the resolution as follows (No. 26):

Resolved, That when the several committees report, all memorials, papers and petitions presented to them shall be presented with the report of each to the Convention.

Mr. Moore — In support of that resolution, which I hope will be adopted by the Convention, I wish to say that I do not mean in any sense to attach all these memorials and petitions to a report, but that the papers upon which the report is based shall accompany that report, not in printed form, but in the original, that the Convention may judge itself and examine them, if any member desires to. It is stated in some of the newspapers of to-day that very many things that have gone to the committees are to be smothered; that that is part of the plan. My idea is that these things upon which the committee shall make the report, shall accompany these reports, in order that the delegates, if they choose to examine the papers on which the report is made, shall have an opportunity to do so, and that they shall not be smothered in committee.

Mr. Bush — Isn't this also a proposition which should properly go to the Committee on Rules? Won't the report of the Committee on Rules provide for all this matter? It relates to the order and regulation of the business of the Convention, and it seems to me, should first be considered by that committee.

Mr. Moore — Does the gentleman make that as a motion?

Mr. Maybee — Mr. President, I rise to a point of order. The rules forbid any member of the Convention from speaking more than twice upon any one subject.

The President — The point of order is well taken.

Mr. Mulqueen — Mr. President, I move to lay the resolution of Mr. Moore upon the table.

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

The President — The Committee on Rules are requested to meet immediately in the President's room.

Mr. Kellogg — Mr. President, I desire to call up the resolution which I offered yesterday calling upon the Comptroller for whatever information he had, if any, relating to the property in the State which is exempt from taxation.

The President — The Secretary will read the resolution.

The Secretary read the resolution as follows (No. 17):

Resolved, That the Comptroller be requested to inform this Convention whether he has any report in his office giving the value of property which is exempt from taxation in this State. If so, to give the value of such property.

Mr. Kellogg — Mr. President, I desire to state to the Convention that I called upon the Compiler yesterday, and he stated to me that he had nothing, or had prepared nothing, which covered this ground. I also took occasion to call upon the Comptroller, and he said if this resolution prevailed that he could furnish the Convention with a considerable amount of valuable information upon this subject. Gentlemen of the Convention, this is important information, and I believe will be not only interesting to us but to the people of the entire State of New York. I hope that the resolution may prevail.

Mr. Mulqueen — I would like to ask a question. Who will pay the expense of furnishing all this information, the Comptroller or the Convention?

The President — It is made the duty of the Comptroller.

Mr. Johnson — I would like to have the location as to county besides the value stated.

Mr. Kellogg — I accept that amendment.

Mr. Griswold — I would suggest that the property of the State be excepted. Of course, we do not want that, and of the United States.

The President — Do you accept that amendment, Mr. Kellogg?

Mr. Kellogg — That is in there anyway.

An amendment was also offered that the nature of the property exempted from taxation be ascertained.

The President — I think that is included.

Mr. Holcomb — I would like to ask the gentleman who introduced the resolution to also include a statement of the various acts and laws under which these exemptions have been made.

Mr. Kellogg — I do not desire to have my resolution so loaded down with amendments that it will share the same fate as the resolution of yesterday. I think the resolution as amended now covers the ground thoroughly. I think the information called for will be interesting and valuable. However, I am willing to accept any amendment that will cover the ground thoroughly.

The President — The question is on Mr. Holcomb's amendment.

Mr. Kellogg — I will accept that amendment.

Mr. E. R. Brown — I desire to say in relation to this question that I think the Convention should, before it passes a resolution of this character, have it submitted to some proper committee. Already several resolutions of this character have come before the Convention, and in almost every instance it has been learned, either that something has been left out or some information has been called for that could easily be obtained from some department here. I understand this same information was called for by the last Legislature, and I think there is some document in existence on this subject. I, therefore, suggest that all resolutions of this character be referred to the proper committee and put in proper form if it is found to be necessary to make such a call.

The President — The matter cannot be referred without a motion.

Mr. E. R. Brown — I, therefore, submit that the President refer this resolution to the proper committee.

The President — It is moved that this resolution be referred to the Committee on Taxation and State Finances.

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

Mr. Cookinham offered the following resolution:

R. Special.— Resolved, That the Secretary be requested to invite the clergymen of the city of Albany in charge of parishes to open the daily sessions of the Convention with prayer.

The President put the question, and it was decided in the affirmative.

Mr. Becker offered the following resolution:

R. 30.— Resolved, That the Committee on Rules ascertain and report on the first legislative day of next week the propriety of furnishing a daily report of the proceedings of this Convention to each of the newspapers published in this State, and the estimated expense thereof.

Mr. Deady — Mr. President, I move that this resolution be laid upon the table.

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

Mr. McMillan offered the following resolution:

R. 31.— Resolved, That the Secretary of this Convention be and he hereby is directed to transmit to the eight law libraries of the State, one copy each of all proposed amendments to the Constitution, as soon as printed.

Mr. Cochran — Mr. President, I believe that the entire matter of printing these overtures has been referred to the Committee on Rules. It seems to me that it would be better that this resolution lie over until the committee has decided whether they will print them. Otherwise, they will be printed simply for the use of these libraries.

Mr. McMillan — The rules at present provide that a thousand copies are to be printed, and of these thousand copies we simply ask that the Secretary transmit to the eight law libraries, which are located in eight of the large cities of the State, so that the people can refer to them without sending here to the members for copies.

The President — The Chair decides that, as this resolution gives rise to debate, it stands over until to-morrow.

Mr. Vedder — Mr. President, I did not quite understand the disposition which was made of the resolution which I offered yesterday in regard to posting notices of the committee meetings.

The President — It was referred to the Committee on Contingent Expenses, and they will very likely report on it this morning.

Mr. Vedder — I hope so.

Mr. Lincoln offered the following resolution:

R. 32.— Resolved, That the clerk of each of the counties of this State be required to transmit to the Secretary of this Convention

on or before the fifteenth day of June next, a statement of the number of persons naturalized in his county under the laws of the United States during the year 1893, classifying the same according to nationality.

The President — Under the rule this will lie over until to-morrow morning.

The President — The next order of business will be the introduction of overtures by districts in numerical order.

The Secretary called the roll by districts.

Mr. R. M. Johnston offered the following overtures:

O. 61.— Proposed amendment to section 10, article 3 of the Constitution, regulating tenures of office under the State, etc.

Referred to the Committee on the Governor and State Officers.

O. 62.— Also, proposed amendment to section 18, article 6 of the Constitution, relating to police justices and justices of inferior courts in cities and towns in the State.

Referred to the Committee on County, Town and Village Officers.

Mr. Bigelow offered the following overture:

O. 63.— Addition to section 16, article 3 of the Constitution, regulating the introduction and passage of local and private bills.

Referred to the Committee on Legislative Powers and Duties.

Mr. Holls offered the following overture:

O. 64.— Proposed amendment to article 2 of the Constitution, empowering the Legislature to enforce by law the duty of voting.

Referred to the Committee on Suffrage.

Mr. Maybee offered the following overture:

O. 65.— To amend the Constitution by making the office of surrogate a separate office in each county of the State.

Referred to the Judiciary Committee.

Mr. Roche offered the following overtures:

O. 66.— To amend section 15, article 4 of the Constitution, prohibiting county judges and surrogates from practicing law, and justices of the peace from acting in courts of sessions.

Referred to the Judiciary Committee.

Mr. McDonough offered the following overture:

O. 67.— Proposed amendment to section 6, article 7 of the Constitution, providing for transferring the State canals to the United States.

Referred to the Committee on Canals.

Mr. Kellogg offered the following overture:

O. 68.— Proposed amendment to the Constitution in relation to exempting property from taxation.

Referred to the Committee on State Finances and Taxation.

Mr. Marshall offered the following overture:

O. 69.— To amend section 7, article 8 of the Constitution, relative to the liability of the stockholders of banking corporations.

Referred to the Committee on Banking.

Mr. Mantanye offered the following overture:

O. 70.— To amend or change section 13, article 6 of the Constitution, changing term of Supreme Court and city courts to eight years.

Referred to the Judiciary Committee.

Mr. Hill offered the following overtures:

O. 71.— To amend section 8 of article 3 of the Constitution relating to the eligibility of persons for election to the Legislature.

Referred to the Committee on Legislative Organizations.

O. 72.— Also, to amend section 9 of article 8 of the Constitution, relating to city charters.

Referred to the Committee on Cities.

Mr. Vedder offered the following overture:

O. 73.— To amend section 15, article 3 of the Constitution, in relation to the passage of bills.

Referred to the Committee on Legislative Powers and Duties.

Mr. Mullen — Mr. President, I desire to call the attention of the Convention to page 12 of the Journal, where it recited the fact of the organization of this Convention, that the Sixth Senatorial District does not appear to be represented in this Convention by its delegates. The Sixth District is entirely omitted from the list of delegates, as recited in the organization of this Convention. I find at the bottom of page 14 of the Journal, continued on page 15, a certificate reading as follows:

State of New York, Office of the Secretary of State, ss.:

I certify that I have compared the foregoing with an original statement filed in this office, and that the same is a correct transcript therefrom, and of the whole of such original, with the exception as to the statement as to votes cast in the Sixth Senatorial District and the declaration of the election of candidates to the office of district delegates to Constitutional Convention in said district which were omitted by order of the Supreme Court.

Given under my hand and seal of office, at the city of Albany this 8th day of May, 1894.

JOHN PALMER,
Secretary of State.

I desire to call the attention of the President, and the gentlemen of this Convention that that has been an oversight on the part of Mr. John Palmer, Secretary of State. If he had investigated further, and examined his records, he would have ascertained that the Supreme Court at General Term in December last issued a writ of peremptory mandamus compelling the State Board of Canvassers to re-assemble and to canvass the votes cast in the Sixth Senatorial District, and to declare the true result of the vote so cast, according to law. The State Board of Canvassers, in canvassing the vote in November, omitted to canvass the vote from Richmond county, leaving it out entirely, both of the Democratic and Republican candidates of that district. Before they had issued any certificate to any of the delegates from that district, I called the attention of the Secretary of State to the fact that there had been a grave omission in the canvass of the votes from that district, whereupon he requested me to apply to the Supreme Court at General Term to compel the Board of State Canvassers to reconvene, and canvass the vote and declare the result of the election in that district. I made such application. The matter was argued before the General Term. A peremptory writ of mandamus was issued and so the State board re-assembled, re-canvassed the vote, and issued a certificate to the Democratic members of the Sixth Senatorial District. The certificates which we hold to-day, and brought with us into this Convention recite all these facts, and they appear as part of the records of the Secretary of State's office, and did so, probably, at the time when the Secretary of State called this Convention to order, and attended to its preliminary organization. Of course, the question, whether or not we are entitled to remain here as members will be settled hereafter, but, for the present, we being members-elect and holding our certificates as members-elect of this Convention, our names should appear on the Journal of this Convention as having taken our seats, having subscribed to the oath, and having taken the Constitutional oath of office, as delegates to this Convention. Hence, I ask, Mr. President, and offer it as a motion, that this matter be referred to the proper committee, and that the proper correction be made in accordance with the facts, and I desire to correct the Journal accordingly. If it is not referred to any committee I offer a motion that the Journal be corrected accordingly, so that the

names of the delegates from the Sixth Senatorial District shall appear on the face of the Journal, and that the certificate of the Secretary of State, as appearing on pages 14 and 15, be amended so as to conform with the facts of the case.

Mr. Moore — I ask that the gentleman put his motion in writing.

The President — The Chair would call the attention of Mr. Mullen to the fact, that the part which he proposes to correct is an official document, signed by the Secretary of State, the Comptroller, the Treasurer, the Attorney-General, and the State Engineer and Surveyor, as the State Board of Canvassers, and perhaps, his object would be accomplished by having the fact inserted, of the appearance of these gentlemen, as delegates, and that they were duly sworn and attended to their duties.

Mr. Mullen — I desire to have the opportunity to prepare that motion in proper shape and have it submitted to the Convention to-morrow.

The President — Reports of standing committees are now in order.

Mr. Root — I beg leave to submit the report of the Committee on Rules, and I offer the following resolution:

The Secretary read the resolution as follows:

R. 33.— Resolved, That the report of the Committee on Rules be printed and distributed to the members of the Convention, and that consideration of the report be postponed until Friday, May twenty-fifth.

Mr. Root — Mr. President, I ask leave to make a statement, in regard to that resolution, and in regard to the report. The report is already printed, and will be distributed immediately. I put the resolution in that form, in order that the authority of the Convention might be given to the officers to pay for the printing, so that the members of the Convention will have the entire time from this morning to consider the report. I wish to say, also, that the Committee on Rules at the meeting which they have just held this morning, have added to rule 32, which will be found in the pamphlet about to be distributed, the words which will make the first sentence of the rule read as follows: "All propositions for amendment, after their second reading, which shall be by title, shall be referred to a standing or select committee to consider and report thereon, and shall be immediately printed and placed on the file of each member." They have been inserted in writing this morning in the printed report, which I have handed up, and the members

will not find it in the copies that will be distributed. I wish, further, to say, Mr. President, that the Committee on Rules has sought to simplify, as far as they were able, the rules which they offer to the Convention for its consideration, with the idea that a very large proportion of the members of the Convention have not been members of deliberative bodies and are not especially familiar with parliamentary proceedings; that the proceedings of this Convention are, in their nature, quite simple, and that it was better that the rules should be so simple that every member of the Convention would be able to understand and apply them in the course of our proceedings. We have endeavored to state in plain and customary English the simple rules by which our business should be conducted. I wish, also, to say that the report is a unanimous report of all the members of the Committee on Rules. I ask for the reading of the resolution, which I have offered and that it be put to a vote.

The Secretary again read the resolution.

Mr. Deady — I move to amend the resolution by inserting "Tuesday, May twenty-ninth" instead of "Friday, the twenty-fifth."

Mr. Barhite — I second that amendment.

Mr. Root — Mr. President, I hope the amendment will not prevail. It seems to me that we ought to settle upon the rules which are to govern our procedure as soon as possible and not become accustomed to rules which may possibly not be the rules of the Convention. Every day that we proceed under the rules, which may not be finally adopted, will make it more difficult for us to accustom ourselves to the rules which are adopted. It seems to me that, if the gentlemen who have these rules in print to-day will take them and examine them, they ought to be able to be ready by to-morrow to debate them. I, for one, am exceedingly anxious that we should get all these preliminary matters settled, and get down to work as soon as possible.

Mr. Goodelle — I fully concur with the suggestions of the chairman of this committee. It seems to me that there ought not to be any further delay over the adoption of our rules.

Mr. Barhite — I have every confidence in the ability of our Committee on Rules. I have no doubt that they have labored faithfully and diligently to give this Convention such rules as will be best fitted for its work. At the same time, as has been suggested here before, there are very many members or at least some members of this Convention who are not thoroughly familiar with legis-

lative rules, and it seems to me that, if this report is to be acted upon or adopted to-morrow morning, there will not be sufficient opportunity for these members to give proper consideration to them. It may be necessary to compare them with the rules of other legislative bodies, and it seems to me that no harm will come to the Convention if this amendment is adopted.

Mr. Bush — Mr. President, the rules which are to govern this Convention are a matter of great import to every member of this Convention, and it does seem to me that, as we have existed so long under the rules that we have been acting under, the putting over of the consideration of this report will not retard the work of this Convention to any great extent. It seems to me that this question of the rules should be looked over very carefully, so that there will not be any trouble hereafter in making changes. It is true that we have the greatest confidence in the Committee on Rules, and have no doubt that they have done everything that is wise and necessary for the proper conduct of the business of this Convention. Nevertheless, in a body so large as this, on looking over the rules very carefully, many changes may be found necessary. I would, therefore, ask to have this matter put over until next Tuesday, and if that should be found impracticable, then until next Thursday, in order to give every member an opportunity to read over the rules, and compare the changes with the Legislative Manual or Blue Book. I do not see how any harm can be done to any one by putting it over. I do not see how any harm can be done by making this a special order for next Tuesday at ten o'clock.

Mr. Vedder — Mr. President, we are deciding substantially by adopting the motion of the chairman of the Committee on Rules, to begin the consideration of these rules to-morrow. That will not prevent the consideration of the rules, if debate should arise, until Tuesday or Wednesday of next week, but, we may to-morrow, if we begin, adopt some of the rules about which there will be no discussion. Now, time is fleeting. We ought to begin to-morrow to adopt rules which should govern us, and I certainly hope that the motion will prevail.

Mr. Mulqueen — I move, as an amendment, that the report be read to-morrow; that those rules to which no objection is made stand as the rules; and that all rules, on which debate arises, be made a special order for Thursday.

Mr. J. Johnson — Mr. President, it is stated that this is a unanimous report of the Committee on Rules. I think with that unanimous report we need not be afraid, with twenty-four hours to inves-

tigate the subject, to take it up to-morrow and try and dispose of it, before we leave the city over Sunday. If there is anything difficult, if there is anything that we cannot comprehend, or master, or understand, we can then provide for putting it over. But, surely, twenty-four hours is sufficient to take up and consider at least, a unanimous report of this committee.

Mr. Kellogg — I hope, Mr. President, that the report made by the chairman of the Committee on Rules, will be adopted. It seems to me that this Convention should have confidence in the Committee on Rules, which is made up of both parties, and who have spent a week's time diligently and earnestly in considering them. I hope the report will be adopted.

Mr. A. B. Steele — Mr. President, I would like to inquire if these rules can be amended at any time during this session of the Convention?

Mr. President — Yes, sir; of course.

Mr. A. B. Steele — Then, what harm could there be, I would like to inquire, in taking the matter up to-morrow and making as much progress as we can?

Mr. Bush — Mr. President, I move, as an amendment to the resolution of the chairman of the Committee on Rules, that we adopt the report of the Committee on Rules now, and that next Tuesday all changes that are desired to the rules may be brought on as a special order, and then we can run this Convention, from to-day on, under the rules and consider such changes as may be advisable on next Tuesday at ten o'clock.

Mr. Cochran — I rise to a point of order, Mr. President; it requires unanimous consent to suspend the rules.

The President — I think the amendment is a little out of order.

Mr. Bush — I was about to say that I had a conversation with the chairman of the Committee on Rules, and I think he approved of my amendment, although he can speak for himself.

Mr. Alvord — Mr. President, I desire to say a very few words in reference to this matter. I think the amicable way to settle this matter, is to take up this subject to-morrow and go as far as there shall be no difference of opinion, and then adjourn the balance over until Tuesday morning.

I simply want to suggest, in addition, that to-morrow is Friday, and from my experience of the past, we will have a very slim attendance. Gentlemen will have their carpet-bags up here all ready to start for home, if they have not already started. I, therefore, suggest

that we take it up to-morrow and go as far as we can with the rules which are not objectionable, and then let the balance go over until Tuesday. I agree with the gentleman that it is important that we should settle upon the rules, as soon as possible, that will govern our actions.

Mr. Root — Mr. President, I wish to say that the resolution which I will offer seems to substantially embody the idea of the gentleman from Syracuse (Mr. Alvord). The resolution is that this report be taken up, as a subject for consideration, to-morrow. We will then be as competent to be fair and reasonable as we are to-day. I do not think we ought to hamper ourselves as to our action to-morrow by resolutions to-day. Let us take the matter up, and whatever then appears to be appropriate for immediate disposition, because substantially unquestioned, let us adopt, and whatever appear to us to be matters of great difference, we will put over; but I do not think we ought to adopt the amendment of the gentleman from New York (Mr. Mulqueen), by which we now hamper ourselves, as to the disposition we make to-morrow and I hope the resolution originally offered will be adopted. It seems to me to be a reasonable and proper one.

Mr. Becker — Mr. President, I find on page 6 of the Journal of the proceedings of this Convention, that the resolution in reference to the rules under which we have been acting, is that these rules shall be in force, and be accepted as temporary rules until the Committee on Rules shall make a permanent report. It does not read until the Committee on Rules shall make a permanent report and that report shall be adopted; but by some oversight, presumably on the part of the mover of the resolution, the rules under which the Convention is now acting can only remain in effect until the committee makes its report. Consequently, it is necessary for us to proceed at once with the consideration of these rules so that we may have something to govern our actions.

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

The President put the question and the previous question was ordered.

The President — The gentlemen will bear in mind this fact that the pending question is on the amendment of Mr. Mulqueen, that the report be read to-morrow, and that the rules to which no substantial objection is made, be approved, and that those that do give rise to substantial debate, be made a special order for Thursday next.

Mr. Emmet — Mr. President, do I understand that any member of the Convention objecting to a rule, simply on that objection, they shall go over as a special order for Thursday?

The President — I presume that is so under Mr. Mulqueen's amendment.

The President put the question on Mr. Mulqueen's amendment, and it was determined in the negative.

The President put the question on Mr. Deady's amendment, and it was determined in the negative.

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

Mr. Goodelle — I desire to give notice that the Committee on Suffrage will hold a meeting this afternoon at half past three o'clock, and with the permission of the Chair, the meeting will be held in this room. I have been requested to state, for the benefit of all that are interested, that the discussion will be opened with the affirmative side of the proposition to strike the word "male" out of the Constitution. I am further requested to state that the Committee on Suffrage will be addressed by Miss Anthony this afternoon.

Mr. Holls — I desire to give notice to the Committee on Education that there will be a meeting of that committee in room number 6 this afternoon.

Mr. Deyo asked to be excused from attendance on the twenty-ninth, and the request was granted.

Mr. Vedder — I desire to give notice that the Committee on Legislative Powers will have a meeting in room 3 at four o'clock.

I also request that the Republican members of the Convention meet in the Assembly parlor immediately after adjournment to-day.

Mr. Mulqueen — May I ask what committee Mr. Vedder represented when he made that announcement? Was it the caucus committee?

The President — I do not know anything about it. The chairman will inform you.

Mr. Ackerly asked to be excused from attendance to-morrow, and the request was granted.

Mr. Mullen asked to be excused from attendance all of next week, and the request was granted.

Mr. Deady asked to be excused on Tuesday, and the request was granted.

Mr. Cornwell asked to be excused from attendance on Tuesday, and the request was granted.

Mr. Nichols asked to be excused from attendance to-morrow, and the request was granted.

Mr. Mantanye asked to be excused from attendance next Tuesday, and the request was granted.

Mr. Galinger — Mr. President, I notice in the newspapers that my name appears as a member of the Committee on Banks and Insurance, and I would like to be informed if that is a fact, that I am a member of the Committee on Banks and Insurance.

The President — The Secretary will inform the gentleman.

Mr. Towns — Mr. President, it seems that a great many of the members have been excused from attendance on Friday of this week, and Tuesday of next, and the prospect is that we will have a very slim attendance. I will, therefore, move that when this Convention adjourns on Friday, it will adjourn until Thursday morning, the thirty-first of May, at twelve o'clock.

Mr. Holls — Mr. President, I rise to debate that motion, and ask that it lie over under the rule.

The President — Rule 50 does not require it to lay over as it is a motion relating to recess or adjournment.

Mr. Holls — It does not relate to the order of business.

The President — It is in regard to recess or adjournment. The Chair is of the opinion, however, that the motion is out of order.

Mr. Riggs asked to be excused from attendance on Tuesday, and the request was granted.

Mr. Lauterbach asked to be excused from attendance to-morrow, and the request was granted.

Mr. McMillan — I move that this Convention do now adjourn.

The President — Before the motion is put to adjourn the Chair requests the chairmen of all the standing committees, and all the clerks to meet immediately after the adjournment in the President's room, in order that the assignment of clerks, and the hours of session of the various committees may be considered there.

The President put the question on the motion to adjourn, and it was determined in the affirmative. Whereupon the Convention adjourned until to-morrow morning, at ten o'clock.

Friday, May 25, 1894.

The Constitutional Convention of the State of New York met at the Assembly Chamber, Albany, N. Y., Friday, May 25, 1894.

The Convention was called to order by President Choate at 10 A. M.

The Rev. C. P. Evans offered prayer.

The President — The Secretary will read the Journal of yesterday's proceedings.

Mr. Mulqueen — Mr. President, I move that the reading of the Journal be dispensed with.

Mr. Speer — I object.

Mr. Bowers — I object.

The President — The Secretary will read the Journal.

The Assistant Secretary proceeded to read the Journal of Thursday, May twenty-fourth.

Mr. Fuller — Mr. President, I request that unanimous consent be granted that the further reading of the Journal be dispensed with.

The President — That motion has already been made, and unanimous consent was refused, objection being made by Mr. Bowers of New York.

Mr. Speer — Mr. President I have a correction of the Journal which I desire to offer.

The President — Corrections of the Journal are now in order.

Mr. Speer — I move that the Journal be corrected as follows:

The President — The Secretary will read the resolution of Mr. Speer.

The Secretary read the resolution, as follows:

R. 34.— Resolved, That the Journal be corrected by inserting the following: Mr. Vedder, chairman of the Caucus Committee, announced that there would be a meeting of the Republican members in the Assembly parlor, immediately after adjournment.

Mr. Speer — Mr. President, the object of making that correction is that if we are to have a caucus of the members of this body, that fact should appear on the Journal, so that the official record of the Convention may show that such matters as the days on which we adjourn, the hours at which we shall sit, and the rules which we shall adopt are considered first by a caucus. We have recognized in our rules the existence of the other regular committees of this body.

At the same time that the announcement of the meetings of these committees were made yesterday, the chairman of the Caucus Committee announced that there would be a caucus immediately after adjournment. The only object of that is —

Mr. Alvord — Mr. President, I rise to a point of order. My point of order is that this is entirely extraneous matter, and is not permissible before this Convention.

Mr. Speer — Mr. President, I ask a vote upon my resolution.

The President — The question is on the resolution of Mr. Speer, that the Journal be corrected.

Mr. Alvord — Mr. President, I rise to another point of order. My point of order is that the resolution is entirely out of order.

The President — The Chair is of the opinion that a member has the right to ask for a correction of the minutes and have it voted upon.

Mr. Cookinham — Mr. President, I desire to know what the motion is.

The President — The motion is to correct yesterday's minutes by inserting a statement that Mr. Vedder of the Caucus Committee made an announcement.

The President put the question on Mr. Speer's resolution and it was determined in the negative.

The President — If there are no other amendments, the Journal will stand approved, as read. It is so approved.

The President — The Secretary will read the assignment of clerks to the different committees.

The Secretary read the following:

Governor and State Officers; Preamble; State Prisons and Penitentiaries — H. G. Getter.

Banking and Insurance; Military; Indians — J. W. Titus.

Industrial Interests; Canals; Revision and Engrossing — C. H. Bassett.

Railroads, etc.; Corporations; Privileges and Elections — J. A. Cook.

State Finances and Taxation; Education; Charities — J. H. Rathbone.

County, Town and Village Officers; County, Town and Village Government; Printing — J. P. Brenan.

Contingent Expenses; Cities; Right of Suffrage — Ray B. Smith.

Rules and the President; Judiciary; Constitutional Amendments — E. A. Fay.

Legislative Powers; Legislative Organization; Salt Springs — George B. Munn.

The President — The next order of business is the presentation of memorials.

Under this order of business the following memorials were presented:

Mr. Wellington presented the petition of Helen J. Comstock, Lilian Root and 2,627 others, of Madison county, praying that the word "male" be stricken from the Constitution. It was signed by 1,588 women and 1,034 men. The vote of the county in 1893 was 8,748.

Referred to the Committee on Suffrage.

The following petitions for woman suffrage were also presented, as follows, viz.:

Mr. Schumaker presented the petition of Cornelia K. Hood, Marianna W. Chapman and 9,750 others of Brooklyn; women, 5,525; men, 4,225. The vote of Brooklyn in 1893 was 166,640.

Referred to the Committee on Suffrage.

Mr. Griswold presented the petition of Mrs. Van Aken and 2,693 others of Greene county; women, 1,977; men, 716. Vote of Greene county in 1893 was 6,999.

Referred to the Committee on Suffrage.

Mr. Peck presented the petition of Mrs. E. S. Howe, Mrs. L. M. Rice and 1,701 others of Rensselaer county; women, 1,079; men, 637. The vote of Rensselaer county was 28,857.

Referred to the Committee on Suffrage.

Mr. Woodward presented the petition of Frances Howell and 3,197 others of Genesee county; women, 1,913; men, 1,284. Number of taxpaying women, 1,549, and assessed valuation of property, $2,654,511.

Referred to the Committee on Suffrage.

Mr. Mantanye presented the petition of Mrs. P. H. Patterson, Mary L. Squires and 3,806 others of Cortland county; women, 2,143; men, 1,663. Vote of Cortland county in 1893 was 6,017.

Referred to the Committee on Suffrage.

Mr. Davies presented the petition of Frances E. Newland, Ida J. Britcher and 1,625 others of Oneida county; women, 1,043; men, 582. The vote of Oneida county in 1893 was 27,088.

Referred to the Committee on Suffrage.

Mr. W. H. Steele presented the petition of Mrs. S. M. Barker, Mrs. L. Mattison and 8,006 others of Oswego county; women, 4,902; men, 3,104. The vote of Oswego county in 1893 was 13,264.

Referred to the Committee on Suffrage.

Mr. Durfee presented the petition of the Wayne County Women's Christian Temperance Union, praying for equal suffrage for women.

Referred to the Committee on Suffrage.

Also, a petition of the Wayne County Christian Temperance Union, praying for an amendment to the Constitution, prohibiting the manufacture and sale of intoxicating liquors.

Referred to the Committee on Legislative Powers and Duties.

Mr. Abbott presented the petition of Mary Waddell Roger and 3,634 others of St. Lawrence county; women, 2,561; men, 1,073. The vote of St. Lawrence county in 1893 was 14,240. Number of taxpaying women, 3,573. Assessed valuation of property, $1,093,794.

Referred to the Committee on Suffrage.

Mr. Spencer presented the petition of Mr. George Beakley and 2,586 others of Fulton county; women, 1,711; men, 875. The vote of Fulton county in 1893 was 8,988.

Referred to the Committee on Suffrage.

Mr. C. H. Lewis presented the petition of Marie R. Jenny, Arria S. Huntington and 16,716 others of Onondaga county; women, 11,207; men, 5,509. The vote of Onondaga county in 1893 was 28,048. Taxpaying women, 5,666. Assessed valuation of property, $11,449,375.

Referred to the Committee on Suffrage.

In the absence of Mr. Lyon, Mr. Cassidy presented the petition of Prof. J. L. Lusk, Gen. E. F. Jones, the Rev. Samuel Greene and 3,017 others of Broome county; women, 1,834; men, 1,183. The vote of Broome county of 1893 was 11,649.

Referred to the Committee on Suffrage.

Mr. C. A. Fuller presented the petition of Jennie Harris, Lottie Burrows and 2,542 others of Chenango county; women, 1,512; men, 1,026. The vote of Chenango county in 1893 was 8,020.

Referred to the Committee on Suffrage.

The President — The next order of business is communications from State officers. If none of the members have any, the next order of business will be the presentation of notices, motions and resolutions, to be called for by districts numerically.

Mr. Kellogg — Mr. President, I offer the following resolution, and ask to have it referred to the appropriate committee:

The Secretary read the resolution as follows:

R. 35.— Resolved, That the Governor of this State be requested to furnish to this Convention the number of pardons granted by him during his term of office, with the reasons for such pardons; also the number restored to citizenship during the same time, if any, and if so, who.

Referred to the Committee on Governor and State Officers.

Mr. McMillan — Mr. President, I call up my resolution which was laid over yesterday, in regard to the transmission of the printed report to the several law libraries of the State. Upon the suggestion of several members, I have designated the location of these several libraries, as fixed by statute, and have added thereto the Harlem Law Library and the Bar Association of the State of New York.

The President — The Secretary will read the original resolution, as amended by Mr. McMillan.

The Secretary read the resolution as follows (No. 31):

Resolved, That the Secretary of this Convention be, and he is hereby, directed to transmit to the eight law libraries of the State, to wit: New York, Brooklyn, Kingston, Schenectady, Utica, Delhi, Binghamton and Buffalo, and to the Harlem Law Library and the Bar Association of the State of New York one copy each of all proposed amendments to the Constitution as soon as printed.

Mr. Goodelle — I rise to a question of information. Is Syracuse omitted from that list?

Mr. McMillan — Syracuse and Rochester are not fixed by statutes. I would ask, on the request of the gentleman on my right, that Rochester and Syracuse both be included.

Mr. Deady — And the Law Institute of New York.

Mr. McMillan — I accept that.

Mr. Dickey — I ask that the Law Library at Newburgh be included.

Mr. Cookinham — I ask that the Law Library at Utica, which is a State institution, be also included.

Mr. McMillan — That is already included.

The President — Does Mr. McMillan accept all these amendments?

Mr. McMillan — I will accept them, Mr. President.

The President put the question of the adoption of the resolution as amended, and it was determined in the affirmative.

Mr. Lincoln — Mr. President, I call up the resolution offered by me yesterday, and I offer this as a substitute.

The President — The Secretary will read the substitute offered by Mr. Lincoln, if there is no objection.

The Secretary read the substitute as follows:

Substitute for resolution No. 32:

Resolved, That the clerks of the several courts in each of the several counties of this State in which persons are naturalized pursuant to the laws of the United States be required to transmit to the Secretary of this Convention on or before the fifteenth day of June next, a statement of the number of persons naturalized in said courts respectively during the year 1893, classifying the same according to nationality.

The President put the question on the adoption of the resolution, and it was determined in the affirmative.

Mr. Vedder — Mr. President, are we under the order of motions and resolutions?

The President — We are.

Mr. Gilbert — Mr. President, I beg the indulgence of the President and of the Convention for not introducing a resolution when it ought to have been done, and I beg now to introduce it.

The President — The Secretary will read the resolution.

The Secretary read the resolution as follows:

R. 36. Resolved, That the Secretary of the Convention be authorized to make the usual contracts as are made by the clerks of the two houses of the Legislature with the postmaster of the city of Albany and with the express companies for the transmission of papers and documents.

Mr. Roche — Mr. President, what is the usual contract?

The President — The Chair is unable to state, and as this resolution seems to give rise to debate it will lie over under the rules.

Mr. Vedder — Mr. President, the Committee on Contingent Expenses, to which was referred the resolution in regard to posting notices of committee meetings upon a bulletin have not reported. I understand that the chairman, Mr. Lyon, has not been at the Convention yet, and this resolution seriously concerns the work of

the Convention. I do not think, sir, that it would be discourteous if I should move that the Committee on Contingent Expenses be discharged from the further consideration of that resolution at once and have it disposed of one way or the other. As matters now are the members of the different committees wander through the corridors of this Capitol seeking committee rooms and do not find them, and it is important that the notices of meetings and the places where they are held should be posted in order that the members of the Convention may be informed of the respective committee meetings and the hour of meeting. And disclaiming all intention of any discourtesy to that committee, I move that it be discharged from the further consideration of my resolution.

Mr. McMillan — Mr. President, I desire to make an inquiry through the Chair as to whether this bulletin will furnish any information except to the public as to where the hearings will take place. I understood from the Secretary yesterday that that was the purpose of this bulletin. I think that no one can be misled as there are very few hearings set down. I know of but one, and I think under all circumstances this matter being before the committee, it should remain there.

The President — I understood from some member of the Committee on Contingent Expenses yesterday that they would be able to report notwithstanding the absence of their chairman. Is Mr. E. A. Brown of the Committee on Contingent Expenses ready to report from that committee?

Mr. A. B. Steele — Mr. President, I understand that Mr. Brown, together with some other members of that committee, are holding a meeting now.

Mr. Vedder — If the committee is now in session, of course I will withdraw my motion. Now, Mr. President, I would like to say a word in reference to what the gentleman from Erie (Mr. McMillan) has said on this subject. I understand that this bulletin board will not only give information to the public, but it will give information to the Convention itself. I understand that for the last seven years this rule has prevailed and this is a copy of the resolution which the Legislature has acted under during the last seven years. Personally, I do not care whether it is voted up or down.

The President — The Chair would suggest, Mr. Vedder, that if the appropriation were stricken out so that one of the messengers could attend to the matter, the resolution could be passed at once.

Mr. Vedder — I withdraw the resolution.

R. 37.— Mr. Holls — Mr. President, I merely wish to call the attention of the Convention to the fact that the debates and the Journal are not paged continuously, and that reference to anything that has occurred is therefore impeded, and I would, therefore, ask unanimous consent to make a motion that the Secretary be directed to see that the paging is made continuous.

The President put the question on the motion of Mr. Holls, and it prevailed.

The President — Overtures for constitutional alteration, to be called for by districts in numerical order, will now be received.

O. 74.— Mr. Jesse Johnson offered a proposition to amend article 5 of the Constitution, by adding a provision for an election commission.

Referred to the Committee on Governor and State Officers.

O. 75.— Mr. J. I. Green offered a proposition to amend section 2, article 1 of the Constitution in reference to the procedure in case of death or disability of one or more jurors in criminal cases.

Referred to the Committee on Judiciary.

O. 76.— Also, a proposition to amend section 6, article 1 of the Constitution in reference to the abolition of capital punishment, and discharge of persons imprisoned, after indictment and awaiting trial for ten months.

Referred to the Committee on Judiciary.

O. 77.— Mr. Dickey offered a proposed amendment to article 6, section 13 of the Constitution, permitting assignment by Governor to judicial duty of such judges as have reached the age of seventy years, when the public interests will be served by such assignment.

Referred to the Committee on Judiciary.

O. 78.— Mr. A. B. Steele offered an overture amending section 5, article 4 of the Constitution, relating to pardoning power.

Referred to the Committee on Governor and State Officers.

O. 79.—Also, an overture amending section 15, article 6 of the Constitution, relating to County and Surrogate's Courts.

Referred to the Committee on Judiciary.

O. 80.— Mr. Barrow offered an overture entitled "a proposition to amend section 6 of article 7 of the Constitution relating to the sale or lease of certain canals."

Referred to the Committee on Canals.

O. 81.— Also, an overture entitled "a proposition to amend section 9 of article 3 of the Constitution relating to two-third bills."

Referred to the Committee on Legislative Powers and Duties.

O. 82.— Mr. Cookinham offered an overture proposing an original article on the construction of the Constitution.

The President — Mr. Cookinham, to what committee should that go?

Mr. Cookinham — Judiciary.

The President — It is referred to the Judiciary Committee.

O. 83.— Mr. Mantanye offered an overture to amend or change sections 2 and 6 of article 3 of the Constitution, making terms of Members of Assembly two years and of Senators four years, providing for biennial sessions and for the compensation of Members and of Senators.

Referred to the Committee on Legislative Organization.

O. 84.— Mr. Hawley offered an overture entitled "a proposition to amend section 2 of article 8 of the Constitution, relating to corporations."

Referred to the Committee on Corporations.

O. 85.— Also, an overture entitled "a proposition to amend the Constitution by striking out section 2 of article 8 relating to corporations."

Referred to the Committee on Corporations.

O. 86.— Mr. Doty offered an overture to abrogate certain provisions of section 17 of article 1 of the Constitution, relating to the appointment of commissioners of codification.

Referred to the Committee on Judiciary.

O. 87.— Mr. Becker offered a proposed amendment to article 3, section 18, providing for the appointment of commissioners of jurors in counties containing cities of over twenty-five thousand population.

Referred to the Committee on Judiciary.

O. 88.— Mr. McKinstry offered an overture to amend section 2, article 10 of the Constitution, giving the Legislature the power to extend the right of suffrage in city, town and village elections to all citizens.

Referred to the Committee on County, Town and Village Government.

O. 89.— Also, an overture to amend article 10, section 1 of the Constitution, the purpose of that amendment being to render county treasurers ineligible for a successive term.

Referred to the Committee on County, Town and Village Officers.

O. 90.— Also, an overture to amend article 3 on legislative powers, the purpose of said amendment being to take saloons out of politics.

Referred to the Committee on Legislative Powers and Duties.

The President — Reports of standing committees are now in order.

Mr. Root — I ask to take up the consideration of the report of the Committee on Rules, and for the purpose of bringing it before the Convention, I move its adoption.

RULES REPORTED BY THE COMMITTEE ON RULES.

CHAPTER I.

Powers and Duties of the President and Vice-Presidents.

Rule 1. The President shall take the chair each day at the hour to which the Convention shall have adjourned. He shall call to order, and, except in the absence of a quorum, shall proceed to business in the manner prescribed by these rules.

Rule 2. He shall possess the power and perform the duties herein prescribed, viz.:

1. He shall preserve order and decorum, and, in debate, shall prevent personal reflections, and confine members to the question under discussion. When two or more members rise at the same time, he shall name the one entitled to the floor.

2. He shall decide all questions of order, subject to appeal to the Convention. On every appeal he shall have the right, in his place, to assign his reason for his decision. In case of such appeal no member shall speak more than once.

3. He shall appoint all committees, except where the Convention shall otherwise order.

4. He may substitute any member to perform the duties of the Chair during the absence or inability of both Vice-Presidents, but for no longer period than two consecutive legislative days, except by special consent of the Convention.

5. When the Convention shall be ready to go into Committee of the Whole, he shall name a chairman to preside therein, subject to right of committee to elect its own chairman.

6. He shall certify the passage of all amendments by the Convention, with the date thereof.

7. He shall designate the persons who shall act as reporters for the public press, not exceeding thirty in number; but no reporter

shall be admitted to the floor who is not an authorized representative of a daily paper. Such reporters, so appointed, shall be entitled to such seats as the President shall designate, and shall have the right to pass to and fro from such seats in entering or leaving the Assembly Chamber. No reporter shall appear before any of the committees in advocacy of, or in opposition to, anything under consideration before such committees. A violation of this rule will be sufficient cause for the removal of such reporter. Removal for this cause shall be vested in the President.

8. He shall not be required to vote in ordinary proceedings, except where his vote would be decisive. In case of a tie vote the question shall be lost. He shall have general control, except as provided by rule or law, of the Assembly Chamber and of the corridors and passages in that part of the Capitol assigned to the use of the Convention. In case of any disturbance or disorderly conduct in the galleries, corridors or passages, he shall have the power to order the same to be cleared, and may cause any person guilty of such disturbance or disorderly conduct to be brought before the bar of the Convention. In all such cases the members present may take such measures as they shall deem necessary to prevent a repetition of such misconduct, either by the infliction of censure or pecuniary penalty, as they may deem best, on the parties thus offending.

9. He shall also be ex officio member and chairman of the Committee on Rules.

10. In the absence of the President, or his inability to preside, his duties shall devolve upon the First Vice-President, or, if he also be absent, upon the Second Vice-President.

CHAPTER II.

Order of Business.

Rule 3. The first business of each day's session shall be the reading of the Journal of the preceding day, and the correction of any errors that may be found to exist therein. Immediately thereafter, except on days and at times set apart for the consideration of special orders, the order of business shall be as follows:

1. Presentation of memorials. Under which head shall be included petitions, remonstrances and communications from individuals, and from public bodies.

2. Communications from the Governor and other State officers. Under this head shall be embraced also communications from public officers and from corporations in response to calls for information.

3. Notices, motions and resolutions, to be called for by districts, numerically.

4. Propositions for amendment, by districts in numerical order.

5. Reports of standing committees in the order stated in rule 15.

6. Reports of select committees.

7. Third reading of proposed amendments.

8. Unfinished business of General Orders.

9. Special orders.

10. General Orders.

Reports from Committee on Revision and Engrossment may be received under any order of business.

CHAPTER III.

Rights and Duties of Members.

Rule 4. Petitions, memorials, remonstrances and any other papers addressed to the Convention shall be presented by the President, or by any member in his place, read by their titles and referred to the proper committee.

Rule 5. Every member presenting a paper shall indorse the same; if a petition, memorial, remonstrance or communication in answer to a call for information, with a concise statement of its subject, and his name; if a notice or resolution, with his name; if a proposition for amendment, with a statement of its title and his name; if a proposition of any other kind for the consideration of the Convention, with a statement of its subject, the proposer's name, and the reference, if any, desired. A report of a committee must be indorsed with a statement of such report, together with the name of the committee making the same, and shall be signed by the chairman.

Rule 6. Every member who shall be within the bar of the Convention, when a question is stated from the Chair, shall vote thereon unless he be excused by the Convention, or unless he be directly interested in the question; nor shall the roll of absentees be more than once called. The bar of the Convention shall be deemed to include the body of the Convention Chamber.

Rule 7. Any member requesting to be excused from voting may make, when his name is called, a brief statement of the reasons for making such request, not exceeding three minutes in time, and the Convention, without debate, shall decide if it will grant such request; but nothing in this rule contained shall abridge the right of any

member to record his vote on any question previous to the announcement of the result.

CHAPTER IV.

Order and Decorum.

Rule 8. No member rising to debate, to give a notice, make a motion, or present a paper of any kind, shall proceed until he shall have addressed the President, and been recognized by him as entitled to the floor. While the President is putting a question or a count is being had, no member shall speak or leave his place; and while a member is speaking no member shall entertain any private discourse or pass between him and the Chair.

Rule 9. When a motion to adjourn, or for a recess, shall be carried, no member or officer shall leave his place till the adjournment or recess shall be declared by the President.

Rule 10. No person, except members of the Convention and the officers thereof, shall be permitted within the Secretary's desk, or the rooms set apart for the use of the Secretary, during the session of the Convention, and no member or other person shall visit or remain by the Secretary's table while the yeas and nays are being called, except officers of the Convention in the discharge of their duties.

CHAPTER V.

Order of Debate.

Rule 11. No member shall speak more than once on the same question until every member desiring to speak on such question shall have spoken; nor more than twice on any question without leave of the Convention.

Rule 12. If any member, in speaking, transgress the rules of the Convention, the President shall, or any member may, call to order, in which case the member so called to order shall immediately sit down, and shall not rise unless to explain or proceed in order.

Rule 13. All questions relating to the priority of one question or subject-matter over another, under the same order of business, the postponement of any special order, or the suspension of any rule, shall be decided without debate.

Rule 14. 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.

CHAPTER VI.

Committees and Their Duties.

Rule 15. The President shall appoint the following standing committees to report upon the subjects named, and such others as may be referred to them, viz.:

1. On the preamble and the bill of rights, to consist of eleven members.

2. On the Legislature, its organization and the number, apportionment, election, tenure of office and compensation of its members, to consist of seventeen members.

3. On the powers and duties of the Legislature, except as to matters otherwise referred, to consist of seventeen members.

4. On the right of suffrage and the qualifications to hold office, to consist of seventeen members.

5. On the Governor and other State officers, their election or appointment, tenure of office, compensation, powers and duties, except as otherwise referred, to consist of seventeen members.

6. On the judiciary, to consist of seventeen members.

7. On the State finances, revenues, expenditures and taxation, and restrictions on the powers of the Legislature in respect thereto and to public indebtedness, to consist of seventeen members.

8. On cities, their organization, government and powers, to consist of seventeen members.

9. On canals, to consist of eleven members.

10. On railroads, transportation, and electrical transmission, to consist of seventeen members.

11. On counties, towns and villages, their organization, government and powers, to consist of seventeen members.

12. On county, town and village officers, other than judicial, their election or appointment, tenure of office, compensation, powers and duties, to consist of seventeen members.

13. On State prisons and penitentiaries, and the prevention and punishment of crime, to consist of eleven members.

14. On corporations and institutions, not otherwise herein specified, to consist of seventeen members.

15. On currency, banking and insurance, to consist of eleven members.

16. On the militia and military officers, to consist of seven members.

17. On education and the funds relating thereto, to consist of seventeen members.

18. On charities and charitable institutions, to consist of seventeen members.

19. On industrial interests, except those already referred, to consist of seventeen members.

20. On the salt springs of the State, to consist of seven members.

21. On the relations of the State to the Indians residing therein, to consist of seven members.

22. On future amendments and revisions of the Constitution, to consist of seven members.

23. Revision and engrossment, to consist of seven members.

24. Privileges and elections, to consist of eleven members.

25. Printing, to consist of seven members.

26. Contingent expenses, to consist of seven members.

27. Rules, to consist of seven members, and the President.

Rule 16. The several committees shall consider and report, without unnecessary delay, upon the respective matters referred to them by the Convention.

Rule 17. The Committee on Revision and Engrossment shall examine and correct the amendments which are referred to it, for the purpose of avoiding inaccuracies, repetitions and inconsistencies. It shall also carefully examine in the order in which they shall be directed by the Convention to be engrossed for a third reading, all amendments so engrossed, and see that the same are correctly engrossed, and shall immediately report the same in like order to the Convention before they are read the third time.

Rule 18. It shall be the duty of the Committee on Printing to examine and report on all questions of printing referred to them; to examine, from time to time, and ascertain whether the prices charged for printing, and the quantities and qualities furnished, are in conformity to the orders of the Convention and to the conditions fixed by it; to ascertain and report the number of copies to be printed, and how distributed; and to report to the Convention from time to time, any measures they may deem useful for the economical and proper management of the Convention printing.

Rule 19. It shall be the duty of the Committee on Contingent Expenses to inquire into the expenditures of the Convention, and whether the same are being or have been made in conformity to law and the orders of the Convention, and whether proper vouchers exist for the same, and whether the funds provided for the purpose are economically applied, and to report, from time to time, such regulations as may conduce to economy and secure the faithful disbursement of the moneys appropriated by law.

CHAPTER VII.

General Orders and Special Orders.

Rule 20. The matters referred to the Committee of the Whole Convention shall constitute the General Orders, and their titles shall be recorded in a calendar kept for that purpose by the Secretary, in the order in which they shall be severally referred.

Rule 21. The business of the General Orders shall be taken up in the following manner, viz.: The Secretary shall announce the title of each proposed amendment or other matter, as it shall be reached in its order; whereupon it shall be taken up on the call of any member, without the putting of a question therefor, but if not so moved, it shall lose its precedence for the day. And whenever three proposed amendments or other matters have been thus moved the Convention shall go into Committee of the Whole upon them without further order.

Rule 22. Tuesday and Thursday of each week shall be set apart especially for the consideration of the General Orders; but they may be considered on any other day when reached in their order.

Rule 23. Each member shall be furnished daily with a printed list of the General Orders, which shall be kept on his files by the Sergeant-at-Arms, in the same manner as other printed documents.

Rule 24. Any matter may be made a special order for any particular day, by a report of the Committee on Rules or by unanimous consent.

CHAPTER VIII.

Committee of the Whole.

Rule 25. Any matter may be committed to the Committee of the Whole after the report or discharge of a standing or select committee, or by unanimous consent without such report or discharge. The same rules shall be observed in Committee of the Whole as in the Convention, so far as the same are applicable, except that the previous question shall not apply, nor the yeas and nays be taken.

Rule 26. A motion to "rise and report progress" shall be in order at any stage, and shall be decided without debate. A motion to rise and report is not in order until each section and the title have been considered, unless the limit of time has expired.

Rule 27. Proposed 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, the amendments which have been pro-

posed and not previously acted upon shall be voted upon in their order without further debate. The proposed 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.

If the committee shall have adopted any proposed amendment, the same shall be reported complete with any amendments made in committee incorporated in their proper places.

Rule 28. If at any time, when in the Committee of the Whole, it be ascertained that there is no quorum, the chairman shall immediately report the fact to the President, who then takes the chair for the purpose of securing a quorum, and when that is obtained the chairman resumes his duties.

Rule 29. Should the committee not have completed the business before it rises, the chairman will report progress and ask leave to sit again. If leave be refused, the effect is to bring up the subject immediately before the Convention.

CHAPTER IX.

Proposed Amendments to the Constitution.

Rule 30. No proposition for amendment shall be introduced in the Convention, except in one of the following modes, viz.:

1. Under the order of introduction of propositions for amendment by districts in numerical order.

2. By report of a committee.

Rule 31. The title of each proposition for amendment introduced shall state concisely its subject-matter.

Rule 32. All propositions for amendment, after their second reading, which shall be by title, shall be referred to a standing or select committee, to consider and report thereon, and shall be immediately printed and placed on the files of each member. All proposed amendments reported shall, if the report be received, be committed to the Committee of the Whole and immediately printed. When a committee has reported that no amendment should be made to the provisions of the existing Constitution relating to any specified subject and such report is agreed to, all propositions for amendment relating to that subject which have been referred to that committee shall be considered as rejected. No standing or select committee shall be discharged from the consideration of a proposed amendment referred to it until the committee has had a meeting, subsequent to such reference.

Rule 33. Proposed amendments reported by the Committee of the Whole shall be subject to debate before the question to agree with the committee in their report is put.

Rule 34. No proposed amendment shall be ordered to a third reading until it shall have been considered in Committee of the Whole.

Rule 35. No proposed amendment shall be put upon its third reading until it shall have been reported by the Committee on Revision and Engrossment as correctly revised and engrossed, unless by unanimous consent. Nor shall any proposed amendment be read the third time, unless it shall have been once printed.

Rule 36. Every proposed amendment shall receive three separate readings, previous to its final passage, and the third reading shall be on a day subsequent to that on which the proposed amendment passed in Committee of the Whole.

Rule 37. The third reading of proposed 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 amendment to be read is laid on the table. And the question on the final passage of every proposed amendment shall be taken immediately after such third reading, and without debate.

Rule 38. In all cases where unanimous consent is asked for advancing a proposed amendment out of its order, it shall be the duty of the President to plainly announce such request in full twice.

Rule 39. On the third reading of a proposed amendment after the reading of the title and before the reading of the text, the proposed amendment shall be open one hour, if required, for debate on its merits, before the previous question shall be ordered; but no member shall speak more than five minutes or more than once; the vote, however, may be taken at any time when the debate is closed.

Rule 40. On the third reading of the proposed amendment no amendment thereto shall be in order, except to fill blanks, without unanimous consent.

Rule 41. A motion may be made during the third reading of any proposed amendment to recommit it, with instructions, but the instructions shall be in writing, and such motion shall not be debatable.

Rule 42. A register shall be kept by the Secretary of all proposed amendments introduced in the Convention, in which shall be recorded, under appropriate heads, the progress of such proposed amendments from the date of their introduction to the time of their final disposition.

Rule 43. In all cases where a proposed amendment, order, motion or resolution shall be entered on the Journal, the name of the member introducing or moving the same shall also be entered on the Journal.

CHAPTER X.

Motions and Their Precedence.

Rule 44. When a question is under consideration, the following motions only shall be received; which motions shall have precedence in the order stated, viz.:

Motions to or for:

1. Adjourn for the day.
2. Recess.
3. Call of the Convention.
4. Previous question.
5. Lay on the table.

(1 to 5: Not amendable or debatable.)

6. Postpone indefinitely (not amendable).
7. Postpone to a certain day.
8. Go into Committee of the Whole.
9. Commit to Committee of the Whole.
10. Commit to a standing committee.
11. Commit to a select committee.
12. Amend.

(7 to 12: Preclude debate on main questions.)

Rule 45. Every motion or resolution shall be stated by the President or read by the Secretary before debate, and again, if requested by any member, immediately before putting the question; and every motion, except those specified in subdivisions 1 to 11, inclusive, of rule 44, shall be reduced to writing if the President or any member request it.

Rule 46. After a motion shall be stated by the President, it shall be deemed in the possession of the Convention, but may be withdrawn at any time before it shall be decided or amended.

Rule 47. The motion to adjourn, to take a recess, and to adjourn for a longer period than one day, shall always be in order; but the latter motion shall not preclude debate.

Rule 48. A motion to reconsider any vote must be made on the same day on which the vote proposed to be reconsidered was taken, or on the legislative day next succeeding, and by a member who voted in the majority, except to reconsider a vote on the final passage of a proposed amendment, which shall be privileged to any member. Such motion may be made under an order of business, but shall be considered only under the order of business in which the

vote proposed to be reconsidered occurred. When a motion for reconsideration is decided, that decision shall not be reconsidered, and no question shall be twice reconsidered; nor shall any vote be reconsidered upon either of the following motions:

To adjourn.
To lay on the table.
To take from the table; or
For the previous question.

Rule 49. No amendment to a motion shall be received while another is pending unless it be an amendment to the amendment and germane to the subject.

CHAPTER XI.

Of Resolutions.

Rule 50. The following classes of resolutions shall lie over one day for consideration, after which they may be called up, as of course, under their appropriate order of business:

1. Resolutions containing calls for information from any of the executive departments, from State, county or municipal officers, or from any corporate bodies.

2. 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.

Rule 51. All resolutions for the printing of an extra number of documents shall be referred, as of course to the standing Committee on Printing, for their report thereon before final action by the Convention.

Rule 52. All resolutions authorizing or contemplating expenditures for the purposes of the Convention shall be referred to the standing Committee on Contingent Expenses for their report thereon before final action by the Convention.

CHAPTER XII.

The Previous Question.

Rule 53. The "previous question" shall be put as follows: "Shall the main question now be put?" and, until it is decided, shall preclude all amendments or debate. When, on taking the previous question, the Convention shall decide that the main question shall not now be put, the main question shall be considered as still remaining under debate. The "main question" shall be on the passage of

the proposed amendment to the Constitution, resolution or other matter under consideration, but when amendments thereto are pending, the question shall first be taken upon such amendments in their order, and when adopted in Committee of the Whole, and not acted on in the Convention, the question shall be taken upon such amendments in like order.

CHAPTER XIII.

The Convention Chamber and Privileges of Admission to the Floor.

Rule 54. The following classes of persons, besides officers and members of the Convention, shall be entitled to admission to the floor of the Convention during the session thereof, viz.:

1. Governor, Lieutenant-Governor and ex-Governors of the State.
2. Judges of the Court of Appeals and of the Supreme Court.
3. The members of the Senate and Assembly, and ex-Speakers.
4. The State officers, Deputies and Commissioners.
5. The Regents of the University.
6. United States Senators and Congressmen.
7. The Capitol Commissioners.
8. Persons in the exercise of an official duty directly connected with the business of the Convention.
9. The reporters for the press, as provided by subdivision 7 of rule 2.

No other person shall be admitted to the floor during the session, except upon the permission of the President or by vote of the Convention; and persons so admitted shall be allowed to occupy places only in the seats in the rear of the Assembly Chamber. All permits granted by the President may be revoked by him at pleasure, or upon the order of the Convention. No person shall be entitled to the privileges of the floor of the Convention as a legislative reporter of a newspaper who is interested in pending or contemplated constitutional revision, or who is employed by, or receives compensation from, any corporation, except a newspaper, news or press association. The doors of the Convention shall be kept open to the public during all its sessions.

CHAPTER XIV.

General Rules.

Rule 55. Equivalent motions, resolutions or amendments thereto shall not be entertained. If any question contains several distinct

propositions, it shall be divided by the Chair at the request of any member, but a motion to " strike out and insert " shall be indivisible.

Rule 56. All proposed action touching the rules and order of business, except by unanimous consent, shall be referred to the Committee on Rules; such committee may sit during the session of the Convention without special leave, and report at any time on rules or order of business. It will be in order to call up for consideration at any time a report from the Committee on Rules. Any member may object to its consideration until the next legislative day, and if sustained by twenty-four other members, the consideration shall be so postponed, but only once. Pending the final consideration thereof, but one motion, that the Convention adjourn, may be entertained, and no other dilatory motion shall be entertained until such report is fully disposed of. A motion to suspend the rules shall in all cases state specifically the object of the suspension, and every case of suspension of a rule under such notices and motion shall be held to apply only to the object specified therein. Provided that whenever a standing committee shall make a report on a constitutional amendment or other subject, or at any time, the Committee on Rules may report a rule limiting the time of debate; and if approved or unquestioned by the Convention, such report shall stand as the time limited for debate on the subject-matter referred to in such rule, and the previous question or other motion to close debate shall not be in order until the expiration of the time allotted, or the debate has been closed; the time thus allotted for debate shall be equally divided between those in favor and those opposed to the subject-matter under consideration.

Rule 57. The yeas and nays may be taken on any question whenever so required by any fifteen members (unless a division by yeas and nays be already pending), and when so taken shall be entered on the Journal.

Rule 58. When the Convention shall be equally divided on any question, including the President's vote, the question shall be deemed to be lost.

Rule 59. In considering the report of the Committee on Revision and Engrossment, each article shall be open to amendment germane to such changes as may have been reported by the committee, without previous notice, but no one shall speak more than five minutes, or more than once, on any proposition to amend.

Rule 60. When a blank is to be filled and different sums or times shall be proposed, the question shall be first taken on the highest sum and the longest time.

Rule 61. A majority of the Convention shall constitute a quorum.

In all cases of the absence of members during its sessions, the members present may take such measures as they shall deem necessary to secure the presence of absentees, and may inflict such censure or pecuniary penalty as they may deem just on those who, on being called on for that purpose, shall not render sufficient excuse for their absence.

Rule 62. For the purpose of securing the attendance of members, a call of the Convention may be made, but such call shall not be in order after the main question has been ordered, nor after the voting on any question has commenced nor after the third reading of an amendment has been completed.

Rule 63. 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 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.

Rule 64. Whenever any person shall be brought before the bar of the Convention for adjudged breach of its privileges, no debate shall be in order, but the President shall proceed to execute the judgment of the Convention without delay or debate.

Rule 65. It shall be the duty of the Secretary to keep the Journal of each day's proceedings, which shall be printed and laid on the table of members on the morning after its approval. In addition to his other duties he shall prepare and supervise the printing of the Calendars of the orders of the day and cause them to be placed on the files before the beginning of each day's session. All appointments of officers and employes shall be entered on the Journal of the Convention, with the date of appointment.

Rule 66. It shall be the duty of the stenographer of the Convention to be present at every session of the Convention. He shall take stenographic notes of the debates in the Convention and in Committee of the Whole, and shall, at each day's session of the Convention, furnish a copy of the debates of the day before, written out in long hand, and file the same with the Secretary, who shall keep the same in his office, and the same shall at all times be open to the inspection of delegates.

Rule 67. At a reasonable time, to be determined by the Convention, and at least five days before final adjournment, the Committee on Revision and Engrossment shall be instructed to accurately enroll and engross the present State Constitution, with all amendments thereto properly inserted, or the proposed new Constitution; and the same shall be reported by said committee to the Convention, read through therein, and submitted to a final vote prior to its final adjournment. When an article of the Constitution is amended, or a new article substituted or added, such amended article, or new article, shall be enrolled and engrossed entire in its proper place in the Constitution.

CHAPTER XV.

Miscellaneous Provisions.

Rule 68. The Sergeant-at-Arms shall, under the direction of the Committee on Printing, receive from the printer all matter printed for the use of the Convention, and keep a record of the time of the reception of each document, and the number of copies received, and cause a copy of each to be placed on the desk of each member immediately after their reception by him. Subject to the direction of the President he shall enforce the rules of the Convention.

Rule 69. Separate files of the daily Journal, reports of committees and of all documents ordered to be printed shall be prepared and kept by the Sergeant-at-Arms, and one copy shall be placed upon the desk of each member of the Convention and of the Secretary.

Rule 70. There shall be printed, as of course, and without any special order, 1,000 copies of the Journal and of all reports of committees on the subject of constitutional revision.

Rule 71. Five hundred copies of the Journal and five hundred copies of the reports, as printed, shall be bound and distributed as follows, viz.: To each member of the Convention, two copies; State library, five copies; the library of the Senate, five copies; the library of the Assembly, five copies; the office of each county clerk, one copy; and the remaining copies to such libraries and other institutions as shall be designated by the President or by the Convention.

JOSEPH H. CHOATE,
Chairman.

The President put the question on Mr. Root's motion to adopt the report presented by the Committee on Rules.

Mr. Bowers — Mr. President, do I understand that the matter is now before the Convention for debate?

The President — It is.

Mr. Bowers — Mr. President, I desire to ask before expressing my views on this report, that rule 24 be amended by inserting after the word "rules" "if approved or unquestioned by the Convention," so as to make it harmonize with rule 56. If this is accepted by the committee I can proceed.

The President — Does Mr. Root accept that amendment? Do you strike out the words "or by unanimous consent," Mr. Bowers?

Mr. Bowers — Oh, no.

The President — Mr. Bowers moves to amend rule 24 by inserting after the word "rules" the words "if approved or unquestioned by the Convention." Is that correct and does Mr. Root accept the amendment?

Mr. Root — Mr. President, I had already prepared after consultation with several members of the Committee on Rules, and in view of suggestions made by gentlemen of the Convention, what I supposed was substantially identical with what Mr. Bowers proposes, and if the other gentlemen of the Committee on Rules make no objection to it, I certainly shall accept it. Will the Secretary be good enough to give us those words again?

Mr. Bowers — Mr President, I will proceed then without pressing the matter. The report of the Committee on Rules for this Convention is an unanimous report. It has not been adopted.

The President — Mr. Bowers, before you proceed, I think that notwithstanding the assent of the Committee on Rules to that amendment, it should be put to the House.

Mr. Marks — Mr. President, I offer an amendment that the rules be adopted by section or by each rule; that each rule be taken up separately and adopted.

The President — The Chair is of the opinion that that is not a proper amendment to Mr. Bowers's amendment, as his amendment was offered to a specific article.

Mr. Marks — Then I offer this as an amendment to the original motion.

The Chair is of the opinion that while one amendment is pending, another cannot be presented to the House.

Mr. Marks — Then I offer it as a substitute for the amendment.

Mr. Roche — Mr. President, I desire to second the motion of the gentleman offering this substitute. It seems to me that the orderly way to proceed is to take up these rules by chapters, and if

any gentleman desires to present any amendment to any rule in any chapter, he can do so, and we can thus get at the thing in an orderly way.

Mr. Root — If Mr. Bowers is willing to postpone the consideration of his amendment until we reach the chapter in which rule 24 is, I am perfectly willing to accept the suggestion of the gentleman from Troy.

Mr. Alvord — Mr. President, is this a proposition to adopt or accept?

The President — To adopt.

Mr. Alvord — That is entirely wrong. The word should be accept. We accept the report and then the question of adoption comes afterwards. I ask the gentleman from New York (Mr. Root) to accept that modification as that will avoid all difficulty.

Mr. Root — I understand that the effect of the resolution adopted yesterday was to accept the report. If there is any question about that I readily accept the suggestion of the gentleman from Onondaga.

The President put the question on accepting the report of the Committee on Rules so as to bring it before the House, and it was determined in the affirmative.

Mr. Maybee — Mr. President, I move an amendment to rule 39.

The President — Perhaps Mr. Maybee didn't hear the motion made by Mr. Marks and seconded by Mr. Roche that we take up the rules, chapter by chapter and that the amendments be offered as we proceed.

Mr. Alvord — Mr. President, I propose to modify that proposition and suggest that they be taken up rule by rule in their order as they are reported by the committee. Many of them are the same as those in our manual and will not give rise to debate. All such can be adopted readily.

The President — Does Mr. Marks accept that amendment?

Mr. Marks — That was my original motion.

The President put the question on the motion of Mr. Marks that the matter be taken up rule by rule and it was determined in the affirmative.

Mr. Bowers — Mr. President, I take it that the resolution just adopted means that we are to have the opportunity of finally adopting these rules, as a whole. As a whole I favor the rules and as a whole the Committee on Rules unanimously favored them. These,

Mr. President and members of the Convention, had been the feelings that have actuated the minority of the Committee on Rules in joining in this report. We recognize that there is a comparatively short period of time within which this Convention must perform its work. We are also aware that for the proper performance of that work the best energies of all the members of this Convention must be devoted to the consideration of the different propositions and the different matters which are to come before this Convention, and that only can be accomplished by a system of simple rules easily understood and readily enforced. These amendments that will be made to the Constitution of the State must be submitted to the people at the election in November, and as I understand the law, must be ready at least twenty days in advance of the election, and if we properly perform our work, it should be concluded by the middle of September. It is undoubtedly the right of the majority to adopt a system of rules which will enable them to transact business, and that, the minority of the members of the Committee on Rules have not hesitated to concede. It is also the right of the minority to have a reasonable time given for the discussion of all questions that may come before the Convention.

These views have been submitted to the Committee on Rules and the rules so adopted as they bear upon this all important question as to the limitation of debate are the result of long and careful consideration and the yielding more or less on both sides.

Mr. Lester — Mr. President, I rise to a point of order; my point of order is that there is no question pending before the House.

The President — The Chair did not state the question; the question is, of course, on the adoption of rule 1.

Mr. Vedder — Would it not be well then to have it read?

The President — The Secretary will read rule 1.

The Secretary read rule 1.

Mr. Goodelle — Mr. President, I move that rule 1 be adopted.

Mr. Bowers — Mr. President, I make the point of order that I have the floor.

The President — Mr. Bowers now has the floor on the motion to adopt rule 1.

Mr. Bowers — I am very sorry that the members of the Convention feel that I am wasting their time, as I shall not be very long and it may be possible that my explanation will aid in the discussion of these rules. The principal rule which bears upon the question to which I have referred is rule 56.

Mr. Alvord — I must rise to a point of order; my point of order is that the gentleman cannot make a speech covering the whole of these rules.

The President — The Chair rules the point of order not well taken.

Mr. Bowers — Mr. President, the views that I am expressing may actuate members in voting on rule 1. If we can adopt the rules as a whole, they will be acceptable. If we cannot, some of them may be voted down. For the purpose of enabling this Convention to proceed conveniently in the transaction of its business it has been proposed in these rules that on all of the important reports of committees, there shall be a time fixed for debate in the first instance before such reports are adopted by the Convention, and then no motion shall be made to close the debate until that time shall have fully elapsed. It seemed to the minority that as it was the right of the majority and they could insist upon and enforce it, if they saw fit, to close debate at any time that a rule requiring first, the Committee on Rules and the body of the Convention, to fix a reasonable time for debate on every important question would give the minority some reasonable assurance in this body that there would not at any time be an effort made to move the previous question and close debate without giving all sides an opportunity to be fully heard. And so also in these rules it will be found, Mr. President and gentlemen, that when we once adopt them we are to remain under their protection, and they are not to be obliterated at a moment's notice. Of course, it is true in the business of this Convention the time will arise when from the very necessities of the case a change will be desired, and if so, on the approval of the Committee on Rules it can be made. If at any time a reasonable minority protest, these rules provide that on the request of twenty-five members action shall not be taken until the next legislative day. These privileges being in one sense of the word conceded, and these rights claimed by the majority, being by the minority also conceded, it seems to us that we come before the Convention with a set of rules that are intended to protect the rights of the majority and lead to the prompt conclusion of the work of this Convention at a proper time, and at the same time protect every right that we can expect under all circumstances of those who might wish to be heard on any question before the House. Now that being the main question that, after all, this Convention is to determine, there comes the rest of the rules over which there can be no question for debate. There are undoubtedly some errors, and there undoubtedly could be some

corrections made for the advancement of the business, but I beg the gentlemen to remember that any such suggestion can be sent to the Committee on Rules and the committee will, undoubtedly, act in the best interests of the Convention by changing any rule that may be deemed desirable. We have been proceeding under rules never adopted by the Convention, but suggested to us by the Compiler. There are material changes in these rules, in the rules now reported. It is believed that the rules should be adopted as soon as possible so that the Convention may become accustomed to the rules under which we are to act and not to rules that can be abrogated at any moment. Therefore, the committee asks that the rules be permitted to become the governing force of this Convention as soon as possible, and I believe it will be greatly to the advantage of the Convention, and of the delegates. It will be noticed that there are some changes that I have suggested already that may be voted down, but on the whole if these rules should be adopted I am perfectly satisfied that they will accomplish everything that should be accomplished at this time. The rules should be adopted as a whole, and not as a part, as they all hang together, and unless they are adopted as a whole I shall not feel satisfied to adopt a part of them and it is for that reason that I ask the indulgence of the House that it may be understood why the unanimous report has been made and the minority and majority members will understand that a committee consisting of five, three on the part of the majority and two on the part of the minority have arrived at a conclusion from no partisan standpoint, but simply looking forward as to how this convention could be best conducted to accomplish the great work that has been confided to it by the people, and for this reason I hope these rules as they have been reported will be finally, and this day adopted.

The President — The question is on the adoption of rule 1.

Mr. Bowers — Do I understand that this vote finally adopts rule 1?

The President — That is the judgment of the Chair. If we adopt rule 1 that settles it.

Mr. Bowers — I shall then have to oppose it. I am willing to take it up and adopt it provisionally.

The President put the question on the adoption of rule 1, and it was determined in the affirmative.

The President — The Secretary will read rule 2.

The Secretary read rule 2.

Mr. Platzek — Mr. President, I move to amend subdivision 2 of

rule 2 so that the last sentence shall read as follows: " In case of such appeal only the appellant shall be allowed to speak."

Mr. Root — Mr. President, I hope the amendment will not prevail. I do not think we ought to muzzle 165 members of the Convention in any such way.

Mr. Alvord — Mr. President, I trust that motion will not prevail.

Mr. Platzek — Mr. President, the purpose of the amendment is to save time and not to waste the hours of this Convention in idle talk. When appeal is taken from an order or decision of the chair, all of us being present and listening to it are fully familiar with what is taking place, if we are attentive. If we understand the ordinary rules of parliamentary bodies it is also usual for the Chair to state his reason for making a decision, and also for the appellant to state his reason. That being the case, I believe we can act upon the proposition without every member of the Convention being allowed to be heard upon every ruling of the chair, no matter what it is.

Mr. Alvord — Mr. President, I have but one word to say in reference to this matter. The proposition of the gentleman simply makes it a duel between the Chair and the gentleman making the appeal, and allows the rest of us to sit here and look at them. I hope the amendment will be voted down.

The President put the question on Mr. Platzek's amendment, and it was determined in the negative.

Mr. Marks — Mr. President, I move that rule 2, as read by the Secretary, be adopted.

The President put the question on the adoption of rule 2, and it was determined in the affirmative.

Mr. Barhite — Mr. President, in order to save the time of the Convention, I move that each rule, as read by the Secretary, to which objection is not made, be declared carried or adopted by the President without further motion.

Mr. Jesse Johnson — I would suggest that the reading be dispensed with unless called for by some member.

Objection was made to Mr. Johnson's proposition by several members.

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

The President — The Secretary will read rule 3.

The Secretary read rule 3.

The President — Does any gentleman of the Convention object to rule 3 as it has just been read by the Secretary?

Mr. W. H. Steele — Mr. President, for the purpose of explaining my position to this Convention and being too much of a parliamentarian to " talk at the chair " instead of speaking upon a motion, I move to strike out, before the word " by " in the fourth section of rule 3, the words " proposition for amendment " and insert in place thereof the words " overtures for constitutional alteration." Mr. President, I do not propose unnecessarily to take up the time of the Convention, but I think it due myself to make a few remarks in reference to this subject. When I commenced the preparation of this manual, and began to study the Journal of 1867, I found that I was utterly unable, without the expenditure of much labor and time, to find out wherein the gentlemen of that Convention had made any motions, resolutions or propositions directly touching the Constitution. Also in the Blue Book and Legislative Manual I found the word " bills," a word which means very little and also a great deal, but in this case used as a specific legislative term. It, therefore, seemed necessary for me to find some short, concise and specific word to express these five words " propositions for amendment to the Constitution." I worked faithfully for some time, and found that, so poor is the English language, there is but one word in any English dictionary or encyclopedia which met the requirements, the word " overture." I had as much objection to the word " overture " as any gentleman of this Convention. It did not strike pleasantly upon my ear, but feeling that this house was composed so largely of lawyers constantly using Latin and French phrases in their practice, such as habeas corpus, nolle prosequi, coverture, etc., and also feeling that the word overture was as good a word as " cloture," which has been adopted by our Congress, I thought it proper to insert the word in my typewritten copy and then consult with well-qualified parties in regard to the advisability of retaining it in the printed work. I consulted with about fifty men, lawyers, business men, clergymen and others, and yet could find no other suitable word. Now, we will find as we go through our manual, that, if the proposed alteration is allowed to stand, the words " amendment " or " proposed amendment " will clash with the ordinary amendment. We know that ordinary amendments are often as thick as flies in a sugar barrel, and in order to avoid any difficulty in indexing, or in finding out what the gentlemen intended when we read the article in the newspaper, it struck me that some definite term was necessary to signify a proposed constitutional alteration.

If the delegates will refer to the Journal of the Constitutional Convention of 1846 they will find that the scholars of that Convention used, instead of this word, the term "projet," a word which is found in Webster's dictionary, and also in the "Century." I found that the word "overture" has the sanction of that eminent Irish philosopher, Edmund Burke, one of the ablest and noblest men that ever sat in the English parliament, as being a specific term which directly defined the questions about to be brought before this Convention. It has also been in common use for more than 200 years in international affairs among the high contracting powers of the Old World, as well as in military negotiations, ecclesiastical conventions, and by our most eminent historians. I had no desire to make any innovation but rather to aid the work of the Convention to the best of my ability.

When we consider the frequency with which the word "amendment" will occur, it is almost an absolute necessity to have some word, I care not what it is, for expressing the five words, "proposed amendment to the Constitution," so as to express in one pure, simple English word just what is meant. I find in these new rules that which I consider a great compliment to myself. I find that the greater portion of them are adopted, word for word, from the rules I had prepared in the manual. I find that most of the rules which have been in use in the Legislature for many years are left untouched. I find that those rules which were framed by such eminent scholars as Charles J. Folger, William M. Evarts, Martin I. Townsend and others are left in the rules almost entire, but I regret that some material portions are omitted. Mr. President, I am sorry that I have taken up so much of the time of the Convention, but I felt it a duty to myself to make this very simple explanation of my reason for making use of the term "overture" instead of the longer phrase, "proposed amendment to the Constitution." I have no desire to antagonize the committee in regard to the proposed alterations, and, therefore, withdraw my motion.

Mr. Alvord — Mr. President, if that is a common expression, it includes a great deal for the purpose of designating directly what the amendments mean. I would suggest to the gentleman who is chairman of the Committee on Rules that the word "constitutional" be inserted before the word "amendment" wherever it occurs. It seems to me that is all that is desired.

Mr. Root — Mr. President, although I am not the chairman of the Committee on Rules, I presume that as I have been charged by the committee with the presentation of this report, the gentleman from

Onondaga (Mr. Alvord), has addressed his remarks to me. I will say that that amendment is perfectly satisfactory to the committee.

The President — It is moved by Mr. Root that the word "constitutional" be inserted before the word "amendment."

Mr. Alvord — Mr. President, it will occur in the fourth subdivision and also again in the seventh subdivision of rule 3.

The President put the question on the motion of Mr. Root that the word "constitutional" be inserted in the fourth and seventh subdivisions before the word "amendment," and it was determined in the affirmative.

Mr. Mulqueen — Mr. President, I move that whenever an amendment is proposed to a rule as read that discussion on that rule be passed until the Secretary has finished the reading of the report.

The President — The motion is entirely inconsistent with the vote already taken. The Chair rules it out of order.

Mr. Gilbert — Mr. President, I desire now to renew the motion which Mr. Steele made. I do not regard it as a very important matter. It is not a matter about which I care to say much, but I am convinced by an examination of the word "overture" and by the remarks which the gentleman from Oswego has made that the term "overture" is, in the first place, apt, appropriate and proper. In the second place it is economical. Now, Mr. Steele has introduced this convenient word to cover a phrase. It is quite convenient to have a single word stand for five or six words. Now, the word "overture," if you will examine it etymologically, is an absolutely proper word. It is a distinct proposition submitted for consideration, adoption or rejection. That is the precise meaning of the word. Now if we use the word "bill" that word has already been preoccupied by legislative bodies. The word "overture" is made use of in ecclesiastical bodies because of its intrinsic fitness, but it has not been used in any legislative body. A number of gentlemen have said in my hearing, and to me, that they thought the word "overture" was the better word to express a proposed amendment to the Constitution. I believe it to be a better way to express this phrase. I, therefore, move that the word "overture" be inserted instead of the words "proposed constitutional amendment."

Mr. McMillan — Mr. President, the suggestion of the gentleman from Oswego reminds me of the suggestion that was made to President Lincoln by a member of his cabinet when he was going to strike out the words "sugar-coated" from one of his messages. Mr. Lincoln replied that the people of the United States knew what

" sugar-coated " meant, and he pleaded that it remain. I think the people of the State of New York understand what " constitutional amendment " means. I believe if we use the word " overture " they will not understand it. I hope the motion will not prevail.

Mr. Root — Mr. President, I do not wish to allow the remarks of Mr. Steele to pass without expressing the acknowledgment of the Committee on Rules for his admirable work; for the result of his industry and the result of his faithful effort and thought in these rules. The committee fully appreciate it. Nevertheless, we were of the opinion, unanimously, that it was better for us in making the rules of this body to confine ourselves to the ordinary method of using the English language, to common and well-understood expressions, in order that we might avoid the possible imputation of undertaking rather to revise and amend the English language than to revise and amend the Constitution, or the possible imputation of being fantastical rather than practical. We find that the Constitutional Convention of 1867, which included such great masters of the English language as Horace Greeley, William M. Evarts, George William Curtis, Charles J. Folger, William A. Wheeler and a score of others got along very well by talking and ruling regarding proposed amendments to the Constitution. We do not find that this new use of the word " overture " has obtained in any Constitutional Convention, and we thought it was better to walk in the old paths.

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

The President put the question on the adoption of rule 3, as amended, and it was determined in the affirmative.

The President — The Secretary will read rule 4.

The Secretary read rule 4.

Mr. W. H. Steele — Mr. President, there is one simple amendment that I think could be made to that rule. I find that the words " read by their titles " is the only amendment to the former rule. I would state that the ordinary form of presenting a petition is either by the Secretary or President. Any member has a right to have that petition read. That right has descended to us from the barons whose Magna Charta was wrested from King John. Any member has a right to have a petition read. The individual rights are protected and also the rights of the Convention. I would move, if these words are retained, that after the words " read by their titles," there be inserted the words " unless the reading be requested by some member of the Convention." I would suggest that that be

inserted, as I think the rule will read more in accordance with the spirit of our Republican institutions than it does now.

Mr. McMillan — Mr. President, in view of the fact that a resolution was passed yesterday requiring the printing of these papers, I think the rule should pass.

Mr. Steele — Mr. President, I would like to ask if the resolution was passed in reference to printing memorials, remonstrances and petitions. If so, I am clearly off my bearings.

Mr. McDonough — Mr. President, I move the previous question on the motion of the gentleman from Oswego.

The President — I suppose this resolution should be read before I put that question. The Secretary will please read the resolution.

The Secretary read the following resolution by Mr. Moore:

Resolved, That all overtures be printed on presentation and laid on the table of the members, and that all overtures already presented be printed.

The President — The question is on Mr. Steele's amendment, offered to rule 4, to insert after the words "read by their titles," the words "unless the reading in full is requested by some member of the Convention."

Mr. Vedder — Mr. President, I would suggest to Mr. Steele whether it would not be better to make his amendment read "and referred to the proper committee unless otherwise ordered." Wouldn't it take up a great deal of time if remonstrances, petitions and memorials were read upon the suggestion of any one member?

Mr. Root — Won't Mr. Steele accept that?

Mr. W. H. Steele — I am perfectly willing to accept anything, Mr. President, that will not deprive any member of his rights.

The President put the question on the amendment to insert after the word "committee" "unless otherwise ordered" and it was determined in the affirmative.

The President put the question on the adoption of rule 4 as amended and it was determined in the affirmative.

The Secretary will read rule 5.

The Secretary read rule 5.

Mr. Speer offered the following amendment: In rule 5, last line, strike out the word "chairman" and insert the words "a majority of the committee."

Mr. Speer — Mr. President, the object of this change is simply to have the records show how the majority of the committee voted on all propositions which it reports. Under the rule now the chairman reports and the members of the Convention do not know whether the amendment which he reports has the assent of a great majority of the committee or of a bare majority, and the object of this change is that the records shall show when they report how the members of the majority vote.

Mr. Root — Mr. President, I hope that that will not prevail. Any single member of a committee in the minority can, of course, have the report of a committee state who is for, and who is against the proposition reported, and if there is not sufficient opposition, if there is not a single member of the committee in opposition to the report, it seems to me that it is not necessary for the clerk of the committee to run around and get the signatures of the different members of the committee.

Mr. Alvord — Mr. President, I would say that it is a personal privilege granted to each member of a committee who shall be in the minority upon a report to stand in his place on the incoming of the report by the chairman and state that he desires to be recorded as being adverse to the report. That seems to be sufficient to meet the point.

Mr. Cochran — Mr. President, I think Mr. Alvord is mistaken in saying that that covers the point made by Mr. Speer. I am well aware that the chairman of a committee in the Assembly can made a report, and if it needs nothing but the signature of the chairman to bring a report before the Convention, why we might have a report brought here for consideration that might be opposed by every other member of the committee. The object of the amendment is to express the views of all the members of the committee.

Mr. Moore — Mr. President, does he mean to infer that the chairman will permit fraud?

Mr. Cochran — I do not mean to infer anything of the kind.

Mr. Osborn — Mr. President, I desire to call the attention of the members to the fact that there is no provision in these rules for reports of minorities of committees, and by these rules, if I am correctly informed, there is no way by which the Convention can bring before itself proposed constitutional amendments which have not been acted upon in committee. It seems to me there should be a distinct recognition by these rules of the rights of the minority members of a committee to make a report, and I, therefore, submit this amendment.

The President — The gentleman will send it up in writing. The Chair is of the opinion that that should be made a separate motion, as the question now before us is in reference to the way the majority report shall be signed. The question is that rule 5 shall be amended at the end by striking out the word "chairman" and inserting in place thereof the words "majority of the committee."

Mr. Speer — Mr. President, the very object of this amendment was stated by Mr. Root when he said that if this amendment was adopted, every member of a committee would have to be consulted before a report could be made. That is the very object of it. When Mr. Root said that if this amendment was adopted, the Clerk of the committee would have to run around and get the signatures of the members, I say that is what we want done. Every member of a committee has a right to be consulted upon every proposition that comes up before the committee. If every member is not consulted, it is not right. I think that what Mr. Root said is the very effect that the Convention wants accomplished; that the clerks will have to poll every member of a committee, and if the majority of the members of the committee are not willing to sign the report, that report should not be made.

Mr. Acker — Mr. President, in reply to the gentleman from Albany, I want to give notice to one chairman that he will have to come up to Steuben county if he wants to get my signature to his report. From the looks of this Convention to-day, I think he will have to make several trips to the Adirondacks, to Buffalo and all over the State to procure the signatures of very many of the other members. Now, as far as finding out how the members of a committee have voted, the very proposition of the gentleman from Albany does not aid him at all. If you get a majority, the chairman of the committee reports, and other members may or may not have voted. Everybody knows that the chairman of a committee has no right to make any such report until he has the authority of a majority of the committee, and I do not believe there is a chairman here who would dare to make a report without first obtaining the assent of a majority of his committee. If there is any such, I am sure that the committee would remove him. This running around of the Clerk is all sheer nonsense. It is enough to know how a member votes in the Convention, and then the press can write him up or write him down.

The President put the question on Mr. Speer's amendment to rule 5, and it was determined in the negative.

Mr. Osborn — Mr. President, I now offer my motion.

The President — Mr. Osborn moves to amend rule 5 by inserting at the end thereof the matter which will be read by the Secretary.

The Secretary read the amendment as follows: By inserting at the end thereof " a report by a minority of any committee shall be signed by the members rendering the same."

Mr. Root — Mr. President, I accept that.

Mr. Alvord — Mr. President, if I am in order, I desire to suggest to the chairman of the committee to insert the word " constitutional " before the word " amendment," where it occurs on page 4.

Mr. Root — Mr. President, I accept that. Mr. President, may I make a suggestion?

The President — Yes, sir.

Mr. Root — I move the adoption of this report, and I suppose the acceptance of the amendments by the mover of the resolution obviates the necessity of putting the question separately upon the amendments, and that the question would arise immediately upon the question as amended.

The President — It seems to me that they are beyond the control of the Chair. The question is on the adoption of Mr. Alvord's amendment to insert the word " constitutional " before the word " amendment " in rule 5.

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

The President — The next question is on the adoption of Mr. Osborn's amendment by adding at the end after the word " chairman," the matter which has been read by the Secretary to the effect that minority reports shall be signed by the members concurring in them.

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

Mr. Speer — Mr. President, may I ask if this rule in its present shape, as adopted, provides that when the minority members of a committee make a report they must sign their names, and when a majority make their report they must not.

The President — The Secretary will read rule 6.

The Secretary read rule 6.

There being no debate on rule 6, the President put the question on its adoption, and it was determined in the affirmative.

The President — The Secretary will read rule 7.

The Secretary read rule 7.

There being no debate on rule 7, the President put the question on its adoption, and it was determined in the affirmative.

The President — The Secretary will read rule 8.

The Secretary read rule 8.

There being no debate on rule 8, the President put the question on its adoption, and it was determined in the affirmative.

The President — The Secretary will read rule 9.

The Secretary read rule 9.

There being no debate on rule 9, the President put the question on its adoption, and it was determined in the affirmative.

The President — The Secretary will read rule 10.

The Secretary read rule 10.

There being no debate on rule 10, the President put the question on its adoption, and it was determined in the affirmative.

The President — The Secretary will read rule 11.

The Secretary read rule 11.

Mr. Gilbert — Mr. President, I think, on the whole, I should prefer the rule as it stands among the rules of the Assembly, which has worked well and, I believe, will work well here. This rule would be made to conform to that by striking out the words in the first line after the word " more " down to the word " than " in the third line, so that the rule will read " no member shall speak more than twice on any question without leave of the Convention." I move, therefore, to amend by striking out the words indicated.

Mr. Tekulsky — Mr. President, I hope that that amendment will not prevail. It is always right and proper that every member shall be heard before the first speaker or the prior speaker has spoken twice, and I think this rule as it reads is right and proper, and I hope the amendment will not prevail.

Mr. Davies — Mr. President, I am informed that rule 11 reads precisely now as the Assembly rule on that subject.

Mr. Gilbert — I have before me the Red Book of 1894, and, inasmuch as my statement is challenged and I do not propose to make statements to this Convention that I do not think are correct, I will read the rule. Now, this is the way it reads: " Rule 11. No member shall speak, except in his place, more than twice on any question without leave of the house." I do not want my statements

to be challenged, as I would not make them unless I thought they were right.

Mr. Davies — I beg the gentleman's pardon. I was informed by a gentleman on my right that it was so, but on reflection he says it was taken from the rules of 1881.

The President put the question on the motion of Mr. Gilbert to strike out all after the word "than" in the first line down to the word "twice" in the third line and it was determined in the negative.

The President put the question on the adoption of rule 11 as it stands and it was determined in the affirmative.

The President — The gentlemen will please remember that they cannot speak more than once without transgressing the rules of the House.

The Secretary will read rule 12.

The Secretary read rule 12.

There being no debate on rule 12 the President put the question on the adoption of this rule and it was determined in the affirmative.

The President — The Secretary will read rule 13.

The Secretary read rule 13.

Mr. Platzek — Mr. President, I move to amend by striking out the words "or the suspension of any rule."

The President — Will the gentleman wish to be heard on that question? If not, the question is on the amendment.

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

The President put the question on the adoption of rule 13 and it was determined in the affirmative.

The President — The Secretary will read rule 14.

The Secretary read rule 14.

Mr. Hawley — Mr. President, I desire to inquire of the gentleman from New York with regard to this rule, as to whether the requirement of the last part of the rule, that a statement of all questions and decisions upon questions of order shall be printed as an appendix to the Journal, is intended to cover uncontested questions of order, where as a mere incident the President expresses an opinion that a question is not in order, and that decision is submitted to without debate or question. Are all these questions to be catalogued as an appendix.

Mr. Root — Mr. President, it is for the reason that the gentleman

who raises the point of order is himself entitled to have it treated with respect, and the decisions upon such questions are often instructive to the members who wish to know what the precedent is.

The President — In answer to Mr. Hawley's question, I understand in the Assembly, according to the practice there, all contested points of order are placed in the Journal by the Clerk.

The President put the question on the adoption of rule 14 and it was determined in the affirmative.

The President — The Secretary will read rule 15.

The President — That rule has already been adopted.

Mr. Alvord — Mr. President, I would ask for information whether there is any change whatever in rule 15, and if there is not, I ask that it be passed without being read.

Mr. Root — Mr. President, may I call the attention of the President to the fact that there is a printer's error in subdivision 3 of rule 15. The word "eleven" should be "seventeen."

The President — The correction will be made.

The Secretary will read rule 16.

The Secretary read rule 16.

Mr. Spencer — Mr. President, I propose an amendment to rule 16, that the words "by the Convention" be stricken from rule 16, and the words "or which may relate to the subject upon which they were appointed" be inserted in place thereof. To explain the object of that proposed amendment, I would say that I regard these rules reported by the committee as substantially amendments to the temporary rules under which the Convention has been acting. By turning to rule 16 of those rules adopted for temporary purposes I find that the Compiler added to that rule a provision by which the committees, of their own motion, might inquire into many matters, and report to the Convention any information or resolution, if they deem it to be of public interest.

Mr. McMillan — Mr. President, I desire to call the attention of the gentleman to subdivision 2 of rule 30, which provides that no proposition for amendment shall be introduced in the Convention except in one of the following modes: By districts in numerical order or by report of the committee.

Mr. Spencer — Mr. President, we have not adopted rule 30 yet, and I do not think the reference is pertinent. I suggested the amendment because I believe the great mass of the overtures that have been presented and referred to the committees and which

will hereafter be presented and referred should find their death and burial in the various committees to which they have been referred. They will serve to these committees as suggestions for constitutional amendment which the committees will report for our consideration here, and I think, in view of the fact that the Committee on Rules struck from the rule these provisions introduced by the Compiler, indicates that the Committee on Rules expected that the committee should be confined to the particular specific things referred to them, and I think that is too narrow a provision, and that the committees might be permitted to disregard many of these things unless called for by the Convention, and to use them simply as suggestions for proposed amendment. The rule proposed by the Committee on Rules possibly would serve an excellent purpose for a legislative body, but for a Convention of this character it seems to me that greater latitude should be given to the various committees, and I therefore propose this amendment.

Mr. McMillan — Mr. President, the idea of the Committee on Rules was identical with that of the gentleman who last addressed the Convention, and who will find in rule 32 the exact provision which he has in mind, the idea being that the Committee on Judiciary Affairs should take up all the subjects referred to them and make one report which will embrace the proposed amendments, which they will report to this Convention, and when the committee reports not to make any change, all matters referred to that committee are supposed to be rejected. It seems to me that rule 32 covers all the matters suggested by Mr. Spencer.

The President put the question on Mr. Spencer's amendment and it was determined in the negative.

The President put the question on the adoption of rule 16 and it was determined in the affirmative.

The President — The Secretary will read rule 17.

The Secretary read rule 17.

Mr. Alvord — Mr. President, I would suggest to the gentleman who had charge of this report that the word "constitutional" be inserted before the word "amendment" so that it will read "all constitutional amendments so engrossed."

And also insert the word "constitutional" before the word "amendment" on line 2 of rule 17.

Mr. Root — Will not the gentleman from Onondaga make his motion read so that it will apply to all subsequent occurrences of the word "amendment?"

Mr. Alvord — I will most cheerfully make such a motion at the suggestion of the gentleman from New York, that whenever we arrive at the word "amendment" the word "constitutional" be inserted before it.

The President — The Chair having been a member of the Committee on Rules, he would remind Mr. Alvord that there are places where the word "amendment" refers to something other than an amendment to the Constitution.

Mr. A. B. Steele — Wouldn't that difficulty be obviated by making the motion read where the word "amendment" refers to the Constitution?

The President — It is moved and seconded that in all cases where the word "amendment" refers to the Constitution, the word "constitutional" be inserted before it.

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

Mr. Goodelle — Mr. President, at the request of very many members, I move that when this Convention adjourn it adjourn at half-past one o'clock for the day.

Mr. Marks — Mr. President, I rise to a point of order. My point of order is that a motion of that kind is not in order; that the business we are under is the adoption of rules.

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

The President put the question on the adoption of rule 17 as amended and it was determined in the affirmative.

The President — The Secretary will read rule 18.

The Secretary read rule 18.

Mr. Lincoln — Mr. President, I understand some arrangement was made yesterday for some amendment to that rule.

The President — Mr. Lincoln says that he understands some arrangement was made yesterday for some amendment to that rule by the Committee on Rules.

Mr. Root — Mr. President, I think that Mr. Lincoln is thinking of the amendment that was reported to rule 32.

Mr. Lincoln — Possibly, that is so. It was an amendment relating to printing.

The President put the question on the adoption of rule 18, and it was determined in the affirmative.

The President — The Secretary will read rule 19.

The Secretary read rule 19.

There being no debate on rule 19, the President put the question on its adoption, and it was determined in the affirmative.

The President — The Secretary will read rule 20.

The Secretary read rule 20.

There being no debate on rule 20, the President put the question, and it was determined in the affirmative.

The President — The Secretary will read rule 21.

The Secretary read rule 21.

There being no debate on rule 21, the President put the question, and it was determined in the affirmative.

The President — The Secretary will read rule 22.

The Secretary read rule 22.

There being no debate on rule 22, the President put the question, and it was determined in the affirmative.

The President — The Secretary will read rule 23.

The Secretary read rule 23.

There being no debate on rule 23, the President put the question, and it was determined in the affirmative.

The President — The Secretary will read rule 24.

The Secretary read rule 24.

Mr. Abbott — Mr. President, I propose the following amendment: Strike out at the end of rule 24 the words " by unanimous consent," and insert in place thereof, " by the consent of the majority of the members present."

Mr. Root — Mr. President, I move to amend rule 24 and move as a substitute for the amendment proposed by Mr. Abbott, to insert after the word " by " in the second line of the rule the words " the acceptance of," and after the word " rules " in the second line insert the words " or by a two-thirds vote," so that the rule will read " any matter may be made a special order for any particular day by the acceptance of the report of the Committee on Rules, or by a two-thirds vote, or by unanimous consent."

Mr. Abbott — I accept the amendment, Mr. President.

Mr. Root — Mr. President, let me say that I drew that amendment at the suggestion of the gentleman from New York (Mr. Bowers), and numerous other gentlemen who have spoken to me about that rule.

Mr. Holcomb — Mr. President, I hope that the change in this rule suggested by Mr. Root of a two-thirds vote will not be adopted. The report of the Committee on Rules will be accepted by a majority vote of this Convention without any trouble. It seems to me to be quite enough to have it accepted by a majority vote and not by a two-thirds vote.

Mr. Marks — Mr. President, I do not see the necessity of adding the words "unanimous consent" if you have a provision in the rules that it may be accepted by a two-thirds vote.

Mr. Root — Mr. President, I consider it wholly immaterial whether they are in or out. If the gentleman wants them out, take them out.

The President — The question is on Mr. Holcomb's amendment to the motion of Mr. Root.

Mr. Holcomb — Mr. President, as I understand it, Mr. Root accepted the amendment.

The President — Did you accept Mr. Holcomb's amendment, Mr. Root?

Mr. Root — No, sir, I did not accept it and I hope it will not prevail.

Mr. Gilbert— I don't quite understand the question, Mr. President, as put. As I understand it Mr. Holcomb moved to substitute a two-thirds vote instead of unanimous consent. I may, however, be mistaken about it.

The President — The Chair understands the situation to be this way. Mr. Abbott offered an amendment to strike out the words "unanimous consent" and insert in place thereof the words "by the consent of the majority of the members present." Mr. Root moved as a substitute for the amendment proposed by Mr. Abbott, to insert after the word "by" in the second line the words "the acceptance of," and after the word "rules" in the second line insert the words "or by a two-thirds vote," so that the rule shall read "any matter may be made a special order for any particular day by the acceptance of a report of the Committee on Rules or by a two-thirds vote or by unanimous consent."

Mr. Abbott accepted Mr. Root's amendment and Mr. Holcomb moved to strike out the words "by a two-thirds vote" from Mr. Root's motion.

Mr. Marks — Mr. President, I move to strike out the words "by unanimous consent."

The President — Mr. Marks is out of order. He has already spoken once.

Mr. Cochran — Mr. President, I call for a division of the question.

The President — The question can only be on the adoption of Mr. Holcomb's amendment to Mr. Root's amendment.

Mr. Marks — What becomes of my motion to strike out the words " by unanimous consent? "

The President — That will have to be made in a separate motion after we get through with Mr. Holcomb's and Mr. Root's amendments. No other amendment is in order now until the amendments proposed by these two gentlemen have been disposed of.

Mr. Kerwin — Mr. President, in the starting of the debate on the rule Mr. Bowers offered an amendment to strike out the words " or by unanimous consent," and insert in place thereof the words " when unquestioned by the Convention." I then understood Mr. Root to accept Mr. Bowers's amendment.

The President — I did not so understand it. The Chair has to trust his own ear. The question seems to be on Mr. Holcomb's amendment to Mr. Root's amendment to strike out the words " two-thirds vote."

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

The President then put the question on the adoption of Mr. Root's amendment.

Mr. Marks — I move that the words " or by unanimous consent " be stricken from the rule.

Mr. McMillan — Mr. President, I rise for the purpose of making a suggestion to the Convention. We should not be compelled to take a vote on any proposition that there is no objection to. A two-thirds vote is only where an objection is made. I think that the unanimous consent should be retained here for the purpose of expediting business.

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

Mr. Lincoln — Mr. President, I move to amend by striking out the words " two-thirds " and inserting " majority."

Mr. Root — Mr. President, I hope that will not prevail. It seems to me that the order which has been established by rule ought not to be knocked to pieces here without some very substantial reason. It would be equivalent to having no order at all if it is to be deter-

mined upon the moment that the rules should be changed by a mere majority vote.

The President put the question on Mr. Lincoln's amendment, and it was determined in the negative.

Mr. Roche — Mr. President, I move to strike out all after the word " day " and insert " by the assent of two-thirds of the members present," so that the rule will read " any matter may be made a special order for any particular day by the assent of two-thirds of the members present." That will make it conform to the rules of the Senate and Assembly, and will enable the Convention to control its business and not be controlled by a report from the Committee on Rules which may be adopted, as Mr. Root now proposes, by a majority of those present.

The President put the question on Mr. Roche's amendment, and it was determined in the negative.

Mr. Roche — Mr. President, I desire to ask a question for information and do not rise to offer an amendment. I would like to ask Mr. Root if by the rule, as it is now proposed, the Committee on Rules may come in in the morning with the report that a certain matter be made a special order for that same day, or if this matter will be presented on one day, and if the report is accepted that that matter will be taken up on the following day? The purpose of my inquiry is to find out whether things can be rushed in such a way that, without the members knowing of it, the Committee on Rules may come in with a particular matter, and one that may be very important and make that matter a special order for that day?

The President — The Chair will call the attention of the Convention to rule 56, which provides for that very matter. (The President reads): " It will be in order to call up for consideration at any time a report from the Committee on Rules. Any member may object to its consideration until the next legislative day, and if sustained by twenty-four other members, the consideration shall be so postponed, but only once."

Mr. Root — Mr. President, it seems to me that it is fair to move the previous question on rule 24.

The President put the question " Shall the main question be ordered on Mr. Root's amendment? " and it was determined in the affirmative.

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

The President put the question on the adoption of rule 24, as amended, and it was determined in the affirmative.

The President — The Secretary will read rule 25.

The Secretary read rule 25.

Mr. Cochran — Mr. President, we have now concluded certain chapters of these rules. I think it becomes apparent to all the members of this Convention that it will be impossible to complete the discussion of these rules to-day. There is no doubt that the majority of the Convention desire to return to their homes to-day, and unless this Convention adjourn at some reasonable hour, it will be impossible for them to catch their trains. I now move you that when this Convention adjourns it be at half-past one o'clock.

Mr. Root — Mr. President, will not the gentleman withdraw that and let us consider rule 32 out of its order? I am informed that many gentlemen are anxious to catch a train that leaves earlier than half-past one o'clock, and it is very important that rule 32 should be considered.

The President — The Chair wishes to state for Mr. Cochran's information and all the gentlemen, that while the house is engaged in the consideration of a special order there is no way of getting out of it except by a motion to suspend or postpone.

Mr. Goodelle — I supposed that a motion to adjourn was always in order, Mr. President, and I now move to adjourn until to-morrow morning at ten o'clock.

Mr. I. S. Johnson — If the gentleman will permit me I will offer the following resolution:

The President — The Secretary will read the resolution.

The Secretary read the resolution as follows:

Resolved, That until the adoption of rules covering the subject all overtures, or proposed amendments be immediately printed and placed upon the files of the members.

Mr. Root — Mr. President, I feel bound to make the point of order that the resolution offered by the gentleman is not in order.

The President — The point of order is well taken.

Mr. Root — I move that we take up rule 32 out of its order, in relation to the printing provision.

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

The President — The Secretary will read rule 32.

The Secretary read rule 32.

Mr. Marks — I offer an amendment to be inserted at the end of rule 32 as follows: "A report from a committee that no amendment should be made to the provisions of the existing Constitution, relating to any specific subject, shall not be received by the Convention, nor shall an adverse report on any proposition introduced by a delegate be received by the Convention unless the delegate who has introduced the amendment upon which the committee desires to report adversely has first had an opportunity to be heard by said committee.

Mr. Maybee — Mr. President, I rise to ask for information, because I may not be here when the further consideration of these rules is taken up. I desire to ask the Committee on Rules how much time they propose to give for the discussion of these amendments. I desire to ask if it is proposed to limit the time and if so, how much?

Mr. Root — Mr. President, I will inform the gentleman that the Committee on Rules recognizes the absolute impossibility of fixing the time for discussing amendments. One amendment may need an hour and another may need a week. It is the object of rule 56 to provide the machinery for reporting to the Convention the considerations which shall affect each case as it arises so that they may be dealt with as the circumstances may require.

I hope, Mr. President, while I am on my feet, that the amendment proposed by the gentleman from New York (Mr. Marks) will not prevail. It seems to me to be wholly unnecessary to impose upon our committees a great number of minute and particular rules for their conduct. I hope we will have this rule adopted without that addition.

Mr. Marks — Mr. President, my object in introducing this amendment was, first, in justice to the delegate who introduces a proposed amendment, and, secondly, with a view of saving the time of the Convention in unnecessary debate. I think every delegate who introduces an amendment does so in absolutely good faith. I think that a committee, before it brings in an adverse report on a proposed amendment, should first give the delegate who introduces it an opportunity to be heard before that committee. The resolutions or amendments should not be smothered in committee in this way by simply passing them over to a committee and never hearing from them again. I think the introducer should be allowed to go to the committee and state his views. If the introducer goes to the committee and sets forth his views he is asked certain questions

and he may come to the conclusion after hearing the views of the committee that his amendment is entirely unnecessary, and it will thus save the time of the Convention when the Convention goes into the Committee of the Whole. There are undoubtedly a number of amendments that will not be adopted by the Convention, and I think the delegates who introduced them should have an opportunity to discuss them before the committee of this Convention.

Mr. Root — Mr. President, of course the committees will hear the introducers of these proposed amendments. My objection to the amendment is that it is entirely unnecessary to prescribe rules of conduct which every gentleman will find it necessary to follow. We need not tell our various committees that they shall be courteous, that they shall be reasonable, that they shall do their duty. Of course they will do their duty. It is not necessary to put it into our rules.

Mr. Tekulsky — Mr. President, I fully agree with Mr. Root on this subject, because there are a large number of amendments which will be offered by request. If any gentleman who is interested in any amendment cannot go before a committee, there is no delegate who will not give the introducer an opportunity to be heard, if he desires to be heard. I, therefore, move the adoption of the rule as it is.

Mr. Alvord — Mr. President, I desire to say that the remarks of the gentleman from New York (Mr. Marks) cast an imputation upon the character of this Convention. He makes us out at least a body of criminals requiring certain and strict laws to keep us in the bounds of propriety. I doubt, sir, if there is a gentleman upon this floor who will hesitate to stand up for the rights of a delegate who desires to appear before a committee to be heard on a proposed amendment, and it is a slur upon us to intimate that we are criminals and will not do our duty.

Mr. Marks — Mr. President, I desire to say a word.

The President — The gentleman having spoken once is out of order.

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

Mr. Osborn — Mr. President, in line with the amendment already offered to rule 5 and accepted by the gentleman from New York, I would move to amend rule 32 as follows: "By such committees, or by minorities thereof," in order that the reports of minorities may

be sent to the Committee of the Whole upon the same terms accorded to the majority of committees.

Mr. Bowers — Mr. President, I think that amendment should be accepted. I think if a report comes from a committee, and there is a minority report that it is perfectly proper for it to come before the house.

Mr. Root — Mr. President, it seems to me that we would give the opportunity for a single member of the Convention to impose upon the Convention the burden of printing his views. Any single member of the Convention, who is a member of a committee, can write a treatise and send it in and have it printed. It seems to me that the matter of printing a minority report should be left with the Convention. Of course, if there should be a considerable minority of a committee favoring another scheme, another Constitutional amendment, or giving briefly reasons against the report of the majority, the Convention would order it to be printed. But it seems to me that we should not, by our rules, let down the bars and enable every single man in the Convention to require the officers of the Convention, without our direction, to print whatever they may see fit to call a minority report.

The President — The Secretary will please read the amendment.

The Secretary read the amendment as follows: Insert after the word "reported" in line 4 the words "by such committee or by minorities thereof."

The President — That does not require the printing of anything but the amendment.

Mr. Osborn — Mr. President, I desire to call the attention of the gentleman to the following words, "shall, if the report be received, be committed to the Committee of the Whole and immediately printed."

Mr. Maybee — Mr. President, I believe that the members of the minority will be treated with fairness and respect, and I do not think there is a single member of the Convention that would impose upon the patience of the members by requiring long and abstruse statements to be printed.

The President — The amendment only requires the printing of such an amendment as may be reported by the minority of the committee.

Mr. Holls — I do not understand that the amendment offered by the gentleman from Putnam requires the printing of the minority report, if such report is received, and it seems to me under the rule

that we have adopted this morning, we are bound, in common courtesy, to receive a minority report. It seems to me that there the privilege which they have a right to ask stops. The report should be received and referred to the Committee of the Whole, but it should be clearly expressed that nothing but the majority reports and amendments should be printed.

The President — The Secretary will please read the clause as it is proposed to be amended by Mr. Osborn.

The Secretary read the clause with the proposed amendment, as follows: " All proposed amendments reported by such committee or minorities thereof, shall, if the report be received, be committed to the Committee of the Whole and immediately printed."

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

Mr. Peck — Mr. President, I have an amendment to this rule which I would like to offer.

The President — The Secretary will read the amendment.

The Secretary read the amendment as follows: After the words " reports thereon " in the third line, insert the words " but no report shall be made until after the proposed constitutional amendment shall have been on the files at least one Convention day."

Mr. Peck — Mr. President, the purpose of that amendment is simply to give effect to the amendment proposed by the committee itself yesterday when the rule was amended so that all proposed constitutional amendments should be printed and placed upon the files of the members. Now, as we all know, they cannot be printed in time for the next morning. The purpose of this amendment is to allow these proposed constitutional amendments that are referred without reading to the committees to be on the files of the members for one Convention day before there is a report from the committee upon them.

Mr. Vedder — Mr. President, I suppose that any reference to this whole proposition would be germane, although not to the particular proposition which is pending. The question is on adopting rule 32. Now, as I understand the rule, with the amendment which has just been adopted, if a minority report shall be made it shall also go to the Committee of the Whole. Is that correct?

The President — Not the report. The amendments reported by the minority shall be printed and if the report of the minority is received by the House then it shall go to the Committee of the Whole.

Mr. Vedder — Mr. President, now I think we are going to be bothered in the future by the word "received." It reads like this: "All proposed amendments (constitutional amendments, I suppose) reported shall, if the report be received, be committed to the Committee of the Whole and immediately printed." It was held this morning that when the report was taken by the Secretary it was received. If that is so then if it is a minority report — if the report of the constitutional amendment is adverse, it must still go to the Committee of the Whole, because it has been received. Then, again, it says, "when a committee has reported that no amendment should be made to the provisions of the existing Constitution, relating to any specific subject, and such report is agreed to, all propositions for amendment relating to that subject which have been referred to that committee shall be considered as rejected." Now, then, if when a proposed amendment to the Constitution shall have been rejected there can be no other proposed amendment introduced upon that same subject, when shall we find out under this rule that it is rejected, if the matter can go to the Committee of the Whole? Now it seems to me that a constitutional amendment when it has been reported adversely by the standing committee to which it has been referred and that report has been agreed to by the Convention, that that shall be the rejection of the proposed amendment, and that it ought not to be permitted to drag along for weeks and weeks for debate in the Committee of the Whole. Now it seems to me that this whole rule must be reconstructed. If it is not we will tie ourselves up so that we will never be able to untangle ourselves.

Mr. Alvord — Mr. President, will the gentleman allow me to ask him a question? In all his knowledge of parliamentary proceedings, isn't it the first time in history that he has heard of a rule by which a minority report went to the Committee of the Whole?

Mr. Vedder — It is.

Mr. W. H. Steele — Mr. President, I have listened with much interest to this debate, and I wish to say to this Convention that this amendment asks for rights which are never given to a minority. In the first place by old parliamentary rules, there is no such thing as a minority report. That has been settled for a hundred years. It is simply a right given by courtesy for them to express their dissent from the report of the majority. By legislative courtesy that report has been called a minority report. If that report is accepted it is nothing more nor less than an amendment to the report of the majority and does away with the majority report. When the report

of the majority is received and adopted by the House, then that report becomes the decision of the Convention. As has already been said, the report of the minority stops right there. It has been acted upon and unless it has been adopted, thereby superseding the report of the majority, it is rejected.

Mr. Bowers — Mr. President, I rise to a point of order. I make the point of order that the discussion is not germane to the matter before the House.

The President — The matter before the House is Mr. Osborn's amendment to rule 32.

Mr. Root — Mr. President, it is manifest that we will be unable to get this section into shape in time to permit the gentlemen who wish to take the train from Albany for their homes. Perhaps before the meeting on Tuesday we will be able to redraft this section so as to satisfy the gentlemen on the other side, and in view of that I move that the Convention do now adjourn.

Mr. Maybee — Mr. President, I suggest that a quorum of the Convention is not present.

The President — Well, I think there are enough present to adjourn. The question is on the motion to adjourn.

Mr. Spencer — Mr. President, I rise to a point of order. My point of order is that the motion is out of order as we are under a special order. The Chair so ruled this morning.

The President — The Chair has not so ruled. The Chair ruled in reference to a motion to adjourn to a particular day. A general motion to adjourn, as I understand it, is always in order.

Mr. Bowers — Mr. President, I hope the gentleman will withdraw his motion to adjourn. On account of Wednesday being Decoration Day, the chances are that a very small number of the delegates will come here for one day's session. I would, therefore, ask unanimous consent to offer a resolution that we sit on Wednesday of next week.

Mr. Holls — I object, Mr. President.

Mr. Goodelle — Mr. President, I desire to have an announcement read before we adjourn. The Committee on Suffrage will give a public hearing in the Assembly Chamber, by special request, on Thursday evening of next week at eight o'clock, to the organizations of New York city and Brooklyn favoring female suffrage. Mrs. Lillie Devereaux Blake, Mrs. Dr. Mary Jacobi and others expect to address the committee at that time.

R. 38.— Mr. Roche — Mr. President, I would ask that action upon that motion be suspended for a moment in order that we may adopt a resolution for the printing of these overtures. We have lost four days now already. It seemed to be unanimously agreed yesterday that we should adopt a rule for the printing of these overtures. I ask that, inasmuch as the rule which would provide for this matter will probably not be adopted to-day that immediate action be taken upon the resolution.

The President — The Chair is of the opinion that that motion is out of order unless the special order is suspended or postponed.

Mr. Roche — Then I ask the unanimous consent that the special order be suspended in order to pass the resolution for the printing of overtures.

The President put the question on the motion to suspend the special order, and it was determined in the affirmative.

Mr. Roche — Mr. President, I now move that the overtures already introduced be printed and placed on the files of the members.

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

Mr. Root — Mr. President, I now call for the vote upon my motion to adjourn, and I decline to yield to anyone for any purpose whatever.

Mr. Cochran — Mr. President, I rise to a point of order. I move as an amendment that when this Convention adjourns it adjourn to meet ——

Mr. Root — Mr. President, I rise to a point of order. The motion is out of order.

Mr. Cochran — Mr. President, I call the attention of the Chair to page 109 of the manual, which holds that a motion to adjourn to a fixed day takes precedence over all other orders.

The President — The gentleman is clearly out of order. All chairmen of committees who have constitutional amendments in their possession will please hand them to the Secretary so that the order of the Convention may be complied with.

The President put the question on the motion to adjourn, and it was determined in the affirmative. Whereupon the Convention adjourned until Tuesday morning at ten o'clock.

Tuesday Morning, May 29, 1894.

The Constitutional Convention of the State of New York, met in the Assembly Chamber at the Capitol, Albany, N. Y., May 29, 1894. The Convention was called to order by President Choate at ten o'clock.

Rev. J. B. Thrall offered prayer.

The President — The first business in order will be the reading of the Journal of the last meeting by the Secretary.

The Assistant Secretary read the Journal of Friday, May 25, 1894.

The President — Unless some amendment is offered to the Journal, as read by the Secretary, it will stand approved. Has any delegate any amendment to propose? If not, the Journal, as read, is approved.

The President — The next business in order will be the presentation of memorials.

Under this order of business, the following memorials were presented, asking that the word "male" be stricken from the Constitution:

Mr. Fraser presented a petition from Mrs. C. A. Sisson and 3,216 others of Washington county; women, 1,895; men, 1,321; total, 3,216. Vote of 1893, 8,275.

Mr. Hedges, for Mr. Arnold, presented a petition from Mary E. Barmore and 3,163 others of Dutchess county; women, 1,957; men, 1,206; total, 3,163. Vote of 1893, 17,100.

Mr. J. H. Redmond presented a petition from Mrs. Milton Rathbun and 2,253 others of Westchester county; women, 1,219; men, 1,034; total, 2,253. Vote of 1893, 25,072.

Mr. H. A. Clark presented a petition from Mrs. H. C. Lowman and 1,610 others of Tioga county; women, 929; men, 681; total, 1,610. Vote of 1893, 5,926.

Mr. C. B. McLaughlin presented a petition from Julia Scott Smith and 2,309 others of Essex county; women, 1,404; men, 905; total, 2,309. Vote of 1893, 5,747.

Mr. McArthur presented a petition from Mrs. J. H. Bain and 1,876 others of Warren county; women, 1,206; men, 670; total, 1,876. Vote of 1893, 6,078.

Mr. Floyd presented a petition from Miss Juliet Wilbur and 2,246 others of Suffolk county; women, 1,245; men, 1,001; total, 2,246. Vote of 1893, 10,972.

Mr. Nichols presented a petition from Mrs. R. A. Griffiths, Mrs. Maud Smith and 5,943 others of Steuben county; women, 3,297; men, 2,646; total, 5,943. Vote of 1893, 16,575.

Mr. A. B. Steele presented a petition from Mrs. Davis, Mrs. Mayton and 2,129 others of Herkimer county; women, 1,322; men, 807; total, 2,129. Vote of 1893, 10,176.

Mr. Barhite presented a petition from Ella Hawley Crossett, Lucy Pierce and 5,401 others of Wyoming county; women, 3,195; men, 2,206; total, 5,401. Vote of 1893, 6,543.

Mr. Maybee presented a petition from Mrs. A. E. Elmore, Miss A. H. Darbee and 1,523 others from Sullivan county; women, 815; men, 708; total, 1,523. Vote of 1893, 6,764.

Mr. Cookinham offered the memorial and petition of Dana W. Bigelow and others in regard to the appropriation of money for sectarian purposes.

Referred to the Committee on Charities.

Mr. Becker offered the memorial of select committee of New York Medico-Legal Society in regard to the abolition of the office of coroner; and also, a resolution of the Alumni Association of medical department, Buffalo University, indorsing the same.

Referred to Committee on County, Town and Village Officers.

Mr. John M. Francis presented a petition, praying for inspection of various State institutions yearly or oftener.

Referred to Committee on Charities.

The President — The next thing in order is communications from State officers. Has any delegate any such communications to present? If not, the next business in order will be notices, motions and resolutions, to be called for by districts numerically.

Mr. Cochran — Mr. President, I desire to move a reconsideration of the vote rejecting Mr. Speer's amendment to rule 5, and that that motion lie on the table.

Mr. Kerwin — I ask for a reading of the amendment.

The President — The Secretary will read the amendment.

The Secretary read the amendment of Mr. Speer as follows:

Amend rule 5 by striking out the word " chairman " and inserting in lieu thereof, " a majority of the committee."

The President — The Chair is of the opinion that the motion is not in order until the matter of the consideration of the rules comes up.

The President — The present order of business is notices, motions and resolutions, to be called for by districts numerically. That refers to the subject of the rules, and it seems to me to be proper to take it up when the rules themselves are under consideration.

The Secretary called the roll by districts.

Mr. J. I. Green offered the following resolution:

R. 39.— Resolved, That the district attorneys of each county of this State be requested by the Secretary to forward to this Convention a list of the persons indicted for the commission of crime in their respective counties and now actually confined in the prisons of their respective counties awaiting trial, together with the date of their arrest, indictment and for what cause they were indicted; also a list of the persons actually confined in the prisons of their respective counties awaiting trial, with the date of their arrest and the cause.

The President — This resolution, calling for information, should go over under the rules until the next day.

Mr. C. H. Lewis — I offer this resolution, and I ask that it be referred to the Committee on Printing.

The President — The Secretary will read the resolution.

The Secretary read the resolution as follows:

R. 40.— Resolved, That there be printed in pamphlet form suitable and convenient for the use of this Convention 600 copies of the rules of the Convention as finally adopted, with a list of the standing committees and a list of the officers and members of the Convention with their Albany residences.

The President — Unless that gives rise to debate, the question may be immediately put upon its adoption.

Mr. Lewis — Mr. President, I move the adoption of the resolution.

The President put the question on the adoption of the resolution, and it was determined in the affirmative.

The President — The next order of business will be proposed constitutional amendments, to be called for by districts. The Secretary will call the districts.

Under this order of business the following proposed amendments to the Constitution were offered:

O. 91.— Mr. Jacobs offered a proposed constitutional amendment to article 3, sections 2, 3 and 4, fixing the number of Senators, the manner of their election, their term of office, compensation and qualification.

Referred to the Committee on Legislative Organization.

O. 92.— Mr. Veeder offered a proposed constitutional amendment to section 4, article 3, relative to the enumeration of inhabitants, etc.

Referred to the Committee on Legislative Organization.

Mr. Veeder — Mr. President, I desire, if the Chair will permit a suggestion, that this proposed amendment should go to the Committee on Judiciary. I have examined rule 13, on committees and their duties, and I do not find the subject of enumeration is referred to any particular committee. The subject of apportionment, which, of course, would come under enumeration, is referred to the Legislative Committee. Beyond that I think there is a grave legal question involved, and that the power should be vested with some department of the State government to perform that duty. I believe, therefore, the proper reference for this proposed amendment is to the Judiciary Committee.

Mr. Peck — Mr. President, I think that that proposed amendment should take the usual course, otherwise it will be impossible to systematically consider the amendment to the third article. It is an amendment to the third article in regard to the organization of the Legislature, and, I think, the reference should be to the Committee on Legislative Organization.

Mr. Veeder — Mr. President, may I say in reply to what the gentleman has said that it does not refer to the organization of the Legislature? It simply refers to enumeration. It simply provides for how the Legislature or department or Governor who are directed to provide for enumeration shall be compelled to perform their duty. I submit that it should go to the Committee on Judiciary.

Mr. Peck — Mr. President, I would suggest that the chief matter in that amendment is the formation of Senate districts, and it should properly be referred to the Committee on Legislative Organization.

The President — The Chair is of the opinion that the matter involved in this amendment would necessarily embrace the subject of legislative organization and apportionment and will refer to that committee unless otherwise ordered. It is so referred.

O. 93.— Mr. Veeder also offered a proposed constitutional amendment to section 9, article 8 of the Constitution, relative to organization and consolidation of cities, villages, counties or towns and the restricting of their powers in certain cases.

Mr. Veeder — The subject-matter in that amendment also includes cities and the matter of counties and towns are involved. Now I sub-

mit, Mr. President, that that is a proper matter to refer to the Judiciary Committee. It is a divided subject.

The President — The Chair is unable to see anything in that amendment that involves the Judiciary Committee. It will be referred to the Committee on County, Town and Village Government, and as it also involves cities, it is also referred to the Committee on Cities.

O. 94.— Mr. Veeder offered a proposed constitutional amendment to section 2, article 13 of the Constitution, relative to calling for future Conventions to revise and amend the same, the number of such delegates and the manner of their election, etc.

Referred to the Committee on Constitutional Amendments.

O. 95.— Mr. Burr offered a proposed constitutional amendment to article 8 of the Constitution, by adding thereto "Section 12," providing as follows: Monopolies and trusts shall never be allowed in this State, etc.

Referred to the Committee on Industrial Interests.

O. 96.— Mr. Hottenroth offered a proposed constitutional amendment to section 6, article 1 of the Constitution, relating to taking of property for public use.

Referred to Committee on Preamble.

O. 97.— Mr. Hottenroth offered a proposed constitutional amendment to section 13, article 1 of the Constitution, abolishing dower and courtesy.

Referred to Committee on Preamble.

O. 98.— Mr. Chipp offered a proposed constitutional amendment to section 5, article 2, relative to election by ballot and other means authorized by the Legislature.

Referred to Committee on Suffrage.

O. 99.— Mr. Roche offered a proposed constitutional amendment to article 3, by the addition of a new section prohibiting the Legislature, or any division of the State, from granting pensions to any civil officers or employes, not however including existing police and fire department funds.

Referred to Committee on Powers and Duties of the Legislature.

O. 100.— Mr. Roche offered a proposed constitutional amendment to section 1 of article 2 of the Constitution, prescribing the period of citizenship as a prerequisite to the right to vote.

Referred to Committee on Suffrage.

O. 101.— Mr. Moore offered a proposed constitutional amend-

ment to section 7 of article 6 of the Constitution, relative to the election of General Term justices of the Supreme Court.

Referred to the Committee on Judiciary.

O. 102.— Mr. Moore offered a proposed constitutional amendment to section 13 of article 6 of the Constitution, relative to the official terms of justices of the Supreme Court and judges of the Court of Appeals.

Referred to the Committee on Judiciary.

O. 103.— Mr. Cookinham offered a proposed constitutional amendment to section 2 of article 3, in regard to the number of Senators and Senatorial districts and Members of Assembly.

Referred to the Committee on Legislative Organization.

O. 104.— Mr. C. A. Fuller offered a proposed constitutional amendment to section 1 of article 1, declaring that the State of New York is an inseparable part of the Federal Union.

Referred to the Committee on Preamble.

O. 105.— Mr. Dean offered a proposed constitutional amendment to article 8 of the Constitution, in relation to railroads and other corporations occupying public franchises.

Referred to the Committee on Railroads.

O. 106.— Mr. Lincoln offered a proposed constitutional amendment to section 1, article 2 of the Constitution, in relation to justification of voters.

Referred to the Committee on Suffrage.

O. 107.— Mr. Lincoln offered a proposed constitutional amendment to section 14, article 1 of the Constitution, relating to leases of agricultural land.

Referred to the Committee on Preamble, etc.

O. 108.— Mr. Lincoln offered a proposed constitutional amendment to article 2, relative to voting by women who are taxpayers.

Referred to the Committee on Suffrage.

O. 109.— Mr. Lincoln offered a proposed constitutional amendment to section 4, article 2 of the Constitution, relating to the registration of voters.

Referred to the Committee on Suffrage.

O. 110.— Mr. Lincoln offered a proposed constitutional amendment to article 2, relating to female suffrage.

Referred to the Committee on Suffrage.

The President — The next order of business is the special order which was suspended on Friday just before the adjournment, the matter in hand being the consideration of rule 32, unless the Con-

vention desires to go back and take up the consideration of the rules in regular order. In that case we will begin at rule 25.

Mr. Root — Mr. President, I desire to ask unanimous consent that we first take up rule 25, which is next in succession to those that have been finally passed upon.

The President put the question on the motion of Mr. Root to take up rule 25 first, and it was determined in the affirmative.

The President — The question is on the adoption of rule 25.

Mr. Cochran — Mr. President, I desire now to renew my motion to reconsider the vote which rejected Mr. Speer's proposed amendment to rule 5, and move that that motion lie on the table.

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

The President — The Chair is of the opinion that the Convention having voted to take up rule 25 that Mr. Cochran's motion is out of order.

Mr. Roche — Mr. President, I move to amend rule 25 by adding at the end thereof the words " nor limit the number of times of speaking."

The President — The Secretary will please read the rule as it is.

The Secretary read rule 25.

The President — Mr. Roche will please hand up his amendment in writing. The Secretary will read Mr. Roche's amendment.

The Secretary read the amendment.

The President — The Chair would suggest to Mr. Roche that that will hardly fit in at the end of that rule, " nor limit the number of times of speaking."

Mr. Roche — Mr. President, the last part of the rule reads " the same rules shall be observed in the Committee of the Whole as in the Convention so far as the same are applicable, except that the previous question shall not apply nor the ayes and nays be taken." You can add the words " nor limit the number of times of speaking " there or you can make it read " nor a limit be made as to the number of times of speaking." The present rules provide that there shall be a limit to the number of times of speaking in the Convention, and I do not want that rule to apply to the Committee of the Whole. It seems to me, Mr. President, that these rules are cleverly arranged; first, to enable the Committee on Rules to control this Convention, or, at least, to exercise a preponderating voice and influence in its management; secondly, to drive through without sufficient debate and consideration in the Convention itself any measures of a political

character, or any other character, that the Committee on Rules, supported by a majority of the members present, may choose to make a special order, by limiting the time of debate upon any proposition; and, thirdly, to enable members to vote on questions of the greatest importance without their votes being recorded, unless a specified number shall demand the taking of the ayes and nays. These rules, Mr. President, it seems to me, enable the Convention to be deprived of its character as a deliberative body seeking to improve the government of a great State, and place it in the hands of a committee supported by a partisan majority, to hasten the adoption of selected measures and defeat those that are objectionable to the committee. These rules are very unusual in their scope. They are a departure from those that are found to be fit and proper for the business of the Legislature of this State, and I submit, Mr. President, that they are not justified by the procedure of this Convention up to this time. Now, Mr. President, I move the adoption of the amendment to rule 25, and I hope to be brief in its discussion. It will become necessary for me, in the course of the discussion, to call the attention of the Convention to some of the other rules which have a bearing upon rule 25, because I think they disclose a very comprehensive plan in certain directions. As I understand it, the object of going into Committee of the Whole is that the proposition may be there fully discussed. It is there threshed and sifted. Every sentence and every word of every sentence may be sifted. It is there shaped and molded and brought to perfection before it is brought into the Convention to be acted upon, and it seems to be absolutely necessary if the work of this Convention is to be well done and successfully accomplished that there should be great freedom in offering amendments in the Committee of the Whole, and unrestricted freedom as to debate. Now, the rules of the Senate of this State on that subject are in this shape: "The rules of the Senate shall be observed in the Committee of the Whole, so far as may be applicable, excepting limiting the number of times of speaking, and except that the ayes and noes shall not be taken."

I also refer to Assembly Rule 20: "A motion to rise and report progress shall be in order at any stage, and shall be decided without debate." As I understand it, that is the ordinary method adopted in Committee of the Whole to bring debate there to a close, and if that be the case, I think there is no occasion for conferring on the Committee on Rules power to report a rule, such as these rules now give it, to close debate.

The President — The Chair will call the attention of the gentle-

man to the second clause of rule 26: "A motion to rise and report is not in order until each section and the title have been considered, unless the limit of time has expired."

Mr. Roche — I desire to call the attention of the delegates to these words: "Unless the limit of time has expired." They are not contained in the rules published in the manual and under which this Convention is now being governed. There is nothing to give us the purport or meaning of those words: "Unless the limit of time has expired," and we must refer to a later rule to find out what their object is.

I refer now to rule 27: "When the limit of time has expired (here we have these words repeated) the amendments which have been proposed and not previously acted upon shall be voted upon in their order without further debate. Now, I can imagine, Mr. President, how that may work in Committee of the Whole. A proposition may be referred to that committee to which half a dozen amendments may be pending. The Committee on Rules may report a rule limiting debate to two hours. The debate on two of these amendments may take up the entire two hours. When they have expired debate must at once cease. The gentleman occupying the chair has no option in the matter, and when the debate ceases the vote must be taken upon the other three amendments which have not been discussed at all. They may be amendments of the most important character, vital to the proposition before the committee, and yet under the strict wording of the rule they cannot be debated and a vote must be had on them without any discussion whatever.

I come now, Mr. President, to rule number 40, which is in these words: "On the third reading of the proposed amendment, no amendment thereto shall be in order, except to fill blanks, without unanimous consent." That, Mr. Chairman, relates to the proceedings of the Convention itself after the Committee of the Whole has made its report to the Convention. Now what is the rule on that subject in the Senate and Assembly of this State? The Senate rule is in these words: "Bills committed to a committee of the whole Senate shall in Committee of the Whole be read through by section. The reports shall state whether or not said bill had been amended in Committee of the Whole. After the report the bill shall be subject to debate and amendment before the question to engross it is put; but such amendments only shall be in order as were offered and decided in the committee of the whole Senate, except by unanimous consent." I understand that to be the rule which prevails in most legislative bodies and the purpose of it is this: Matters may be dis-

cussed hastily in Committee of the Whole or members may be absent. There is no provision for taking the aye and nay vote in that committee. When a matter has been reported back to the House, it has been the custom to allow it to be taken up for further discussion and more mature consideration. Members over night may reconsider matters upon which they have voted hastily in the Committee of the Whole; members may be present in the meetings of the Convention that were not present in the Committee of the Whole; so this opportunity to present such matters as were discussed in the Committee of the Whole should be accorded in the ordinary meetings of the Convention. Under this rule no discussion would be permitted "except to fill blanks, without unanimous consent." It would not do to say that the matter may be recommitted to the committee. That is no answer.

Now I come to rule 56, which has an important bearing on rule 25, which is the rule we are now considering. The rule reads this wise:

"Rule 56. All proposed actions touching the rules and order of business, except by unanimous consent, shall be referred to the Committee on Rules; such committee may sit during the session of the Convention without special leave, and report at any time on rules or order of business." Now, while that privilege (which in my opinion is a proper one) is given to the Committee on Rules, there is no corresponding duty or obligation imposed on the committee to make a report on any rule which has been referred to it. During the course of this Convention a half dozen different propositions may be referred and must be referred to this committee, and the committee may become the burial ground of all of these propositions. There is no way, if the committee choose not to report them, to compel them to report, and I submit that if this privilege is to be accorded to the committee, there shall be some provision for compelling them to report.

"It will be in order to call up for consideration at any time a report from the Committee on Rules." Now that is a very broad power to give to the committee, to come in here at any time during the session of the Convention or Committee of the Whole and interrupt the proceedings to make their report.

"Any member," the rule continues, "may object to its consideration until the next legislative day, and if sustained by twenty-four other members, the consideration shall be so postponed, but only once." I submit, Mr. President, that that is driving things at a pretty serious rate. Now I continue with this rule, "pending the

final consideration thereof, but one motion, 'that the Convention adjourn,' may be entertained, and no other dilatory motion shall be entertained until such report is fully disposed of. A motion to suspend the rules shall in all cases state specifically the object of the suspension, and every case of suspension of a rule under such notice and motion shall be held to apply only to the object specified therein. Provided, that whenever a standing committee shall make a report on a constitutional amendment or other subject, or at any time, the Committee on Rules may report a rule limiting the time of debate; and if approved or unquestioned by the Convention such report shall stand as the time limited for debate on the subject-matter referred to in such rule, and the previous question or other motion to close debate shall not be in order until the expiration of the time allotted, or the debate has been closed; the time thus allotted for debate shall be equally divided between those in favor and those opposed to the subject-matter under consideration." It will be noticed here, Mr. Chairman, that there is no minimum of time fixed at all for debate. In the Senate, I believe, there is a provision recently adopted whereby the Committee on Rules may, if the Senate so approve, limit the time of debate on any resolution to six hours; but we have nothing of the kind here and debate may be limited under a report of the Committee on Rules to one hour, even upon the most important question.

Now I come to rule 57, which reads: "The ayes and nays may be taken on any question whenever so required by any fifteen members (unless a division by ayes and nays be already pending) and when so taken shall be entered on the journal." Now it will be noticed here, Mr. President, that there is no provision, unless fifteen men demand it, for taking the ayes and nays except upon the final passage of any constitutional amendment which may come before this Convention. I submit, Mr. President, that that should not be the case. No bill can pass either House of the Legislature without the votes of the members being recorded, and their constituents knowing where they stand, and it seems to me that no provision should be inserted in the organic law of this State without the people knowing how the delegates have voted, to what extent they voted and by what majority it was carried. The people should know that these propositions express the deliberate wisdom, the will and the wish of this Convention, and the only authentic way they can ascertain that fact is by having the ayes and noes taken upon the final passage of any proposition and it should not be left to the will of fifteen members of the Convention as to whether they shall be taken or not.

Now let us see how this proposition in reference to twenty-four members objecting to the consideration of a report of the Committee on Rules, may operate. There are the woman suffragists, to whose cause, I imagine, the matter of time is of importance. The Committee on Rules, supported by a majority of the Convention, may come in here one day and report a rule making the woman suffragist question a special order for that day, and limiting the time of debate on it to that very day, and unless there are twenty-five advocates of the women's cause present here in the chamber to demand that the report shall lie over, it can be considered on that very day and even if the twenty-five men are present, they can secure under these proposed rules a postponement of the matter only until the next day and not more than once at that. Now, the same will be the position of the gentlemen here who seem to be anxious that the Constitution shall be amended so that church property may not be exempt from taxation. Questions may arise affecting the corporations of the State, those vast aggregations of wealth, power and influence. They are questions, Mr. President, it seems to me, that should be debated carefully and not pushed through the Committee of the Whole and pushed through the Convention by an energetic Committee on Rules on a time limit like unto the time of a limited train itself.

Now there is another thing. I refer to the apportionment of the State for legislative purposes, and Mr. President, I regard a gerrymander as one of the most unfortunate things in politics, and in the end, an unprofitable piece of business; but it is well known that the party now in power in the Legislature of this State neglected to have an apportionment made. When the people deprived it of power such an apportionment was made.

Mr. Acker — Mr. President, I desire to ask the gentleman in what respect the remark he has just made has reference to the number of times he shall speak in the Committee of the Whole?

Mr. Roche — Mr. President, it is always associated with the power of the Committee on Rules to report a rule which shall limit the number of times we shall speak in the Committee of the Whole.

The President — The Chair is of the opinion that Mr. Roche is entirely in order.

Mr. Roche (continuing) — Mr. President, I said as a result of that apportionment the Democratic party stood a fair chance to obtain control of the Legislature; that it had control of the Legislature; that the election of last fall, which was peculiar in its character, restored the Republican party to the control of the Legislature. It

is true that the Republican party is not satisfied with the present apportionment of the State. It is jealous of the representation it gives to the centers of population and industry. It expects that a new apportionment will be presented here. In that event the right of the minority to have it considered fully at all stages, to propose amendments to it, to have it discussed, should be secured in the rules themselves and should not be dependent upon the good nature of the Committee on Rules, a majority of which may be in favor of the apportionment. The minority (and I do not use the word in any partisan political sense) should be protected in the rules themselves in securing full presentation of their views, and full opportunity for offering amendments to any proposed changes of the Constitution. I know it may be said that we should not assume that the Committee on Rules will be unfair or will act unreasonably. Mr. Speaker, I respect that committee and recognize the eminent character of its members. Particularly do I admire the diplomacy and ability which took hold of a complacent minority and secured a unanimous report from that committee. But, Mr. President, what reason have we for believing that this Convention cannot govern itself; that it is necessary to fetter it in advance; that it is wise now to impose restrictions upon the ordinary privileges which are accorded to minorities in parliamentary and legislative bodies; that prolonged and needless discussion is to be the order of the day, needing the intervention of a strong hand in the shape of the Committee on Rules? This body, Mr. President, unlike the Senate of the United States, has not proven its incapacity to transact business with reasonable dispatch and until that time comes, I submit that these rules in the proposed form should not be adopted. I will not disguise the fact that I am somewhat fearful of a report of the Committee on Rules, particularly when I find such beautiful harmony prevailing among its members. That committee has upon it some of the leading and shining lights of the Republican party. We know, as a fact, that the tendency of men is to support their party associates and the recommendations of their party friends, even when they do not regard them as wise, necessary or proper. We have had a test already of the power of this Committee on Rules. Every proposition which has been offered here has been voted down unless it was accepted by the spokesman of the committee, the distingushed gentleman from New York. This Convention itself has been organized, to a great extent, on a political basis. Some of us were of the opinion that it would be a courteous and judicious thing to accord to the minority one of the Vice-Presidents of the Convention, and we put forward for that honor the name of a distinguished son

of this State. No heed was given to it. Every officer of this Convention is of the same party. All of its employes, so far as I know, are adherents of one party. The chairmen of all its committees and the majorities of the committees are of the same party. I don't want my Republican associates to think I am criticising them, or finding fault with them on that account. I simply mention these facts to illustrate and emphasize the points I make and to show the importance of jealously and carefully guarding the rights of minorities in order that the Convention shall not be tempted at any stage of its proceedings, and in order that it shall not, if tempted, be able to unduly restrict the rights and privileges of the minority.

Now, one word more, Mr. President, and I have done. I know it will be said that the time of this Convention is limited, and it should not be taken up with debates and roll-calls. Well, we have several months ahead of us to do our work. I find there are 156 sections in the present Constitution including quite a number which are obsolete. If every one of them should be voted upon it would only be about one-fifth the number of laws which were enacted by the recent Legislature, all of which were passed upon roll-call in both branches of the session which began in January and ended in April. Now I am anxious, Mr. President, that the work of this Convention be approved by the electors in November. I want to see our Constitution amended, strengthened and improved, and that, too, in some of the directions which were suggested by our distinguished presiding officer in his opening address. But to secure this result, Mr. President, it is necessary that this Constitution shall not contain any radical propositions of doubtful, narrow or experimental character; that it should not be made merely the vehicle of the wishes of a political party; that the people of the State should feel from the beginning and should understand and should come to believe that it is the deliberate, unfettered work of the delegates after every delegate has been accorded a reasonable, patient hearing, and is the outcome of the good judgment, the fairness and the patriotism of the Convention. If such be the case, Mr. President, this Constitution will go forth from our hands with good will and will be accorded the suffrages of the people.

Mr. Root — Mr. President, the comments which the gentleman from Rensselaer has made upon the various sections of the rules which we have not yet reached, I think would better be taken up and considered when the rules are reached. I will only say upon the general subject that there is no proposition in these rules that the

Committee on Rules shall limit the time of debate in any way whatever, or that any such limitation shall be established upon any subject except by the action of a majority of this Convention. I see, Mr. President, no objection whatever to the adoption of the amendment proposed by the gentleman from Rensselaer. It would be quite satisfactory to the committee proposing this twenty-fifth rule.

The President — The Secretary will please read the amendment. The Chair is not satisfied that it is in the exact phraseology that Mr. Roche desired.

The Secretary read the amendment as follows: "Nor a limit be made as to the number of times of speaking."

The President — Is that satisfactory, Mr. Roche?

Mr. Roche — Yes, sir, Mr. President.

The President put the question on the adoption of Mr. Roche's amendment and it was determined in the affirmative.

The President put the question on the adoption of rule 25.

Mr. Durfee — Mr. President, I desire to offer an amendment to the first part of rule 25, which I will send to the desk.

The President — The Secretary will please read Mr. Durfee's amendment.

The Secretary read the amendment as follows:

Strike out the first sentence of rule 25 and insert as follows: "Any matter may be committed to the Committee of the Whole on the report of a standing or select committee, or by unanimous consent at any time. Any committee may be discharged from the further consideration of any matter referred to it and such matter may be referred to the Committee of the Whole by a vote of the Convention."

Mr. Durfee — Mr. President, I have offered this amendment in the direction as it seems to me of clearness and simplicity. As the rule now stands, certainly upon first reading, there is some doubt as to what its actual significance is.

Mr. Root — Mr. President, the fact alone that a gentleman of such clearness of vision as the proposer of this amendment finds occasion to make the language of the rule clearer is sufficient to justify the amendment. I think the amendment proposed by Mr. Durfee means precisely what the rule means as it now stands, but if there is any question about it, I am quite satisfied to have the amendment adopted.

Mr. Vedder — Do I understand that the acting chairman of the Committee on Rules has accepted this amendment?

The President — I understand that he approved of it.

Mr. Vedder — Mr. President, I wish to ask of the mover of this amendment this question: As I understand it to have been read it is that any matter may be committed to the Committee of the Whole on the report of a standing or select committee. That is true so far, "or by unanimous consent," without such report?

Mr. Durfee — Yes, sir.

Mr. Vedder — Mr. President, it seems to me that this will lead to difficulty. Here is a proposed amendment before a standing committee and a motion is made and not objected to that that proposed amendment shall be committed to the Committee of the Whole. If not objected to, it goes to the Committee of the Whole, and that proposed amendment is at one and the same time before the Committee of the Whole and before the standing committee. It seems to me to be quite impossible to have one amendment under consideration at two different places at one and the same time.

Mr. McMillan — Mr. President, I would ask for a reading of the proposed amendment.

The Secretary read the amendment.

Mr. McMillan — Mr. President, I think the reading of this will satisfy Mr. Vedder that there cannot be any possibility occur what seems to be in his mind.

Mr. Veeder — Mr. President, before you insert "be referred to the Committee of the Whole by a vote of the Convention," I would suggest that you put in the word "then," so that it will read, "any committee may be discharged from further consideration of any matter referred to it and such matter may then be referred to the Committee of the Whole."

Mr. Durfee — I accept that amendment, Mr. President. It applies to the last clause.

The President — Will you please indicate Mr. Veeder the exact place where the word "then" comes in?

Mr. Veeder — After the committee is discharged then the matter may be committed to the Committee of the Whole.

Mr. Durfee — Mr. President, that refers to the criticism of the gentleman from the Thirty-second (Mr. Vedder). I apprehend that the reference to the Committee of the Whole by unanimous consent would refer only to a matter which had been introduced and not referred to a committee. When a matter has already been referred to a committee it will be necessary, of course, that that committee be discharged before the matter can be brought before the

Committee of the Whole; but it may happen as it seemed to me and as I think was in the minds of the Committee on Rules in framing this rule as it was reported, that a matter may come direct to the Committee of the Whole without being referred to a standing or select committee, and it was for the purpose of facilitating that reference to the Committee of the Whole that the words "by unanimous consent" were incorporated in my proposed amendment.

Mr. Vedder — Mr. President, I ask to have the rule read as finally amended by the insertion of the word "then."

The President — The Secretary will read the rule as finally amended.

The Secretary read the rule as follows:

"Rule 25. Any matter may be committed to the Committee of the Whole on the report of a standing or select committee, or by unanimous consent at any time. Any committee may be discharged from the further consideration of any matter referred to it and such matter may then be referred to the Committee of the Whole by a vote of the Convention."

The President put the question on the adoption of Mr. Durfee's amendment and it was determined in the affirmative.

The President put the question on the adoption of rule 25, as amended, and it was determined in the affirmative.

The President — The question is on the adoption of rule 26.

The Secretary will read rule 26.

The Secretary read rule 26.

Mr. McClure — Mr. President, I move that in connection with rule 26, rule 56 be also considered at the same time.

The President — The Chair is of the opinion that the Convention having adopted a rule for the consideration of this business that we should take them up and consider them rule by rule in consecutive order. Mr. McClure's motion is not in order, until there shall be a re-consideration of that former order.

Mr. McClure — Mr. President, then I move that rule 26 be laid aside and be not considered until rule 56 be reached in its regular order, and if I may be allowed to say my reason for making the motion is that, in proper order, rule 56 would have preceded rule 26. Rule 56 fixes the limit of time upon any measure and if adopted that shall be the time in which the measure must be considered. Now we propose before we adopt rule 56 or we consider it, to take up and pass upon rule 26 which has in its provisions a limit of time

supposed to have been heretofore fixed. I think we should allow the setting aside of the rule and consider these two rules together, or adopt the motion which I now make, that the consideration of rule 26 be laid aside until we reach rule 56.

The President — That course was taken in regard to rule 32 on Friday, by unanimous consent. It can be now done in the same way.

Mr. Root — Mr. President — I see no occasion to pass rule 26. Rule 56 could be wiped out entirely and this would still be the ordinary expression of legislative custom. It may be that the Convention may see fit to fix a limit of time upon debate. It certainly will be true that before this Convention adjourns it will be necessary to fix a limit of time upon debate. The contending claims of the numerous questions that may come before the Convention, all of them of great importance, all of them justifying extended debate and discussion, will be such that fairness to each will demand that all shall be subjected by the persons interested in them to a fair division of the time of this Convention.

The President — The Chair understands Mr. Root to object to the unanimous consent.

Mr. Root — I do, sir.

The President — Then there is nothing before the House.

Mr. Root — I understood Mr. McMillan to move to suspend the discussion of this rule.

Mr. Bowers — Do I understand that Mr. Root refuses his assent and insists that we discuss rule 26 now, which assumes a time limit without an opportunity of discussing the provisions of rule 56 which some of the members considered gave some protection to the minority?

The President — There is no question before the House.

Mr. Bowers — I then request that unanimous consent be given to the discussion of rule 56 now, or that rule 26 be passed until we reach the consideration of rule 56, in order that both may be taken up together.

Mr. Root — Mr. President, upon the grounds stated by the gentleman from New York (Mr. Bowers), that he considers rule 26 and rule 56 are bound together in the way of protection to the minority, I withdraw my objection to the suspension of the consideration of rule 26 until we reach rule 56.

The President — Objection having been withdrawn to the suspension of the discussion on rule 26 until we reach the discussion of

rule 56, rule 26 will be laid aside and the Secretary will please read rule 27.

The Secretary read rule 27.

Mr. McClure — I move that the consideration of rule 27 be postponed until we have reached in the regular order rule 56 for the same reason that I gave in connection with rule 26, and I hope that because I ask unanimous consent or that I am not a member of the Committee on Rules, or even of the minority part of it, will permit Mr. Root not to object.

The President — Unless some delegate objects, rule 27 will be passed until rule 56 is reached.

The President — The Secretary will read rule 28.

The Secretary read rule 28.

Mr. Veeder — Mr. President, may I inquire what is done with the Committee of the Whole when the Chair reports that there is no quorum? It seems to me that there should be a provision there that the committee then rise and let the House proceed to get a quorum. Suppose the debate was limited to two hours and it took two and a half to get a quorum, what becomes of the discussion of the matters referred to the Committee of the Whole?

The President — That interesting question will be answered by the chairman of the Committee on Rules.

Mr. Root — As the President of the Convention is the chairman of the Committee on Rules, perhaps the authority would be better if he will answer. I suppose if there is no quorum of the Committee of the Whole, any limit which the Convention may have fixed upon for discussion would not take into consideration the time occupied in the absence of a quorum. It is entirely within the power of the Convention to fix the time limit, and it is hardly to be supposed that the Convention would assign a time when there was no quorum of the Committee of the Whole in the discussion of an important question, and thus deprive the matter of full consideration. I understand if there is no quorum in the Committee of the Whole, there is no Committee of the Whole.

Mr. Veeder — Mr. President, the little experience that I have had in legislative bodies is that in the absence of a quorum, the committee shall then rise and the Chair then reports it back to the House. I propose an amendment to this rule that the committee shall then rise and the committee shall report it back to the Convention. After the word "quorum" insert the words "and the committee shall then rise and."

Mr. Root — Mr. President, I don't want to take up the time of the members on matters of this kind, which seem to be of very little importance, but we have taken the language of Assembly rule 22, which reads: "If, at any time, when in committee of the whole House, it be ascertained that there is no quorum, the chairman shall immediately report the fact to the Speaker." The effect of that is that the committee ceases and when the Convention obtains a quorum it can resolve itself into a Committee of the Whole.

Mr. Veeder — Will the gentleman allow me to ask him a question? Is it possible when the Convention is in Committee of the Whole to arraign an absentee, and in the absence of a proper excuse, to punish him? It seems to me that it will be proper for the Committee of the Whole to dissolve and report to the Convention the absence of a quorum and then when we obtain a quorum for the Convention to again go into a Committee of the Whole.

The President put the question on Mr. Veeder's amendment and it was determined in the negative by a vote of 30 ayes, 52 noes.

The President put the question on the adoption of rule 28 and it was determined in the affirmative.

The President — The Secretary will read rule 29.

The Secretary read rule 29.

Mr. Veeder — Mr. President, I don't understand what the last paragraph of this rule means: "If leave be refused, the effect is to bring up the subject immediately before the Convention." Now leave may be refused to sit again on the question, and does the amendment then go on the order of third reading?

The President — This very interesting inquiry is for the Convention to dispose of.

Mr. Root — I suppose it would be for the Convention to dispose of.

Mr. Veeder — In that case we could end our duties by July.

The President — The Chair proposes that the word "subject" be stricken out and that the words "same business that was before the Committee of the Whole" be inserted. Isn't that correct?

Mr. McMillan — It leaves the question to be disposed of by the Convention proper in such manner as it may elect. I cannot see what other disposition the gentleman would like to have made of a refusal to sit again. It passes into the Convention and is disposed of as a majority may elect and directed to go to a third reading if the majority so direct.

The President — I understood part of Mr. Veeder's inquiry to be whether the effect is to bring up the subject immediately before the Convention and if it displaces or takes precedence over all other matters.

Mr. McMillan — I understand not, Mr. President. It goes on general orders if the Convention grants leave to sit again. It goes on in its order. The Convention may elect not to send it to general orders at all.

Mr. Vedder — Mr. President, what the rule means or should mean is this: That when the Committee of the Whole reports to the Convention, that some progress has been made on a proposed amendment, and asks leave to sit again, and leave to sit again is denied, such a refusal defeats the proposition; that is, that a refusal for leave to sit again, kills the proposed amendment, because the Convention refuses to permit the appropriate committee to consider it again.

The President — It beats the leave, but it presents the subject in Convention.

Mr. Vedder — If the Convention refuse to grant leave to sit again I understand that beats the proposition.

Mr. W. H. Steele — Mr. President, that rule has been a parliamentary rule for at least two hundred years. If the Convention will refer to page 103 of the manual they will find about the middle of the page the same rule given by Mell in his parliamentary report, which has been in use as one of the books of reference of the Legislature for about fifteen or twenty years. I supposed that there was no doubt about the meaning of the word "immediately." If the Convention sees fit to refuse leave to the Committee of the Whole to sit again, the question came up years ago, what became of the proposition that had been under consideration by the Committee? Now the Convention, by the refusal to allow that committee to sit again takes the matter into its own hands, and it is supposed that being before the Convention some member will move some action upon it precisely as is done upon any other matter before the Convention. If anything is on the Secretary's desk it is not in order for the Convention to sit perfectly still and ask what they are going to do about it. Some member naturally moves to take action upon it or postpone. I think there is no question about that matter. I think that if Mr. Veeder will give the rule a little consideration he will come to the conclusion that if the matter was brought before the Convention it was before the Convention for some sort of action.

Mr. McClure — Mr. President, it must be apparent to the members of the Convention that right in connection with rule 29, provisions

of rule 56 which relate to the moving of the previous question and the forcing of measures to a vote, must affect it. The members will notice that rule 29, to which Mr. Veeder has called attention, puts the matter which a committee has not disposed of immediately before the Convention and therefore, the provisions of rule 56 as to whether when a matter is put before the Convention the previous question can be ordered, becomes a question of great importance. I would, therefore, ask unanimous consent that the further consideration of rule 29, because of the reasons suggested by Mr. Veeder and now referred to by myself, be suspended until we shall have reached rule 56 in its order.

Mr. McMillan — I object to that, Mr. President.

Mr. McClure — Mr. President, I offer the following amendment. I offer an amendment to follow the word "Convention" at the end of the paragraph, as follows: "To take the same course as is provided by rule 37."

The President — This would seem to require, in the contingency of leave being refused, the third reading of the proposed amendment which had been under consideration in the Committee of the Whole and to take it out of the power of the Convention to make any other disposition of it.

Mr. Veeder — Mr. President, I would suggest that after the word "refused" in the third line the following be inserted: "And shall be placed upon general orders."

The President — Mr. Veeder offers another amendment which will be in order after Mr. McClure's amendment has been disposed of. Mr. Veeder will please send his amendment up to the desk in writing.

Mr. Tekulsky — Mr. President, I cannot understand why there is so much delay upon a matter of this kind before this Convention — delay and talking over a matter that almost every delegate ought thoroughly to understand.

Mr. Veeder — Mr. President, have I got the floor?

The President — The Chair thinks Mr. Tekulsky has the floor. As I understood it, Mr. Veeder was to send up his amendment in writing.

Mr. Veeder — But I still have the floor. It would be better to have the amendment offered before you talk about it.

The President — The Secretary will read the amendment.

The Secretary read the amendment as follows: After the word

"refused" in the third line, insert the following: "And shall be placed upon general orders."

Mr. Veeder — I am a little bit embarrassed, Mr. President, because the gentleman would not let me get it read before he commenced the discussion. I only desire that the unfinished business of the Committee of the Whole, when not permitted to sit again, shall go upon the calendar and when the Committee of the Whole again sits it can be considered. Otherwise there is danger of the matter being ordered to a third reading and proceeded to vote upon, as it only requires a majority of the Convention to put it upon the final passage.

Mr. Tekulsky — Mr. President, I have no desire to take up the time of the Convention, and I will only make this suggestion, that these amendments be put to the House and that we vote them down and adopt this rule without taking up too much time as to what they ought to be.

Mr. McClure — Mr. President, I accept Mr. Veeder's amendment for mine.

The President — The Secretary will read that part of the rule as it is proposed to amend it.

The Secretary read that part of the rule as follows: "If leave be refused such business shall be placed on general orders."

Mr. W. H. Steele — Mr. President, that is, it shall be taken out of general orders and replaced on general orders, which will be equivalent to allowing the committee to sit again. Every one of those matters that go to the Committee of the Whole have a certain order which they retain throughout, unless in some manner they lose that order. Now, unless this is returned to the Convention with the report that the Committee of the Whole cannot agree upon any decision, and the matter is brought up immediately before the Convention, the only proposition that could come from the gentleman would seem to be, that it should be placed upon the unfinished business of general orders; but that, of course, would make it lose its order in the business of the Convention and also upon third reading. It seems to me that when that is brought up immediately before the Convention it is like any other proposition for action, and by the terms of the rules, for immediate action.

The President put the question on Mr. Veeder's amendment, and it was determined in the negative.

The President then put the question on the adoption of rule 29 as it stands, and it was determined in the affirmative.

The President — The Secretary will read rule 30.

The Secretary read rule 30.

Mr. Veeder — Mr. President, do I understand there is no power to call for the ayes and noes? I wish to have a vote on the question.

The President — Under the present rules, which I suppose are substantially in force until the new ones are adopted, fifteen are necessary to call for the ayes and noes.

Mr. Veeder — I think we might as well know where we stand and I propose to call for the ayes and noes.

Mr. Holls — Mr. President, I rise to a point of order. The result of the vote has already been stated by the Chair.

The President — That may be so, but Mr. Veeder is simply stating his purpose in the future to call for the ayes and noes on these amendments.

Mr. Cochran — Mr. President, as there is now no business directly before the House, I move that we reconsider the vote by which Mr. Speer's amendment to rule 5 was rejected, and that that motion lie on the table.

The President — The Chair has already announced that the Secretary will read rule 30.

Mr. Cochran — Mr. President, I rise to a point of order, that a motion to reconsider is in order at any time.

The President — The Chair understands that the Convention is guided yet by rules 44 and 48 of the manual.

Mr. Cochran — Rule 48 says: "A motion to reconsider any vote must be made on the same day on which the vote proposed to be reconsidered was taken or on the legislative day next succeeding, and by a member who voted in the majority, except to reconsider a vote on the final passage of an overture, which shall be privileged to any member. Such motion shall be made under any order of business, but shall be considered only under the order of business in which the vote proposed to be reconsidered occurred."

The President — The Chair is of the opinion that a motion to reconsider rule 5 is now out of order. The question is on the adoption of rule 30.

Mr. Cochran — Mr. President, I dislike to do so, but I think I must appeal from the decision of the Chair. I submit, sir, that the rule is arbitrary and that a motion to reconsider is always in order.

The President — The Chair is of the opinion that the gentleman

has a perfect right to make the motion, but its consideration does not come up in the order of business we are proceeding under.

Mr. Cochran — I move that the motion to reconsider lie on the table.

The President put the question on the motion to lay Mr. Cochran's motion to reconsider on the table, and it was determined in the affirmative.

The President — The Secretary will read rule 30.

The Secretary read rule 30.

This rule not giving rise to debate, the President put the question on the adoption of rule 30, and it was determined in the affirmative.

The President — The Chair now rules that Mr. Cochran's motion is open for consideration.

Mr. Cochran — I understood that my motion was laid on the table. I do not desire to take it up now.

The President — The Secretary will read rule 31.

The Secretary read rule 31.

This rule not giving rise to debate, the President put the question on the adoption of rule 31, and it was determined in the affirmative.

The President — The Secretary will read rule 32.

The Secretary read rule 32.

The President — The question is on the adoption of the amendment offered by Mr. Peck immediately before this order of business was suspended on Friday.

The Secretary read the amendment as follows: Insert in line 3, after the word "thereon," "but no report shall be made until after the proposed constitutional amendment shall have been on the files at least one Convention day."

Mr. Cochran — Mr. President, I rise to a point of order. As I recollect rule 32, this amendment was adopted.

The President — The Journal shows that one amendment was adopted to rule 32 and it was the one offered by Mr. Osborn. The question is on the adoption of Mr. Peck's amendment.

Mr. Van Denbergh — Mr. President, I offer an amendment to insert after the words "agreed to" in the ninth line the words, "by the Committee of the Whole," so that sentence shall read, "when a committee has reported that no amendment should be made to

the provisions of the existing Constitution relating to any specified subject, and such report is agreed to," then comes the amendment, "by the Committee of the Whole."

The President — Will Mr. Van Denbergh send his amendment to the desk in writing. It will not be in order until Mr. Peck's amendment is disposed of.

Mr. Peck — Mr. President, I repeat the explanation that I made the other day of the purpose of this amendment. At the time we were considering the propriety of reading overtures in full, it was suggested that this rule should be amended so that all proposed constitutional amendments should be printed and put upon the files of the members, in order that they should be informed in that way, instead of reading them in full from the desk. Now, the purpose of this amendment is that standing committees and select committees shall not report upon such proposed constitutional amendments until after the members of the Convention are informed of such proposed constitutional amendments by having them printed and upon their desks, for at least one day before they are reported. The purpose is to inform the Convention of the proposed amendment before there shall be a report from a special or standing committee in regard to them.

The President — The Chair understands the amendment to be that no report shall be made until after the proposed amendments have been printed and placed upon the files of the members for at least one convention day.

Mr. Root — Mr. President, I am afraid we will get into a little confusion in the language of this rule.

Mr. Peck — You have already accepted an amendment to print them.

Mr. Root — I am going to make a motion on that. Mr. President, there are several hundred proposed constitutional amendments now referred to standing committees. I apprehend that many of them relate to the same subject. Many of them are to the same effect with immaterial variations. The standing committees will, doubtless, report a result which comes from considering a great number of these propositions. Now while we are talking about proposed amendments, isn't it desirable that we should treat of the report of committees rather than of this great mass of proposed constitutional amendments which have been referred to the committees. I am afraid that to provide that a committee shall not report until after the amendments which are introduced here have

been printed and placed upon the files of the members for a certain time, might postpone the reports of the committees; for some new proposition might come in relating to the matter to be reported by the committee, and if this amendment is adopted it would prevent the standing committee from reporting.

Mr. Peck — Mr. President, I would suggest that that difficulty might be avoided by adding to the proposed amendment the words "against the objection of five members of the Convention."

The President — The question is on Mr. Peck's amendment to insert in line 3, after the word "thereon" the words, "but no report shall be made until after the proposed constitutional amendment shall have been on the files at least one convention day against the objection of five members of the Convention."

Mr. McMillan — Mr. President, I desire to ask the mover of the amendment what he thinks the effect will be if the standing Committee on Judiciary, for instance, were ready to report to-morrow merely in regard to the organization of the courts of this State, and a proposed amendment on that subject was introduced to-day. Would it not have the effect to delay the report from day to day by the introduction of propositions on this same subject.

Mr. Peck — Mr. President, I do not think there would be any five members of this Convention who would act together to delay the regular deliberate business of this Convention.

Mr. McMillan — Mr. President, I desire to make a further suggestion, taking another proposition. Supposing it is the subject of apportionment. Does the gentleman think there could not be five members found to delay the report? It seems to me to be a very dangerous thing.

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

The President — The Secretary will read Mr. Van Denbergh's amendment.

The Secretary read the amendment as follows: In line 9, after the words "agreed to," insert the words "by the Committee of the Whole."

The President — The Chair would suggest that there is a little ambiguity. The word "committee" on the last line would then refer to the Committee of the Whole.

Mr. Van Denbergh — Mr. President, the object of that amendment is to define clearly what committee is spoken of in the rule. The rule reads, "when a committee has reported that no amend-

ment should be made to the provisions of the existing Constitution relating to any specified subject, and such report is agreed to, all propositions for amendment relating to that subject which have been referred to that committee shall be considered as rejected." The rule should say what committee. If a standing committee, then it seems to me that they ought not to have the power to say what should be considered as rejected and what not. In order to make it clear that it should be the Committee of the Whole, and not the standing committee to which it had been referred, I propose my amendment.

Mr. Veeder — Mr. President, I think that that amendment is wrong. I think the words "agreed to" certainly must refer to the action of the Convention. Clearly you would not send that subject to the Committee of the Whole. It belongs to the Convention to say, what they shall do with the report of a committee. To leave that to the Committee of the Whole it seems to me to be improper.

Mr. Root — Mr. President, it seems wholly unnecessary when the standing Committee on Preamble and Bill of Rights has reported that there shall be no change in the preamble that we should send it to the Committee of the Whole. The object of the Committee of the Whole is to offer amendments, and if there is to be no action, we do not want any Committee of the Whole to sit upon it.

The President put the question on the adoption of Mr. Van Denbergh's amendment, and it was determined in the negative.

Mr. Root — Mr. President, I move to reconsider the vote by which Mr. Osborn's amendment to rule 32 was adopted on the last legislative day, and pursuant to which the words "by such committee or minorities thereof" were inserted after the word "reported" in line 4. Let me say that I make that motion with the intention of offering an amendment to the rule in these words: Add at the end of rule 32 the following: "All constitutional amendments proposed by a minority report from any committee shall be printed and placed upon the files of the members of the Convention." The object of asking the reconsideration and proposing this amendment in lieu of that offered by Mr. Osborn is that there shall be but one report sent to the Committee of the Whole. The proper course is, as I understand it, that the report of the minority of a committee is excluded from the Committee of the Whole. The report of a minority of a committee having been printed and placed upon the files of the members, it is then fully brought to the knowledge of the Convention and is in position to be offered as a substi-

tute for the majority report; but if we send both reports to the Committee of the Whole, I understand that we would be doing what is contrary to all parliamentary usage. I take it that this change would just as well protect the rights of the minority as the amendment offered by Mr. Osborn, and at the same time enable us to avoid the parliamentary confusion which would arise from sending two reports on the same subject to the Committee of the Whole.

Mr. Osborn — Mr. President, I make the point of order that Mr. Root's motion to reconsider is not in order for the reason that it does not appear how he voted on the adoption of this amendment.

The President — The Chair is of the opinion that when a vote is not taken by ayes and nays so that it can be officially known how many members voted, that Mr. Root's motion is in order.

Mr. Cochran — Mr. President, do I understand that Mr. Root's motion to reconsider is to be considered in connection with his proposed amendment?

Mr. Holls — I rise to a point or order, Mr. President. A motion to reconsider is not debatable.

Mr. Osborn — Mr. President, I offered the amendment, which was accepted on Friday, in order to meet what seems to me ——

Mr. Holls (interrupting) — I rise to a point of order, Mr. President. A motion to reconsider is not debatable.

The President — The Chair is of a different opinion. A motion to reconsider is necessarily debatable.

Mr. Osborn — Mr. President, my amendment was offered with a view of meeting what seemed to be an oversight of the Committee on Rules, and an oversight which will not be met by the amendment now proposed by the spokesman of that committee. I see no way by which this Convention can bring before itself a proposed constitutional amendment, except by the favorable report of the majority of any standing committee to which the proposed constitutional amendment shall be referred. That proposition at first sight seems somewhat extraordinary, but if the spokesman of the Committee on Rules will examine rule 30 he will find that no propositions for amendment shall be introduced in the Convention except in one of the following ways: First, under the order of introduction, and second, by a report of the committee.

Now, Mr. President, what is the status of the minority report and the proposition offered by the minority report? It is simply an introduction. By the terms of the first sentence of rule 32, the

introduction shall be referred forthwith to a standing or select committee. There is, therefore, upon the strict technical phraseology of these rules, an automatic system by which the Convention ties itself up to the favorable report of the majority of any standing committee. By rule 25 it is true that the Convention can then bring up other matters not favorably reported upon, but it can only do so upon the discharge of a standing or select committee. It is not my intention to embarrass the Committee on Rules, or to take any partisan position, but I simply suggested a way to prevent the Convention from handing itself over to the majority of any standing committee. It may be that a majority of the Convention might differ with the majority of a committee, and yet they might not be willing to resort to the means of discharging the committee.

Mr. McMillan — Mr. President, for the information of the gentleman, I desire to state that the suggestion made by the chairman of the Committee on Rules meets his inquiry entirely. The minority report is printed and placed upon the desk of each delegate.

When the matter is considered in the Committee of the Whole, if the Committee of the Whole see fit to accept the minority report, an amendment to that effect will be in order. The minority report is on the desk and before every member. If the Committee of the Whole desire to accept the minority report, that can be done.

Mr. Cady — Mr. President, I am inclined to think that the general rule of parliamentary procedure would meet the suggestion made by the gentleman from Putnam; that is, that the question he desires to bring before the Convention can always be met by a motion to amend by substituting the minority for the majority report of a committee, and it seems to me that no such amendment as he suggested is necessary, although it seems to be fully met by the provisions of Mr. Root.

Mr. Cochran — Mr. President, it seems to me that this motion to reconsider should not prevail. We debated this question fully on Friday, and the minority expressed their reasons for allowing a minority report to be received. The senior member of this Convention last Friday asked the question of another member of the Convention, and the question appears in the debate, "Did you ever hear of a minority report going to the Committee of the Whole?" And the gentleman said he never did. I must say that I can find in the manual, which we have temporarily adopted, and in the rules of Congress, a recognition of the minority report. In the rules of

Congress I find that all reports of committees, together with the views of the minority, shall be referred to the Committee of the Whole.

The President — To the Committee of the Whole?

Mr. Cochran — Yes, sir, and on page 23 of the Congressional Manual, it says "the common practice is to allow the minority to submit their views in writing, which shall be printed with the majority report." But I do not think it necessary even to go into the Congressional Manual. We have a manual here, and on page 99 I find here, "Minority Report." I find that it is not usually called a report, but is recognized as the views of the minority and goes on to say, that in Congress they are recognized and received with the report of the majority and are printed, postponed or considered in the same manner. I submit that this minority is entitled to some consideration. Up to this time I think we have received but very little, and if we cannot get our views before the Convention in the shape of a minority report it is going to lengthen debate very much. The minority of a committee knows exactly what the points are they desire to have presented, and if we can have those points presented, it will tend to shorten and not lengthen debate.

Mr. McMillan — Mr. President, I desire to read for the information of the Convention the rule which the gentleman has just referred to. That refers only to private bills.

The President put the question on Mr. Root's motion to reconsider the vote by which Mr. Osborn's amendment to rule 32 was adopted and it was determined in the affirmative.

The President put the question on Mr. Osborn's amendment to insert after the word "reported" in line 4 of rule 32, the words "by such committees or minorities thereof."

Mr. Root — I offer as a substitute for the motion of Mr. Osborn the following: Add at the end of rule 32 "all constitutional amendments proposed by a minority report from any committee shall be printed and placed upon the files of the members of the Convention."

Mr. Osborn — Mr. President, in view of the explanation of the chairman of the Committee on Rules that the amendments proposed by minorities shall be considered in Committee of the Whole, I will accept the substitute.

The President — Mr. Osborn having accepted Mr. Root's substitute, the question is on the amendment of Mr. Root.

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

Mr. Peck — Mr. President, I have an amendment. After the word "printed" insert "unless the proposed constitutional amendment shall have been on the files of the members for at least one Convention day or shall have been read in full from the desk of the Secretary." That is to be added at the end of the second paragraph. My former motion was voted down for the reason that it was thought that it might be used for the purpose of obstruction. The real purpose of my amendment is such that I believe it should be in some form adopted; that is, that this Convention should have some opportunity of knowing what constitutional amendments were before it on any particular subject, before they were placed on general orders, and therefore, I have now amended the rule, in addition making it alternative either that it shall have been one day on our desks or read from the desk of the Secretary, so that we shall know what is before the Convention.

Mr. Root — Mr. President, may I inquire what it is that the gentleman wishes to have upon the desks?

Mr. Peck — The proposed constitutional amendments, or I now make it in the alternative that it shall have been read from the desk of the Secretary.

Mr. Griswold — Mr. President, if an amendment is in order, I would propose to strike out the words "unless the amendment is read in full."

Mr. Durfee — Mr. President, it seems to me that if this amendment comes in at the close of the second paragraph that it refers to the majority report of a committee and prevents the reference of that report to a Committee of the Whole, unless it has been on the files of the members for at least one day.

Mr. Peck — Or read from the desk of the Secretary, so that we shall know what it is.

Mr. Durfee — Mr. President, I would like to ask the mover of the amendment whether it is his desire that the majority report of a committee shall be on the files of the members or read from the desk before it goes to the Committee of the Whole?

Mr. Peck — That the committee shall not report until the proposed amendments have been printed and placed upon the desks of the members one day, or read from the Secretary's desk, so that the Convention may know in some form what proposed amendments are before it, at the time of sending the report to general orders.

Mr. Durfee — Then I would suggest to the gentleman that the purpose of his amendment would not be accomplished by it if it were adopted. That part of the rule will then read as follows:

"All proposed amendments reported shall, if the report be received, be committed to the Committee of the Whole and immediately printed unless the proposed constitutional amendment shall have been on the files of the members for at least one Convention day, or shall have been read in full from the desk of the Secretary."

Mr. Peck — Mr. President, the rule as it now stands, provides for the printing of these proposed amendments instead of reading in full from the desk. That was accepted by the Committee on Rules.

Mr. Durfee — If the amendment goes in at the close of the first paragraph it would not have that effect, but I understood the President to say that the amendment was intended to follow the second paragraph.

Mr. Root — I think it makes the rule wholly unintelligible.

The President — The Chair apprehends that there will be confusion upon the adoption of this amendment unless it is ascertained where it comes in. Will Mr. Peck state now definitely where he wants his amendment to go in.

Mr. Peck — At the end of the first sentence of rule 32.

Mr. Veeder — Mr. President, may I ask a question why it should remain there and on the files of the members before it is referred to a standing committee? This amendment provides that it shall not go to a committee until it is printed. It seems to me that my friend has made a mistake in the location of his amendment.

The President put the question on Mr. Peck's amendment and it was determined in the negative.

Mr. Veeder — Mr. President, I move to amend the last paragraph of the rule by striking out all after the word "had" and insert the matter which the Secretary will please read.

The Secretary read the amendment as follows: Amend rule 32 by striking out all after the word "had" in next to last line and insert in lieu thereof the words "a reasonable time to consider the same."

Mr. Root — Mr. President, may I ask the gentleman from Kings if he will be good enough to offer his amendment so that it will apply only to the printed matter. There has been a clause added.

Mr. Veeder — Mr. President, this provision of the rule, as I understand it, is that no standing or select committee shall be discharged from the consideration of a proposition referred to it

unless the committee has had a meeting subsequent to such reference. The object is to allow the committee a reasonable time to consider it, and then if they do not agree to it, they may be discharged.

Mr. Root — Mr. President, I will agree to that, although I would like to have the language changed.

Mr. Becker — Mr. President, I desire to offer an amendment to Mr. Veeder's amendment. Strike out the last clause of rule 32, "no standing or select committee shall be discharged from the consideration of a proposed amendment referred to it until the committee has had a meeting subsequent to such reference." As this rule now stands, it would be in the power of a standing committee, or what is perhaps liable to be far more dangerous, in the hands of a select committee appointed by the Chair or otherwise to delay any action whatever by the Convention until in its discretion it has had a meeting. Even as amended by my friend from Brooklyn (Mr. Veeder), as proposed to be amended by his amendment, it would always be doubtful what was a reasonable time. We know, those of us who are lawyers, how often both courts and juries have difficulty with that question. It seems to me that it ought to be in the power of this Convention at any time to discharge a committee from a report, even if it was five minutes after the matter had been referred to the committee, and send it to another committee. I do not believe in placing in the hands of a committee any option to delay on any matters which have been referred to that committee. Suppose that a question has been referred to a committee. A motion is then made to discharge that committee from further consideration. How easy for members of the committee or some person interested to explain that it should not be discharged on the ground that the committee had not had a reasonable time. On the other hand, there may be reasons why, notwithstanding any explanation which may be made, it is required in the business of the Convention that whatever might be referred to any committee might at any time, in the discretion of the Convention, be taken out of its hands and the committee be discharged from further consideration. I think the best way to get at that is to strike out this whole provision and leave it to the Convention to say how long any matter should remain in any committee. I do not believe in tieing up the action of the Convention by an arbitrary iron-bound rule of this character, so that the Convention cannot have control over its business at any time.

Mr. Veeder — Mr. President, I accept Mr. Becker's amendment.

Mr. Root — Mr. President, that is perfectly satisfactory to me.

Mr. Veeder — Rule 25 already provides that the Convention can discharge a committee at any time.

The President put the question on Mr. Becker's amendment to strike out the last clause of rule 32, and it was determined in the affirmative.

Mr. Vedder — Mr. President, I offer an amendment that the word " received " be stricken out and the words " agreed to " be inserted in place thereof. The words " agreed to " are known to all legislative bodies. A report may be received when it is in the hands of a secretary, but it may not be agreed to until the report has been considered by the Convention.

Mr. McClure — Mr. President, I would like to ask if " agreed to " disposes of this matter?

Mr. Vedder — Not at all. What I mean is this. If a committee reports that they are in favor of the passage of a certain amendment and that is agreed to, it goes to the Committee of the Whole. If the committee report a proposition adversely, and that is agreed to, that ends it, because it was adverse to the consideration of it. You will find in the rules of the Assembly that the words "agreed to " are used in this connection.

Mr. McClure — Mr. President, it seems to me that the word which appears in the rule is the most acceptable. We understand what the receiving of a committee's report is, that the Convention takes it and does with it whatever it deems proper. They may recommit it to the committee which makes the report; they may commit it to the Committee of the Whole or do whatever they deem proper. The words " agreed to " may mean that the report in favor of the amendment is adopted, and that is the end of it, and that it may not go in the Committee of the Whole. I think leaving the plain word " received " there is better. I hope the rule will stand, so far as that word is concerned, as it is.

Mr. Vedder — Mr. President, I have simply made the motion because it is in accordance with all rules of legislative bodies. Every favorable report, if agreed to, goes to the Committee of the Whole in every legislative body. It is not the bill which they agree to. It is the amendment which they agree to at that time. It is simply the report of the committee which reported favorably, which means that it shall be committed to the Committee of the Whole. If the report is adverse it means that the committee have reported that it must not go to the Committee of the Whole, and if that is agreed to,

it does not go to the Committee of the Whole. You cannot find in any rule of the Senate or Assembly of this or any other State, and I doubt if you will find in any parliamentary law, any other term used except "agreed to," not "received." I simply desire that this body shall follow all legislative bodies in the use of the terms and phrases which have a meaning and which have had a meaning for the last two hundred years.

The President put the question on Mr. Vedder's amendment to rule 32 by striking out the word "received" at the beginning of the sixth line and inserting in place thereof the words "agreed to," and it was determined in the affirmative, by a vote of 45 ayes, 44 noes.

The President then put the question on the adoption of rule 32, as amended, and it was determined in the affirmative.

The President — The Secretary will read rule 33.

The secretary read rule 33.

There being no debate on rule 33, the President put the question on its adoption, and it was determined in the affirmative.

Mr. Becker — Mr. President, I desire to move that this Convention take a recess until three o'clock.

The President — Before the motion is put the Secretary will please read the assignment of reporters for the public press.

The following persons have been designated as reporters for the public press, in accordance with subdivision 7 of rule 2: George E. Graham, Associated Press; Hugh B. McLean, Commercial Advertiser; John W. Griffin, Rochester Post-Express; E. L. Murlin, New York Tribune; H. S. Cunningham, Utica Morning Herald; F. G. Mather, Buffalo Express; Edward G. Riggs, The Sun; William A. Hoy, New York World; R. H. Fuller, Albany Journal; Henry L. Stoddard, New York Mail and Express.

Mr. C. B. McLaughlin — Mr. President, I would state there will be a meeting of the Committee on County, Town and Village Government immediately after adjournment to-day.

The President put the question on the motion of Mr. Becker to take a recess until three o'clock, and it was determined in the affirmative, whereupon the Convention stood in recess until three o'clock.

Tuesday Afternoon, May 29, 1894.

The Convention resumed its session at 3 P. M.

Mr. Gilbert — Mr. President, I desire to ask unanimous consent to call up the resolution offered by me on Friday last, with reference to the usual contract with the post-office department and with the express companies. I am sure there will not be any objection to it, at least I think so, and the Secretary informs me that it is rather important that it be done speedily.

The President — If there is no objection, that is now in order.

The Secretary will read the resolution.

The Secretary read the resolution as follows:

Resolved, That the Secretary of the Convention be authorized to make the usual contracts as are made by the clerks of the two houses of the Legislature with the postmaster of the city of Albany, and with the express companies for the transmission of papers and documents.

The President put the question on the adoption of the resolution and it was determined in the affirmative.

The President — The Secretary will read the further assignment of reporters for the public press.

The following persons have been designated to act as reporters for the public press, in accordance with subdivision 7 of rule 2: Lewis R. Stegman, Brooklyn Standard-Union; Frank Richter, New York Staats Zeitung; Hugh Hastings, New York Times; H. W. Smith, New York Evening Sun, Buffalo Courier, Rochester Union and Advertiser; Harry C. Gott, Albany Times-Union.

The President — The question will now be on the adoption of rule 34, which the Secretary will please read.

The secretary read rule 34.

There being no debate on rule 34, the President put the question on its adoption, and it was determined in the affirmative.

The President — The Secretary will read rule 35.

The Secretary read rule 35.

There being no debate on rule 35, the President put the question on its adoption, and it was determined in the affirmative.

The President — The Secretary will read rule 36.

The Secretary read rule 36.

Mr. Durfee — Mr. President, I suppose these proposed amendments are proposed " constitutional " amendments, although it does not appear so in print.

The President — That has already been ordered by the Convention all through.

The President put the question on the adoption of rule 36, and it was determined in the affirmative.

The President — The Secretary will read rule 37.

The Secretary read rule 37.

Mr. Vedder — Mr. President, I desire to ask a question, whether under rule 37 a proposed constitutional amendment could be amended on its third reading?

The President — The Chair understands not, as provided by previous rules.

Mr. McMillan — It goes to the Committee of the Whole for amendment?

Mr. Cochran — Doesn't rule 39 cover it?

The President — The attention of Mr. Vedder is called to rule 39 as quite covering the point.

Mr. McMillan — Also 40 and 41.

Mr. Roche — Mr. President, I have here an amendment which I was going to offer to rule 57, but some gentleman has suggested to me that it more properly belongs to rule 37. It is this: " But the vote on the final passage of every proposed amendment, revision or addition to the Constitution shall be taken by the ayes and noes, which shall be entered on the Journal." If this is the more proper place I would offer it.

The President — It seems to be a proper place.

Mr. Root — Mr. President, that seems to me to be a very proper addition.

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

The President then put the question on the adoption of rule 37, as amended, and it was determined in the affirmative.

The President — The Secretary will read rule 38.

The Secretary read rule 38.

Mr. McClure — Mr. President, it seems to me to be questionable policy, the propriety of having a constitutional amendment advanced out of its order simply by the announcement of the Chair.

The President — The rule reads: "In all cases where unanimous consent is asked for."

Mr. Root — It is the request that is announced twice.

The President put the question on the adoption of rule 38, and it was determined in the affirmative.

The President — The Secretary will read rule 39.

The secretary read rule 39.

Mr. Veeder — Mr. President, I move to amend by striking out in the third line "the proposed amendment shall be open one hour if required." I do not understand the policy of that. The Convention can close the debate at any time if it chooses to. An hour may not be sufficient. If the time can be extended by means of a resolution here, why have this provision here that "debate shall be open for only one hour." I move to strike that out, beginning with the last word on the second line down to the word "for" in the third line.

The President — Then it will hardly read right, Mr. Veeder, by striking out those words. I think you will see that it is a continuous sentence. Don't you want to strike out the words "for debate on its merits."

Mr. Veeder — I mean this, that the debate shall be open on its merits before the previous question shall be ordered.

The President — Mr. Veeder moves to amend rule 39 beginning in the third line, by striking out the words "one hour, if required," so that it shall read "shall be open for debate on its merits before the previous question shall be ordered."

Mr. J. Johnson — Mr. President, I am not able to understand what this rule would mean if amended as proposed. As I understand it, if this amendment was adopted, the previous question can be moved at any time.

Mr. Root — Mr. President, the rules provide for discussion in Committee of the Whole upon the merits of amendments which are proposed by standing committees, and for full opportunity for the offering of amendments to those proposed constitutional amendments, and for discussion upon them. The rules provide also, that when the subject has been fully discussed in Committee of the Whole, and is reported to the Convention, that then the constitutional amendment so reported by the Committee of the Whole shall be subject to debate before the question to agree with the committee in their report is put. That is, first, full opportunity for debate in the Committee of the Whole; second, full opportunity for debate upon the motion to agree to the report of the Committee of the

Whole. Now, it did not seem as though it were sensible or reasonable to provide for a third opportunity for unlimited debate. We ought to put a little restraint upon ourselves. The object of this rule is to afford a limited time for saying last words, for the second thoughts or motions to recommit, for proposing slight corrections. That opportunity is regulated by the two succeeding rules, rules 40 and 41. Now, as to the limitation of one hour.

Mr. Veeder (interrupting) — If the gentleman will allow me, I will withdraw the proposition to amend.

Mr. Meyenborg — Mr. President, it strikes me that the one hour should be stricken out. Now, suppose there were fifty delegates who wanted to speak, the one hour would not give them all an opportunity. It seems to me that the time limitation ought to be stricken out and it should be left to the good sense of the members to limit the time to the proper hour.

Mr. W. H. Steele — Mr. President, there seems to be a general misunderstanding in reference to the tenor and purport of this rule, both in the minds of the committee and in the minds of the Convention. It is decidedly a simple rule, and was adopted from the Convention of 1867. The rule was reported to that Convention by Richard U. Sherman, the chairman of the Committee on Rules of that Convention, and amended by Charles J. Folger. As this rule stands now, it simply gives the members of the Convention one hour before any of the text is read. The Secretary read the title and then, contrary to all other rules, contrary to all other forms, by the rules of the Convention of 1867 time was allowed for a limited debate by the members, if they saw fit, before the first section was read. Now, they only made that plain in this way: By adding at the end of the rule that which our committee has left off, these words: "This rule shall not be construed to prevent debate during the reading of the overture." With that clause added this rule is simple, and easily understood. Without that clause added the rule is almost unintelligible. No other rule in parliamentary practice allows that before a section is read there shall be any debate upon it. By this rule the gentlemen of that Convention, and there were some very bright minds in that Convention, thought it advisable on the third reading of an amendment, after the reading of the text, that any member could debate the whole overture or amendment as a whole. That will be seen better when the Convention gets down to rule 41, which has also been amended by the committee. I, therefore, move to amend by adding at the end of this rule the words "this rule shall not be construed to prevent debate during the reading of the over-

ture." I move to add that in order to save all questions as to right of debate.

The President — Mr. Steele's amendment will be in order after Mr. Meyenborg's amendment.

Mr. Meyenborg — Mr. President, if the amendment of the last gentleman will prevail, I will withdraw mine.

The President — Do you now withdraw it?

Mr. Meyenborg — Yes, sir.

The President put the question on Mr. Steele's amendment.

Mr. J. Johnson — Mr. President, I would like to ask of the gentleman proposing the amendment what the precise purport of it is. As I understand it, as it now stands, it limits debate, if the Convention chooses to enforce the previous question, only after we have one hour of debate. Now, would debate be allowed or prohibited under the amendment proposed?

Mr. Steele — Mr. President, as long as the gentleman from Brooklyn has asked a fair question, I will say that this rule was the only one in all of those I had to examine that gave me the slightest trouble. I submitted it to better parliamentarians than myself and they all agreed unanimously that the wording of that rule virtually precluded all debate, because after the title is read there is nothing to debate until the first section is read; but this rule has inserted "after the title is read," and it gave the members a right to talk upon the general principles of the proposed amendment before the first section was read. It is a very peculiar rule, but seems to have been unanimously adopted by the last Convention, and seems to have been followed harmoniously and profitably. I, therefore, adopted this rule thinking if it was proper and just for the Convention of 1867, which contained, as I have said before, some of the brightest minds of the day, it might be good for us. It is merely an innovation upon parliamentary precedents.

Mr. McDonough — Mr. President, I think under these rules we will have sufficient time for debate. I think, possibly, we may have too much debate, and I do not think the Convention of 1867 was a great Convention. I think it was a dead failure. I hope this one won't prove likewise.

The President — The chair would like to state to Mr. Johnson his construction of rule 39. Rule 39 without the amendment certainly gives one hour, if required, for debate before the reading of the proposed amendment. The addition to this rule saying that this rule shall not be so construed as to prevent debate during the reading

of the proposed amendment would seem by implication to give a full opportunity for debate during the reading of the proposed amendment in addition to the one hour.

Mr. Root — Mr. President, it was not the intention of the rule to give that opportunity. The intention of the rule was that after there had been full debate in the Committee of the Whole, after there had been full debate on the motion to agree with the Committee of the Whole, there should be this opportunity for last words by short five minute speeches before the third reading, the beginning of the third reading, and after that we should get down to the vote on the final passage, except for the filling of blanks and a motion to recommit. The Convention of 1867 contained many great men, but the Convention of 1867 talked itself out of office practically, and was dead before it had adjourned. We must bring the matters before us to a point at some time in some way, and not keep on discussing and re-discussing them indefinitely.

The President put the question on the adoption of Mr. Steele's amendment and it was determined in the negative, by a vote of ayes 30, noes 41.

Mr. McClure — Mr. President, I offer an amendment. Add after the word "merits" the words "or for amendment." I will simply state my reasons for making this amendment. This rule, as it now is, simply provides for debate upon the merits of the amendment as proposed for final action. It may become very obvious that several amendments are necessary to perfect the measure. The rule does not permit the smallest amendment being made. Rule 40 provides for no amendment except to fill blanks. Rule 41 contemplates inferentially that an amendment may be found necessary because it says "a motion may be made during the third reading of any proposed amendment to recommit it with instructions," presumably instructions to add an amendment, but I think that rule 39 should expressly give the power within the limit of time which it restricts for amendment.

Mr. Root — Mr. President, that completely overturns the whole scheme of getting at a result. You practically go into Committee of the Whole on the order of third reading. The idea is progressively to get at a point: First, in the Committee of the Whole; next, on the motion to agree with the report; next, to the Committee on Engrossment and Revision; and then reported back from that committee in final form, and unless there is a recommittal it is supposed to be in a condition for the final expression of the opinion of the

Convention. It seems to me that after all that discussion we ought not to throw the bars down again for a flood of amendments.

Mr. Veeder — Mr. President, it frequently occurs at the last moment that a vital amendment is necessary to perfect and make sufficient the proposition. Here we cut off, except by a round-about way, all opportunity for amendment. Now, why not give the opportunity to amend direct? All this debate must be in that one hour unless the time is extended. If the discovery is made that an amendment is necessary, it can be made then.

Mr. McMillan — Mr. President, there is no more dangerous precedent than that of amending on third reading. If there is any amendment entitled to consideration it should go to the Committee of the Whole. We all of us know, who are familiar with legislative proceedings, that what frequently is thought to be a very innocent amendment is smuggled in on third reading. If there is any amendment of any importance, it should go to the Committee of the Whole, and if it comes back, it comes back as the rules provide, fully engrossed and ready to be passed. There cannot be anything more dangerous than an amendment on third reading. If it is permitted to be done, we will find out that on the spur of the moment some little thing is done that vitiates the whole thing.

Mr. W. H. Steele — Mr. President, it is something new to me that when a bill is on third reading it goes back to the Committee of the Whole. I supposed that when it was on its third reading it had passed the Committee of the Whole. The gentleman from Buffalo intimates that it goes back to the Committee of the Whole. Now, if that is the process to be indulged in by this Convention, it is something entirely new to me, at least. I wish to know if that is the intention or wish of the Convention or if that is the parliamentary rule to be followed out. If so, there is no form or rule whereby that course can be taken.

Mr. McMillan — Mr. President, I think if the gentleman will read rule 41 he will see: "A motion may be made during the third reading of any proposed amendment to recommit it with instructions, but the instructions shall be in writing, and such motion shall not be debatable."

Mr. W. H. Steele — Not to the Committee of the Whole.

Mr. McMillan — To the Committee of the Whole.

Mr. W. H. Steele — Mr. President, there is where the gentleman from Buffalo evidently misunderstands, or I misunderstand it, and I am as liable to mistakes as he. I have always understood that

where an amendment was made, the bill or overture was to be recommitted to the committee that had it under consideration, and not to the Committee of the Whole. I can easily see where the gentleman is mistaken or I am. When we come to rule 41 I will be glad to say a few words on that rule when it is read.

Mr. McClure — Mr. President, there seems to be a very great dread here in this body, which ought to be a deliberative body, to have a few minutes spent in explanation of an important matter, and when a proposed amendment is ready to go through, no matter how important it may appear, that there should be a change of one word for another to make it effectual, there does not seem to be a disposition to allow us to do it. Mr. Steele is right in his opinion that the amendment is referred to the standing committee from which it was reported. I think we may be trusted with proper action here, and I think it ought to be permitted in the miserable hour allowed us to talk upon the proposed amendment that an amendment should be in order.

Mr. J. Johnson — Mr. President, I should certainly be very sorry to see the fundamental law of this State that is to stand for twenty years, after we have fashioned and framed our proposed amendments and it had been printed and before us, that then suddenly by some amendment it would be liable to be changed. Look, sir, at the amendment to this rule, the amendment as it is has been drawn. I think, sir, it was not understood. The amendment was obviously offered to extend the time for debate beyond one hour. Its effect obviously would have been to have stricken out all provisions for debate before the previous question was ordered. We have stood around here and have not quite understood the amendments that were made. To have something that has been engrossed, debated and fixed, amended by what would be merely a *viva voce*, would be very dangerous indeed.

Mr. Cochran — Mr. President, what is the idea of giving one hour for debate after the proposed amendments have been considered in the Committee of the Whole and again the Convention on the report of the committee, if we cannot introduce an amendment? It is only that we may have our names appear on the record and give a little stump speech. Otherwise we are merely wasting time. If we cannot introduce an amendment after we have debated the matter, it seems to me that we would be wasting time.

Mr. A. B. Steele — Mr. President, possibly by some little remark or discussion the Convention may see fit to send the amendment back to the committee. That is, as I understand it, the object of

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Mr. A. B. Steele — Mr. President, possibly by some little remark or discussion the Convention may see fit to send the amendment back to the committee. That is, as I understand it, the object of

discussion. If I remember it right some gentleman here offered a proposed amendment that an act of the Legislature before it could become a law, shall be passed a certain length of time, or before the Governor shall sign it, it shall be passed a certain length of time. Why? It is solely that nothing may be done in haste. Now, if it is essential that the acts of the Legislature should be very deliberative, isn't it far more essential that our acts, if adopted by the people, which will stand for twenty years, should be very deliberative, and that we should do nothing on the spur of the moment that at any time we will regret? It seems to me that it is of importance that if any amendment should be made to a proposed amendment it should go back to the committee and be carefully considered, and then brought before the Convention.

The President put the question on Mr. McClure's amendment to rule 39 and it was determined in the negative.

The President put the question on the adoption of rule 39 and it was determined in the affrmative.

The President — The Secretary will read rule 40.

The Secretary read rule 40.

Mr. Roche — Mr. President, I desire to offer an amendment to rule 40, so that it will read as follows: "On the third reading of the proposed constitutional amendment, no amendment thereto shall be in order except to fill blanks or such as were offered in Committee of the Whole, without unanimous consent." My purpose is to make this rule conform with the rules which prevail in the Senate and Assembly, and which, I believe, have prevailed for a great many years without regard to the changes in the political character of those bodies; and I also offer it because it will enable the Convention to avail itself of sober second thought, and to consider them and, if it deems it proper, to adopt amendments which were once offered in Committee of the Whole, and which were not accepted. It will also achieve another purpose. It will save the necessity of referring back matters for instruction to the special committee who made a report on a proposed constitutional amendment. Matters may be rejected in Committee of the Whole, but it might be desirable when it comes up the next day for action in the Convention, to reconsider their vote and to adopt such amendment. It is not open to the objection made by Mr. Johnson, because it is a matter which has already been presented to the Convention, and has been under consideration, so that it cannot be considered a matter that is hastily proposed. Now, I think, Mr. President, it will be found that it will save us time in recommitting matters to a committee with

instructions, and having it referred again to the Committee of the Whole, and the committee reporting back on it again to the Convention. I cannot see that any evil result whatever will follow from permitting these amendments to be offered, if the Convention deem it wise to accept them. It means no extension of the time of debate, because that is already fixed by rule 39.

Mr. Vedder — Mr. President, I think that if rule 41 is to remain it obviates the necessity of the gentleman's amendment. Rule 40 is a little in conflict with rule 41. Rule 40 would seem to say that on the third reading of the amendment no amendment can be had without unanimous consent. Rule 41 seems to say that during the third reading, that is, on the third reading precisely as is spoken of in rule 40, that a motion can be made to recommit with instructions. If rule 41 is to stand, then amendments proposed in Committee of the Whole that have been rejected or all that may be thought of by a member of the Convention can be made under the motion to recommit with instructions to amend without debate. Now, as I have said before, those two rules together mean that every one will have an unlimited chance to amend a proposed amendment during its third reading, simply by making a motion that the proposed amendment be recommitted to the standing committee, whatever it is, to which it had been originally referred, with instructions to amend as follows, and to report forthwith, and you can get in all the amendments you want to under that.

Mr. Roche — Mr. President, I recognize the force of what the gentleman has said. I recognize that an amendment can be offered and referred to the committee and reported back, and my amendment is to save a reference and report back. There may be a great many simple things which the Convention might be entirely willing to amend on third reading without consuming the time to refer to committee with instructions to report back. If it becomes desirable to recommit it we can avail ourselves of the provision of rule 41, and recommit it, but if not, we should likewise be at liberty to offer our amendments and have them acted upon without reference.

Mr. McMillan — Mr. President, the serious objection to the proposition of the gentleman from Rensselaer seems to be that every amendment offered in the Committee of the Whole can be brought into the Convention, and the ayes and noes called for. We can see the needless delay that will call for.

Mr. Mereness — Mr. President, under the amendment of the gentleman from Rensselaer, if the amendment to the proposed constitu-

tional amendment was voted down wouldn't it be in order to recommit with instructions to report, and then more time be consumed?

The President put the question on Mr. Roche's amendment and it was determined in the negative.

The President put the question on the adoption of rule 40, without amendment, and it was determined in the affirmative.

The President — The Secretary will please read rule 41.

The Secretary read rule 41.

Mr. W. H. Steele — Mr. President, I do not like to take up the time of this Convention, but I feel it my duty to apprise this Convention in advance that they may be passing rules here that we may be very sorry for before we get through the Convention. This rule, as it stands here, is the most dangerous rule ever adopted by a parliamentary body. All any member has to do on any amendment which he is afraid to submit to the Convention for debate is to say nothing before a committee, or the Committee of the Whole, but simply wait until it gets to a third reading, and then move to recommit, without debate, something that has never been allowed to any other amendment throughout the whole Convention. If a certain number of gentlemen wish to carry through an amendment which is decidedly objectionable, and without being laid before the Convention, all they have to do is to wait until it goes to a third reading and have it recommitted with instructions, and debate is cut off. These words "without debate," "and such motion shall not be debatable," are decidedly objectionable. In reference to this rule, I wish to say a few words in regard to the old Convention. On the thirteenth day of February, fifteen days before the close of the eight and a half months of the session of the Convention of 1867, the President, Mr. William A. Wheeler, handed down to the Secretary a resolution of this kind: The Convention finds itself in the dilemma which it has been placed in a number of times before. It finds there is no rule whereby a proposed amendment upon third reading can be recommitted with instructions to report. I desire that the Committee on Rules will formulate such a rule, and that all action had previous to this time in regard to any of the proposed amendments shall be considered intermediate. That is, that all former action shall be considered as good for nothing, and all propositions previously passed must be brought through the door of this rule. That rule, as given in the Manual, was adopted at the request of the chairman of the Convention of 1867. The last half of the committee's rule was amended on motion of Charles J. Folger, so as to read as it does in the Manual. Now, if the Convention of 1867 found, after

eight months of session, that they were restricted by not having a proper rule, it struck me that the present Convention might make use of the rule the same as they have done in the Assembly for a great many years. But that it should be done without debate is unparalleled. I move, therefore, that the words "and such motion shall not be debatable" be struck out, and leave it to the Convention to say whether there shall be debate or not.

Mr. Osborn — Mr. President, I would like to ask for information. What is the effect of a recommital with instructions? Are those instructions peremptory upon the committee to exclude debate there?

The President — The Chair understands it to be peremptory upon the Committee of the Whole.

Mr. Tekulsky — Do I understand the Chair to say that this means that it is to go to the Committee of the Whole?

The President — The Chair so understands. That is the last committee from which it came to the Convention.

Mr. Tekulsky — I believe, Mr. Chairman, the Committee on Rules understands that it is to go back to the original committee from which the matter came. With that understanding I favor the amendment.

Mr. Kerwin — Mr. President, in order to set the matter clear, I move to insert the words "or the committee from which it was originally reported."

Mr. W. H. Steele — One word more, Mr. President, and I have done. For the information of the Convention, I would state that the ordinary parliamentary practice is not to have this go to the Committee of the Whole. I never knew of it being done. I never heard of it being done. If the Convention votes that the proposed amendment be recommitted to the standing Committee on Judiciary, on the Legislature, or whatever committee it has passed through, with instructions to amend according to the terms of the amendment and report forthwith, that committee never sees it. The Secretary simply says, "The Committee on Judiciary reports as follows." If any gentleman has ever seen it done otherwise in any parliamentary body in the State of New York, I would like to have him announce it. When the Convention has voted affirmatively the Secretary or chairman says that the committee of the house reports this proposed amendment, as instructed, as follows. I never knew one to go to the Committee of the Whole.

Mr. Tekulsky — Mr. President, I wish to say that I have seen it

go back to the committee, and then the committee passes it up to the Clerk.

Mr. Root — In the ordinary application of the rules I suppose it would go back to the committee which originally reported it, but I suppose it would be entirely in the power of the Convention to recommit it to the Committee of the Whole; but the idea is that in case of any new idea or oversight the Convention should not then pass upon the question arising, but send the matter back to the committee, either the original standing committee or the Committee of the Whole, to have there done what should be done. The instructions are not supposed to be instructions to include a particular amendment in so many words and figures. The Convention may recommit with instructions to give a further hearing; recommit with instructions to frame and submit an amendment to a particular effect without giving it form; recommit with instructions to strike out all of such portions of the amendment as relate to a particular subject, leaving it to the committee to which the matter is returned to put the instructions in proper form, and bring it before the Convention in a proper way, and I had supposed that it was wholly out of order that a matter of that kind should be made an occasion of throwing the whole subject open to discussion again, precisely as if the amendment was being offered in the Committee of the Whole. Unless there is something very plain, very manifest to the members of the Convention that they will without debate send the whole matter back to go over its pathway again, the matter should be considered as finally disposed of.

Mr. Burr — Mr. President, I am not entirely familiar with legislative proceedings and I must confess that the simple and customary English with which these rules are framed sometimes puzzles me, and I, therefore, wish to ask how the errors or misconceptions can be called to the attention of the Convention without debate?

Mr. Root — Naturally in the framing of the proposed instructions.

Mr. Durfee — Mr. President, I would like to inquire whether or not, if the proposed amendment were referred with instructions to a standing committee, upon the report of that committee, the matter would then go to the Committee of the Whole. My idea in regard to that has been that ordinarily in legislative bodies where instructions are given to a committee to report certain amendments, it comes back for the action of the body without going through the Committee of the Whole.

The President — It has been there once.

Mr. Durfee — Mr. President, it seems to me that there should be

some opportunity somewhere for discussion, and if the matter should not go eventually to the Committee of the Whole, then it seems to me that there should be an opportunity for some consideration of a motion to recommit.

Mr. Abbott — Mr. President, I would like to inquire if in this case, suppose where the Convention recommits with instructions, and the committee report in accordance with instructions, if that report includes new matter, whether it would not necessarily be treated as new matter and be disposed of under rules 33 and 34? If not, I should think it would be a very dangerous proposition to leave it without debate. But it seems to me, if the instructions are to report something that has been considered; that is, something immaterial, that it should be considered as reporting new matter, and the Convention should have the right to examine it, and after having it printed should have the right to discuss it. If that is not the effect of the rule, I am in favor of the amendment.

Mr. Towns — Mr. President, it seems to me that the amendment should prevail. It seems to me that the chairman of the Committee on Rules has acknowledged that they are a little obscure, at any rate so far as the language as contained in rule 41 is concerned. Whether this reference is to the Committee of the Whole or the particular committee to which it was originally referred, it seems to me, will give rise to some question. It seems to me that no time would be lost by giving opportunity for reasonable debate in case any amendment provided for in rule 41 should be deemed necessary. It seems to me that it would be a saving of time if it were committed to the original committee, or the Committee of the Whole. Unless it was for the purpose of having the Secretary read it it would certainly take more time and occupy more discussion than the debate relative to the amendment offered on third reading. So we would not be saving time, but would be consuming time. I hope that this amendment of Mr. Steele will prevail. I think that the good sense of the Convention can always be depended upon not to consume the time, which is very short, in unnecessary debate. I hope that the amendment will prevail.

Mr. Acker — Mr. President and gentlemen, I think this rule is just right as it is. I quite agree with most of the delegates present that you can depend upon the Convention to do the right thing at the right time. Now, gentlemen, if, on the order of third reading of a proposed amendment, a slight amendment should be suggested, this rule permits us to recommit it with instructions, just such instructions as they want. If we want the amendment reported

complete, it can be done; but if it is an important amendment, it is still in the hands of the Convention and at the time we can say we order this amendment back to the committee that reported it, and they can report it to the Committee of the Whole. Leaving your rule just as it is leaves the entire matter in the possession of the Convention, and the Convention can debate it or not, and you fix the time now when you take it out of their hands and when the question arises you will find that you have shut yourselves off. This rule is all right. When the amendment comes up, debate it, and all those amendments gag you and you can't help yourself.

The President put the question on the adoption of Mr. Steele's amendment, and it was determined in the negative. Ayes 41, noes 42.

The President — The question now is on the adoption of Mr. Kerwin's amendment.

Mr. Speer — Mr. President, I rise to a point of order; no quorum voted on that motion.

The President — The question is on Mr. Kerwin's amendment.

Mr. McClure — Mr. President, the question of " no quorum " was raised on that last vote.

The President — The Chair is of the opinion that the vote having been taken and announced, the question that no quorum was present is out of order.

Mr. McClure — The point can never be raised until the vote has been announced.

The President — The point raised was that no quorum voted. The Chair calls the attention of the Convention to the rule which provides that when less than a quorum votes on any subject under consideration it shall be in order, on motion, to close the bar of the Convention. Now, if any member made such a motion as that it will be in order.

Mr. Towns — I move a call of the house, Mr. President.

The President — The motion is in order. The roll will be called by the Secretary.

Mr. Veeder — Mr. President, is it not in order to move to lay the last motion on the table?

Mr. Towns — I withdraw the motion.

The President — The Chair is still of the opinion that the vote, as announced, stands, and that that amendment was beaten. The ques-

tion is on Mr. Kerwin's amendment to insert the following: "To the committee which originally reported it."

Mr. Kerwin — Mr. President, that is an amendment to rule 41, which at present reads, "a motion may be made during the third reading of any proposed amendment to recommit it with instructions." Now, the question has been raised during this debate where it should be recommitted. Part of the Convention claims that it should be recommitted to the Committee of the Whole. Now, if the amendment amounts to anything it should be referred back to the Committee which originally reported it, with the idea of giving a hearing if they choose. There is no such proceeding in a legislative body as sending an amendment to a committee with instructions. I think that if we do not want to do any railroad business, it had better go back to the committee which originally reported it.

Mr. Root — Mr. President, I do not see any occasion for that. I do not see why the Convention should tie itself up in that way. The motion may be to recommit to the committee which originally reported it, or to a select committee, or to the Committee of the Whole. Why should we tie ourselves up like that? Leave it to the will of the Convention.

The President put the question on Mr. Kerwin's amendment, and it was determined in the negative.

Mr. Root — Mr. President, I wish to offer an amendment to rule 41, which I have prepared and submitted to Mr. Steele, and which will accomplish substantially what Mr. Steele had in mind, I think. Add the words "but any amendment reported by a standing committee pursuant to such instructions, shall be subject to be recommitted to the Committee of the Whole.

Mr. Roche — Mr. President, is it, however, subject to debate? Does it really meet the difficulty which Mr. Steele presented? When it comes back is it to be referred to the Committee of the Whole, or is the question of its reference debatable?

The President — Mr. Root's motion is to amend by adding the clause he proposes to rule 41, and does not say anything about whether it should be debated in the Committee of the Whole.

Mr. Roche — Nor it does not say that the question of its reference could be debated. Therefore, it seems to me not to meet the objection of Mr. Steele. I propose this amendment: Strike out the word "not" after the word "shall," and insert the word "debatable" "for not to exceed half an hour." Now, it seems to me if the Convention is to receive any enlightenment upon the matter to be

recommitted, the Convention should be able to hear a short explanation from the gentleman introducing the amendment, in order to determine whether the amendment is worthy of consideration. It seems to me that it will save the time of the Convention. It meets the objection which was raised by Mr. Steele, and it confines the debate within a reasonable time.

The President — The Chair is of the opinion that the question must be first put upon Mr. Root's amendment, and after that on Mr. Steele's amendment.

Mr. Tekulsky — Mr. President, I believe that all these amendments are unnecessary, entirely unnecessary. In the first place, there is plenty of debate upon the amendments. This simply says that there shall be no debate when the motion is made to recommit with instructions. That is plain and very distinct, and I cannot understand why the delegates here are wasting so much time in trying to pass this section when it plainly reads here to give instructions to the committee to insert it in the proposed amendment. I cannot understand why anyone should offer an amendment to this article as it now reads.

Mr. Gilbert — Mr. President, I think the trouble has arisen out of a misapprehension of the meaning of the rule as it is printed. Now, when a motion is made to recommit an amendment with instructions, I think that if the Convention votes in the affirmative, by that very vote it reaches its will with reference to the specific proposition presented. I do not think, Mr. President, that when a matter is referred with instructions to a committee that that committee has practically anything to do with it. It is a short way of getting at the will of the Convention. I remember hearing a motion like this made. A member says, " I move that the bill be referred to the committee on so and so, with instructions to strike out the enacting clause," and the Legislature says " yes." The enacting clause is stricken out. The bill is dead. Now, you say, I move to refer this amendment to a certain committee, with instructions to insert ten words, specifying, and the Convention says yes. These ten words are inserted by that vote so that all questions referred to this committee or that committee or debating it or not debating it are entirely inconsequential. Now, if this rule does not mean in parliamentary language what the committee intends to have it mean, it should be reconstructed, but as it reads it means to me exactly what I have stated.

Mr. Johnson — Mr. President, I would like to inquire of the gen-

tleman who has just spoken whether or not the amendment proposed by Mr. Root would not obviate that difficulty?

Mr. Gilbert — Not at all, not at all. If the Secretary will kindly read it, I will try and answer the question.

Mr. Johnson — It seems to me that the proposition is that if it is referred back to the Committee on Judiciary, for instance, with a provision that it must then pass the Committee of the Whole, it will make it very clear that it was not to go there formally.

Mr. Gilbert — Mr. President, let me say that I have failed to make myself understood, that there is a clear distinction between two things: First, referring a matter back to the committee and stopping there; in that case, they consider it and report and then it may go to the Committee of the Whole. It is an entirely different thing to refer it with instructions. In the latter case, you vote upon the proposition immediately. In effect, it is not referred to a committee but is acted upon directly by the Convention.

Mr. Meyenborg — Mr. President, it seems to me that the reference to the committee may be made by the majority of those present, while an amendment can only pass by a majority of the members elected to the Convention.

Mr. Becker — Mr. President, I do not claim to be entirely familiar with parliamentary laws nor did I participate in any way in framing these rules. Looking at them from the standpoint of an interested observer, it seems to me that all the objections that have been made to this rule are covered by the preceding rules. Now, when is this motion to recommit? On the order of third reading and during the third reading? Now, suppose the case put by Mr. Gilbert, that the committee should report an amendment specifying it in due form. When the committee reported, the amendment would still be on the order of third reading, wouldn't it, and you can have your debate then, and rule 35 and rule 34 and rule 33 cover the case just as much as they did before. The amendment is sent back to the committee to do something with it so that it can be revised and engrossed, as provided by rule 35. We have many ideas on the third reading that we may want to have embodied in the bill. Somebody makes a motion in a general way. It is desirable that it be corrected and looked into and be what a constitutional amendment ought to be, to be so plain that " he who runs may read." It comes back again and can be debated. I cannot see any trouble about this rule. Another thing, it is frequently the custom to instruct a committee to report at a particular time, to make it a special order for a par-

ticular time. I think the gentlemen have lost sight of the preceding rules which have been adopted.

Mr. Bowers — Mr. President, I was under the impression that a motion made during the third reading of any proposed amendment to recommit it with instructions would be treated the same as a recommitment to the Committee of the Whole. I am apparently in error. It seems to be the judgment of the majority of the members of this Convention that all that means is that on the third reading of the proposed amendment some member may introduce a resolution that the committee may be required to report it forthwith, and then, without debate, it may be passed. I heard my friend (Mr. Johnson) object to an amendment being made to a bill on its final passage, on the ground that gross injustice may be done the people of the State by such hasty action. If such be the meaning of this rule or there be any doubt as to its meaning, I submit that it ought not to be permitted to stand. I, therefore, offer an amendment to Mr. Root's amendment that either motion may be debatable.

The President — The question will be on Mr. Bowers's amendment to Mr. Root's amendment to add to it " either motion shall be debatable."

Mr. Vedder — Mr. President, it seems to me that in order to make rule 41 harmonious with itself we ought not to add to it the amendment of the gentleman from New York (Mr. Root). Now a proposed amendment is being read. It can only be read on the order of third reading. It is being read. The title has been read and reading it by sections has been begun. Rule 40 says that there shall not be any amendment during its reading or upon its reading, which are the same terms; but in order to get around that, rule 41 says that you may make a motion to recommit with instructions. Now what does that mean? That is making an amendment to it, but under the motion to recommit with instructions, and if that motion should be carried, it incorporates an amendment in the bill that is being read, and does it immediately. No time intervenes. It does not go to the Committee of the Whole. It does not go to any standing committee, only by fiction. It is amended then and there, and the reading goes on. Now, if the bill is recommitted to the Committee of the Whole it must be with instructions under this rule. I know of no power of the Committee of the Whole to report it. There is no chairman. The Committee of the Whole is not in session. Standing committees are all there. That is the meaning of the word " standing." The Committee of the Whole is not a standing committee. It can only be made by the President naming a chairman.

If it goes to the Committee of the Whole it loses its place on the order of third reading and takes its place again on general orders, and you have not advanced any in the business, and instead of preventing debate and discussion you simply invite and encourage it. Now, if it is to go to the Committee of the Whole, the rule ought to be amended and not have it as it reads now that a motion may be made to recommit it with instructions, because they are antagonistic terms. Instruction means, under rule 41, an amendment at once, and the reading shall go on without debate and without delay. Therefore, I hope that the gentleman from New York, Mr. Root, the acting Chairman of the Committee on Rules, will not press his amendment, because it will lead us into endless confusion, and debate and discussion, and we would not know any of the time where we were on the third reading of bills.

Mr. Tekulsky — Mr. President, I just rise to state again what I said before, that when I said there was a motion to amend I meant that all the amendments that were before the house had been thoroughly argued, thoroughly discussed, and that there would be no necessity for debating this question of referring to the committee with instructions. That is what I meant, and I mean to say that if we start in to amend this section you will have no end of trouble when the time comes.

Mr. Cochran — Mr. President, I think the gentleman from Erie and the gentleman from New York are entirely incorrect in their interpretation of that rule. In order that there may be no misunderstanding, I desire to offer a substitute for the pending motion, as follows: To insert after the word "writing" in the third line of this rule, "but a proposed constitutional amendment reported under this rule shall be subject to the provisions of rule 33 and rule 34," which will, of course, take the report from the standing committee to the Committee of the Whole, and then refer it back to the Convention for their action.

Mr. Root — Mr. President, if Mr. Bowers's proposed amendment was limited to the motion to recommit to the Committee of the Whole it would entirely agree with the ideas I had in framing this amendment which I offered. Let me understand the effect of that; it would be that when a proposed amendment to the Constitution is put upon its third reading and some member of the Convention wishes to have something done with it, some change made to it, he moves that it be recommitted, for instance, to one of the standing committees, with instructions to take such course regarding it as he wishes.

If the Convention orders it recommitted with those instructions, it does without debate go back to the committee; and then if they report pursuant to those instructions a change of that proposed constitutional amendment, it would then be subject to the motion to recommit to the Committee of the Whole, and that motion would be debatable. You would cut off debate regarding all the propositions which the Convention is unwilling to entertain. You would prevent the Convention from being broken up by debates upon all propositions which the Convention did not desire to entertain. If those instructions are to report a change or amendment of the proposed constitutional amendment, by force of this addition which I propose, the vote of these instructions would not operate itself to effect the change, but it would merely require a report for consideration of the same and then upon the motion to send the report to the Committee of the Whole there could be debate, and if it was sent to the Committee of the Whole there could be further debate and further amendments proposed to the amendments which have come in with the report.

Mr. Vedder — What becomes of the amendments that went to the Committee of the Whole? Where is the bill in the meantime?

Mr. Root — It goes to the Committee of the Whole.

Mr. Vedder — Does it retain its order on third reading?

Mr. Root — That depends upon the will of the Convention. The very first fundamental idea of this set of rules which we are now upon is that the fundamental law of this State should not be altered by any amendment that should be put in at the last moment; that only goes through the ear and does not go through the eye of the members of this Convention; until every idea is put down in print and every member should have an opportunity to read it, and criticize it, and have an opportunity to form a deliberative opinion as to what is meant. The addition I propose is that if any gentleman wishes to send the whole subject back to the committee at the last moment, he can call upon the Convention to do it, and if the Convention wish to do it they can. If there is no change coming from the committee, then the matter goes on without any further debate.

Mr. Towns — I move you, sir, that the consideration of this rule 41 be suspended, and that it be recommitted to the Committee on Rules for the purpose of having it re-drawn. We have now arrived at that stage which I predicted a few moments ago. We have got into such a snarl that we cannot solve this problem to-day. Therefore, I move that this rule be recommitted to the Committee on Rules, with

instructions to report at the next session, and that we pass to the consideration of rule 42.

Mr. Maybee — I move to lay that motion on the table, Mr. President.

Mr. Acker — I think the motion is out of order. There are two motions to amend and a substitution already before the house.

Mr. Towns — Mr. President, I move to suspend.

Mr. Acker — That motion is out of order, Mr. President.

The President — The chairman is of the opinion that without unanimous consent the consideration cannot be suspended.

Mr. Maybee — Mr. President, I move to adjourn.

The President — Is that motion seconded? If not, the question is on Mr. Bowers's amendment to Mr. Root's pending motion.

The President put the question on Mr. Bowers's amendment, and it was determined in the negative.

Mr. Root — Mr. President, several of the members of the Convention have left for the purpose of taking the five o'clock train in order to reach their homes by to-morrow, and for that reason I renew Mr. Maybee's motion to adjourn.

The President put the question on the motion to adjourn, and the ayes and nays being called for and ordered, it was determined in the affirmative. Ayes 46, noes 39. Whereupon the Convention adjourned until Thursday morning, May 31, 1894, at 10 o'clock A. M.

Thursday, May 31, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber, at the Capitol, Albany, N. Y., May 31, 1894.

The Convention was called to order by President Choate at 10 o'clock A. M.

The Rev. Dr. S. F. Morrow offered prayer.

The President — The first business in order will be the reading of the Journal of Tuesday, May 29, 1894.

The Assistant Secretary read the Journal.

The President — The Journal, as read, will stand approved unless some delegate has amendments to offer. If not, the Journal, as read, will stand approved.

The President — The next business in order will be the presentation of memorials, including petitions, remonstrances and communications from individuals and from public bodies.

Under this order, the following petitions for woman suffrage were presented:

Mr. Hamlin presented the petition of Mrs. Elinor Hicks, Mrs. H. J. Cheseboro and 5,216 others of Ontario county, praying that the word "male" be stricken out of the Constitution. It was signed by 3,161 women and 2,055 men. The vote of Ontario county in 1893 was 9,825.

Referred to the Committee on Suffrage.

Mr. Barnum presented the petition of Mrs. D. W. Ford, Mrs. Mary Fitch Pierce and 4,319 others of Otsego county. Women, 2,440; men, 1,879. The vote of Otsego county in 1893 was 12,024.

Referred to the Committee on Suffrage.

Mr. Van Denbergh presented the petition of Mrs. J. J. Van De Veer, Mr. George Van De Veer and 1,556 others of Montgomery county. Women, 1,050; men, 506. The vote in Montgomery county in 1893 was 10,546.

Referred to the Committee on Suffrage.

Mr. Pratt presented the petition of Mrs. F. Baldwin and 4,524 others of Chemung county. Women, 2,866; men, 1,658. Vote of Chemung county in 1893 was 10,486.

Referred to the Committee on Suffrage.

Mr. Gilbert presented the petition of F. W. Winkley, Mrs. Townsend and 1,606 others of Franklin county. Women, 941; men, 665. Vote of Franklin county in 1893 was 6,548.

Referred to the Committee on Suffrage.

Mr. Cassidy presented the petition of Mrs. Dr. Clawson, Mrs. Dr. Dean and 1,853 others of Schuyler county. Women, 1,119; men, 734. Vote of Schuyler county in 1893 was 4,140.

Referred to the Committee on Suffrage.

Mr. Phipps presented the petition of Anna Willets and 1,595 others of Queens county. Women, 1,090; men, 505. Vote of Queens county in 1893 was 22,043.

Referred to the Committee on Suffrage.

Mr. Hedges presented the petition of Margaret Conklin, M. Augusta Gardener and 1,075 others of Rockland county. Women, 627; men, 448. Vote in Rockland county in 1893 was 6,223.

Referred to the Committee on Suffrage.

Mr. Hill presented the petition of Caroline M. Hawthorne and 8,241 others of Erie county. Women, 3,230; men, 5,011. Vote of Erie county in 1893 was 64,624.

Referred to the Committee on Suffrage.

Mr. Dickey presented the petition of Emma L. Thompson and 1,386 others of Orange county. Women, 792; men, 594. Vote in Orange county in 1893 was 18,614.

Referred to the Committee on Suffrage.

Mr. Moore presented the petition of Mrs. R. M. White, Mrs. A. W. Lansing and 1,264 others of Clinton county. Women, 750; men, 501. The vote of Clinton county in 1893 was 7,900.

Referred to the Committee on Suffrage.

Mr. Osborne presented the petition of Lena M. Brown and 293 others of Putnam county. Women, 166; men, 128. The vote of Putnam county in 1893 was 3,149.

Referred to the Committee on Suffrage.

Mr. Mereness presented the petition of Mrs. M. B. O'Donnell, Miss E. J. Sheldon and 799 others of Lewis county; women, 585; men, 214; total, 799. Vote of Lewis county in 1893, 6,513.

Referred to the Committee on Suffrage.

Mr. Danforth presented the petition of Mrs. Sias, Mr. A. Palmer and 1,209 others of Schoharie county. Women, 708; men, 501. Vote of Schoharie county in 1893, 6,843.

Referred to the Committee on Suffrage.

Mr. Tucker presented the petition of Elizabeth Cady Stanton, Lillie Devereaux Blake, Dr. Mary Putnam Jacobi and 21,239 others of New York city. Women, 11,576; men, 9,663.

Referred to the Committee on Suffrage.

Also, official signatures in behalf of labor organizations representing 111,396 men.

Referred to the Committee on Suffrage.

Mr. Wiggins presented the petition of Mrs. Annie M. Darwood and eighteen others of Orange county.

Referred to the Committee on Suffrage.

Mr. Hawley presented the petition of Francis L. Godfrey, A. W. Allen and 2,710 others of Seneca county. Women, 1,391; men, 779. Vote of 1893, 5,344.

Referred to the Committee on Suffrage.

Mr. Tucker presented the petition of the officials of the labor organizations signed by the authority of their respective organizations, to wit: The American Federation of Labor, representing

40,000 men; Trade, Labor and Reform Conference, representing 70,000 men; other organizations representing 1,369 men.

Referred to the Committee on Suffrage.

Mr. Tucker presented the petition of Mrs. George Place and 42,478 others of New York county. Women, 11,576; men, 9,663.

Referred to the Committee on Suffrage.

The President presented the petition of Helen Shelton Smith and others to provide for the appropriation of State money for the education of New York reservation Indians in industrial institutions outside of the State.

Referred to the Committee on Indians.

Mr. Pool presented a petition of residents of Lockport, N. Y., for an amendment to article 8 of the Constitution, relating to appropriation for sectarian purposes.

Referred to the Committee on Charities.

The President — The next business in order is communications from the Governor and other State officers.

The Chair has received a communication addressed to the Convention from the Comptroller of the State, in response to the resolution of Mr. Holls, passed May twenty-third, showing the sources, extent, nature and present investment and income of every fund and property belonging to or controlled by the State, of which either the principal or interest is devoted to educational uses. The Secretary will read the communication. (No. 1, Doc. No. 7.)

The Secretary commenced the reading of the communication.

Mr. Mereness — Mr. President, I move that the further reading of the communication be dispensed with.

Mr. McMillan — And that it be printed and placed on the files.

Mr. Mereness accepted the amendment.

Mr. Hirschberg — Mr. President, I move that it also be referred to the Committee on Education, from which the request emanated.

The President put the question on the motion to dispense with the further reading of the communication and that it be printed and placed on the files of the members and referred to the Committee on Education, and it was determined in the affirmative.

The President — The next business in order is notices, motions and resolutions, to be called for by districts numerically. The Secretary will call the districts.

The Secretary commenced the calling of the districts.

Mr. Phipps offered the following resolution:

R. 41.— Resolved, That in each committee room there be kept on file a complete set of the printed records and documents of the Convention as supplied to the delegates of this Convention, and that the clerks of the committees be and they are hereby directed to place such records and documents on file and keep them in order for use of the committee occupying such room.

The President put the question on the adoption of the resolution, and it was determined in the affirmative.

Mr. Hirschberg — Mr. President, I do not know as it is strictly in order under this head, but a meeting of the Committee on Privileges and Elections was called for this afternoon at three o'clock to hear the argument of counsel in the Erie county case. I understand the Judiciary Committee are to meet at three o'clock to consider the writ of prohibition. As some of the members of the Election Committee are also members of the other committee, I would like to give notice that the meeting of the Privileges and Elections Committee will occur at half-past three in Senate room 3.

Mr. Gilbert — Mr. President, I desire to give notice that the Committee on Industrial Interests will meet this afternoon at four o'clock in the Court of Appeals attorneys' room.

Mr. I. S. Johnson — Mr. President, I offer the following resolution and ask for its immediate consideration.

The President — The Secretary will read the resolution.

The Secretary read the resolution as follows:

R. 42.— Resolved, That the Committee on Printing be directed to ascertain and report what action is necessary to secure the prompt printing and delivery of all proposed constitutional amendments in the order in which they are introduced.

Mr. Johnson — I desire, Mr. President, to call the attention of the Convention to the fact that on Friday last a resolution was adopted for the printing of these proposed amendments and that they be placed on the files of the members. Nearly a week has elapsed. At nine o'clock this morning there were ninety of them, or up to the number ninety had been printed. Thirty-six intermediate ones had not been printed. Of the twenty-six introduced on the first day ten were not delivered up to nine o'clock this morning, and it is impossible to make up the files of this body so that they can come in order unless some steps are taken for the prompt delivery of these proposed amendments. I do not think that this body should be kept

delayed from day to day without knowing what matters have already been presented. Proposed amendments are daily introduced here, undoubtedly covering the same subjects which have already been proposed, and this comes from the fact that no member is able to ascertain what has already been introduced. If, under this contract, it is impossible to get these papers promptly delivered, then some action should be taken that should either require this contractor or some other to print them and deliver them promptly.

The President put the question on the adoption of the resolution, and it was determined in the affirmative.

Mr. Vedder — Mr. President, I desire to give notice that the Committee on Legislative Powers will have a meeting to-day at three o'clock in room No. 3, Assembly side.

Mr. Morton — Mr. President, I desire, on behalf of Mr. Riggs, to obtain leave of absence indefinitely from the Convention, on account of the serious illness of his wife.

The President — Unless there is objection, leave of absence will be granted to Mr. Riggs.

Mr. Lincoln — Mr. President, I offer the following resolution:

The President — The Secretary will read the resolution.

The Secretary read the resolution as follows:

R. 43.—Whereas, 16 States, to wit: Alabama, Arkansas, Colorado, Florida, Indiana, Kansas, Louisiana, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Oregon, South Dakota, Texas and Wisconsin, by their Constitution, grant the right of suffrage to aliens who have filed a declaration of their intention to become citizens, but who have not been naturalized, thus permitting persons to participate in the government of their country who are subjects of a foreign power, and who owe allegiance neither to the State nor to the United States, thereby giving rise to occasions when the vote of aliens may change the course of government; therefore,

Resolved, That it is the sense of this Convention that such grant of suffrage is contrary to the spirit of the American Constitution; that the right of suffrage ought to be uniform throughout the Union, and that no person ought to be permitted to vote who is not a citizen of the United States.

Resolved, That we hereby request Congress to recommend and submit to the several States for their consideration, a proposed amendment to the National Constitution, requiring all voters to be citizens, and prohibiting any State from granting the right of suffrage to any person who is not a citizen of the United States.

Resolved, That the Secretary of this Convention immediately transmit a copy of these resolutions to the President of the Senate of the United States and also to the Speaker of the House of Representatives.

Resolved, That we hereby respectfully request the Senators and Members of Congress from this State to urge the adoption by Congress of a concurrent resolution providing for the submission of the proposed amendment.

Mr. McDonough rose to debate the resolution.

The President — This resolution giving rise to debate it will go over under the rule until to-morrow.

Mr. Moore — Mr. President, I offer the following resolution:

The Secretary read the resolution as follows:

R. 44.— Resolved, That the Judiciary Committee request all county clerks to furnish it with the cost of terms of County Courts in their respective counties and the days such courts have set during the last ten years at each term; also that the county treasurer of each county be requested to furnish said committee with the amount of salary of each county judge and of each surrogate and county judge where the two offices are held by the same incumbent.

Mr. Kellogg — Mr. President, I was going to move that that resolution be referred to the Committee on Judiciary.

Mr. Hamlin — Mr. President, I would suggest that the information required in that resolution would very likely be found in the statistics already to be supplied to the Convention. I have a table this morning in reference to the contents of the volume which is being prepared by the Compiler. I move that the resolution be laid upon the table until I can have an opportunity to examine this table of contents.

The President — If there is no objection it will be laid on the table.

Mr. Storm — Mr. President, I take this opportunity to ask leave to be excused from attendance in the Convention this afternoon and to-morrow.

The President — If there is no objection, Mr. Storm will be excused.

Mr. Durnin — Mr. President, I ask to be excused from attendance to-morrow.

The President — If there is no objection Mr. Durnin will be excused for to-morrow.

Mr. Burr — Mr. President, I ask leave to be excused this afternoon and to-morrow.

The President — If there is no objection Mr. Burr will be excused for to-morrow.

Mr. Barrow — Mr. President, I ask leave to offer the following resolution:

The President — The Secretary will read the resolution.

The Secretary read the resolution as follows:

R. 45.— Resolved, That the Secretary of State be requested to furnish to this Convention from such data as may be in his possession, as near as may be, the number of manufacturing and business corporations organized under the laws of other States for the purpose of conducting business within this State during the period of three years last past, together with such information as may be in his possession as to the causes which have led to the organization of such corporations without the State; and that the said Secretary also report such information as may be in his possession, if any, as to the organization by citizens of this State of corporations under the laws of other States, to do business therein; and the reasons which have actuated such organization to do business in other States, rather than under the laws of this State.

The President — This resolution, under the rules, will lie over until to-morrow.

Mr. Kellogg — Mr. President, that is another resolution calling for information which may be already compiled, and I move you that the resolution be referred to the proper committee.

The President — The chair has ruled that it shall be laid upon the table for to-morrow.

Mr. Goodelle — Mr. President, I desire to give notice that the Committee on Suffrage will hold an executive meeting at half past three o'clock this afternoon in the Assembly parlor, and I desire also to repeat the announcement given last week, that at eight o'clock this evening there will be a public meeting in this room.

The President — The next business in order is the presentation of proposed amendments to the Constitution, to be called for by districts. The Secretary will call the roll of districts.

The Secretary called the districts, and the following proposed amendments to the Constitution were offered:

O. 111.— Mr. Storm offered the following proposed amendments:

Proposed amendment to article 8 of the Constitution, relating to

corporations, to prohibit the consolidation of competing or parallel railroads.

Referred to the Committee on Railroads, etc.

O. 112.— Also, proposed amendment to article 8 of the Constitution, relating to corporations.

Referred to the Committee on Corporations.

Mr. Tucker offered the following proposed amendments:

O. 113.— Proposed amendment to the Constitution by inserting a new article to provide for home rule for cities.

Referred to the Committee on Cities.

O. 114.— Also, proposed amendment to the Constitution, by inserting a new article to provide for legislation by the direct vote of the electors of the State.

Referred to the Committee on Powers and Duties of the Legislature.

Mr. Arnold offered the following proposed amendment:

O. 115.— Amending section 18 of article 3 of the Constitution, by requiring all bills to be printed in the locality affected thereby.

Referred to the Committee on Powers and Duties of the Legislature.

Mr. Roche offered the following proposed amendment:

O. 116.— Proposed amendment to section 18 of article 3 of the Constitution, still further restricting the power of the Legislature as to passing private or local bills.

Referred to the Committee on Powers and Duties of the Legislature.

Mr. McDonough offered the following proposed amendment:

O. 117.— Proposed amendment to 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 this State.

Referred to the Committee on State Prisons.

Mr. Alvord offered the following proposed amendment:

O. 118.— Proposed amendment to section 1, article 2 of the Constitution, entitled "qualification of voters."

Referred to the Committee on Suffrage.

Mr. O'Brien offered the following proposed amendment:

O. 119.— Proposed amendment to section 3 of article 2 of the Constitution, as to suffrage, and disfranchising certain voters.

Referred to the Committee on Suffrage.

Mr. Barhite offered the following proposed amendments:

O. 120.— Proposed amendment to section 6, article 1 of the Constitution, giving the Legislature power to pass certain laws for obtaining evidence without the State in criminal proceedings.

Referred to the Committee on Powers and Duties of the Legislature.

O. 121.— Also, proposed amendment to section 1, article 2 of the Constitution, with regard to the qualifications of voters.

Referred to the Committee on Suffrage.

Mr. I. S. Johnson offered the following proposed amendments:

O. 122.— Proposed amendment to prevent the use of public funds by officers of the State or of any subdivision thereof.

Referred to the Committee on State Finances and Taxation.

O. 123.— Also, proposed amendment relating to uniform assessment and taxation of property within the State.

Referred to the Committee on State Finances and Taxation.

Mr. Doty offered the following proposed amendments:

O. 124.— Proposed amendment to section 18, article 3 of the Constitution, relating to private and local bills.

Referred to the Committee on Powers and Duties of the Legislature.

O. 125.— Also, proposed amendment to section 6, article 7, relating to canals.

Referred to the Committee on Canals.

Mr. Woodward offered the following proposed amendments:

O. 126.— Proposed amendment to section 15, article 6 of the Constitution, in regard to jurisdiction of County Courts.

Referred to the Committee on Judiciary.

O. 127.— Also, proposed amendment to section 8, article 6 of the Constitution, in regard to a justice of the Supreme Court trying a second time a case tried and decided by him, and his decision reversed.

Referred to the Committee on Judiciary.

O. 128.— Also, proposed amendment to section 6, article 6 of the Constitution, in reference to general terms of the Supreme Court.

Referred to the Committee on Judiciary.

Mr. McMillan offered the following proposed amendment:

O. 129.— Proposed amendment to section 1, article 6, relating to the Governor.

Referred to Committee on Governor and Other State Officers.

Mr. Coleman offered the following proposed amendments:

O. 130.— Proposed amendment to the Constitution concerning actions for damages for negligence by employers.

Referred to the Committee on Industrial Interests.

Mr. Hill offered the following proposed amendment:

O. 131.— Proposed amendment to section 8, article 3 of the Constitution, relating to the eligibility of persons to seats in the Legislature.

Referred to the Committee on Legislative Organization.

Mr. Dean offered the following proposed amendment:

O. 132.— Proposed amendment to sections 3, 4 and 5 of article 3 of the Constitution, to provide a non-partisan legislative apportionment.

Referred to the Committee on Legislative Organization.

The President — The next order of business will be reports of standing committees. Has any standing committee any report to make? Mr. Hamlin, from the Committee on Printing, has a report.

Mr. Hamlin — Mr. President, some time since there was referred to the Committee on Printing the general subject of printing. Owing to the absence of several members of the committee, on account of sickness or otherwise, we have not been able to fully consider the matter. I have in my possession a statement of the contents of a volume of the statistics prepared by the Compiler. I have not had the opportunity to present it to the committee for action, but I take the liberty of presenting it and ask that it be printed and placed upon the files. I will say, in addition, that it will be about three weeks before the book will be ready for delivery by the Compiler.

The President — We now come to the special order, the consideration of the rules, where it was left suspended on Tuesday evening, which, as the Chair recollects it, was in this way. Rule 41 was under consideration. Mr. Root had offered an amendment to add at the end of rule 41 the following: " But any amendment reported by a standing committee pursuant to such instructions shall be subject to be recommitted to the Committee of the Whole;" to this, an amendment had been offered by Mr. Bowers which was rejected. Mr. Kerwin offered a substitute, which will be read by the Secretary, and the question before the house will be between these two propositions, the amendment offered by Mr. Root to rule 41, and the substitute offered by Mr. Kerwin. The first question in order will be upon the adoption of the substitute offered by Mr. Kerwin.

Will Mr. Kerwin please give attention and see if this is correct, as read by the Secretary?

The Secretary read Mr. Kerwin's substitute as follows: After the word "and" in the second line insert "to the committee which originally reported it."

The President — I am informed by the Secretary that the vote was taken upon that substitute and that it was lost.

Mr. Kerwin — Mr. President, if there is no objection, I would ask to withdraw the substitute.

Mr. Root — Mr. Chairman, I offer a substitute for the amendment which I offered the other day, which, I think, will meet the objection of many of the gentlemen who spoke upon this rule.

The President — You withdraw your amendment and offer this?

Mr. Root — Yes, sir; I withdraw the amendment and offer this. To strike out from rule 41 the words "but the instructions shall be in writing." The rule will then read, "A motion may be made during third reading of any proposed amendment to recommit it with instructions and such motion shall not be debatable." That will leave the Convention, if there appears upon the third reading to be any cause to make any change in the proposed constitutional amendment, at liberty to recommit it either to the standing committee which reported it for further hearing or any other purpose, or to the Committee of the Whole, for amendment or for further discussion.

Mr. Cochran — I believe, sir, that I have a pending amendment to this rule.

The President — To rule 41. Oh, yes; excuse me. Mr. Cochran has an amendment pending offered to rule 41. Insert after the word "writing" the following: "But a proposed constitutional amendment reported under this rule shall be subject to the provisions of rule 33 and rule 34." Has Mr. Cochran any objection to allowing Mr. Root's amendment to be put first?

Mr. Root — Mr. President, I suppose the effect of my amendment would be to cover what Mr. Cochran wants.

The President — Mr. Cochran, will you have any objection to my putting Mr. Root's amendment first?

Mr. Cochran — No, sir.

Mr. Roche — Mr. President, I had an amendment pending to rule 41 which has not been announced by the Chair. I am willing to withdraw it if I can offer an amendment to the amendment offered by Mr. Root. I may state that on the motion the other day to

strike out the words " and such motion shall not be debatable," the vote was 41 to 42, so that the motion was not adopted. Now, I think there are a great many delegates who feel that if a motion is made to recommit a proposed constitutional amendment, somebodv should be allowed to make a short explanation of the reason why the recommittal is desired or desirable, in justice to the gentleman who proposes it, and that his motion may not be disposed of in a summary manner, in justice to the Convention itself, that it may vote intelligently upon the proposition. It seems to me that it will save considerable time. Now, I propose to amend rule 41 so that it will read as follows: "A motion may be made during the third reading of any proposed constitutional amendment to recommit it to such committee as the Convention may direct. Such motion shall not be debatable, except that the member making it shall speak not more than five minutes in explanation thereof. When the committee shall report back, its report shall be subject to consideration in Committee of the Whole, if the Convention shall so direct."

Mr. Root — Mr. President, I think that cuts off the power to recommit to the Committee of the Whole. That is a power which probably we will most frequently wish to exercise; that is, to recommit for some amendment which it appears to the Convention would be appropriate, or recommit for further discussion. It seems to me that there can be no serious question involved here. There is an hour granted to five-minute speeches when the measure comes up for third reading. That is abundant opportunity. Mr. President, I move the previous question on the amendment which I have offered.

Mr. Cochran — Mr. President, I would ask Mr. Root if, under rule 39, that debate which he speaks of is not a debate which must take place before the third reading of the amendment? So, under rule 41, as it is now proposed, there could not be any debate or any explanation of why the recommital should be made.

Mr. Root — It is on third reading and substantially simultaneous with the operation of the other rules.

The President — The question is on Mr. Root's motion that the previous question be ordered.

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

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

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

The President — Now, Mr. Cochran, do you desire the question on your amendment to be put?

Mr. Cochran — Yes, sir; so that there may be no question as to the debate in the Committee of the Whole, and also to the one hour debate when it is reported back. I believe that is in accordance with the views of the gentleman who spoke on Friday, and I do not believe it is necessary to say anything more about it.

Mr. Bush — Mr. President, as I understand, it leaves the rule as it now is with this added at the end of it. As I understand it, a motion to recommit with instructions is the only way any proposition may be amended on third reading. The virtual effect of that is, that the amendments are immediately adopted as soon as the instructions are issued. It does not go to the committee. That is a mere matter of form.

Mr. Roche — Mr. President, they are stricken out.

Mr. Bush — I wanted to know how it stands, as I was not here the other day.

Mr. Johnson — Mr. President, as I would read this, I suppose with these words, " instructions shall be in writing," without that the report will be subject to these rules without any amendment. It seems to me that all that is asked for by this amendment is already in the rules.

Mr. Root — Mr. President, while I fully agree with Mr. Cochran, I think his amendment is wholly unnecessary, and that his provision will burden the rule, I fear. When the proposed amendment goes back to the Committee of the Whole, of course it will be subject to the rules applicable to the Committee of the Whole.

Mr. Cochran — Mr. President, I do not think that the chairman of the Committee on Rules has covered the points which were raised on Tuesday last, and which were desired to be covered by this amendment. There was a question whether or not when the report was recommitted if it should go to the standing committee and then to the Committee of the Whole, and then reported by that committee to the Convention, or whether it should be reported back directly to the Convention from the standing committee. The question was raised by Mr. Becker of Erie and by Mr. Bowers of New York. It was in order that there should be no misunderstanding that that amendment was offered.

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

The President put the question on the adoption of rule 41, as amended, and it was determined in the affirmative.

The President — The Secretary will please read rule 42.

The Secretary read rule 42.

The President — Does any gentleman object to the adoption of rule 42 without amendment?

No such objection being made, the President, under the order prescribed, declared rule 42 adopted, and it is so adopted as read.

The President — The Secretary will read rule 43.

The Secretary read rule 43.

The President — Does any gentleman object to the adoption of rule 43, as read, without amendment?

No such objection being made, the President, under the order prescribed, declared rule 43 adopted, and it is so adopted as read.

The question will now be on the adoption of rule 44, which the Secretary will please read.

The Secretary read rule 44.

Mr. Cochran — Mr. President, I desire to amend rule 44 so as to except the motion to postpone indefinitely from the motion on which debate is precluded on the main question, and I think it is only necessary to call the attention of the Committee on Rules to the fact that this rule was copied verbatim from the manual, and to call the attention of the Compiler to the fact that the very precedent that he sets forth failed to establish this motion. A motion to postpone indefinitely, if it prevails, finally disposes of the proposition, and such motion should always permit of debate. I think, by referring to the manual on page 111, they will find my contention reported; they will also find it reported on reference to the Congressional manual and Cushing's manual, that a motion to postpone indefinitely is always debatable.

Mr. President — Mr. Cochran moves to amend to exclude from the list of motions which preclude debate on the main question, the motion to postpone indefinitely so that it will be included in the first five.

Mr. Cochran — No, sir, it would stand alone, so that the motion will be open to debate.

Mr. Root — Mr. President, the rule as reported by the committee is the rule of the Convention of 1867, and I think it should be adopted by this Convention as it stands.

Mr. Cochran — Mr. President, I do not think it necessary to go

back to 1867 to find authority. We have made some progress since 1867, certainly in parliamentary practice. Congress to-day lays down the rule that a motion to postpone indefinitely always admits of debate.

Mr. McClure — Mr. President, I only desire to call the attention of the Committee on Rules in reference to the motion to postpone indefinitely to the parliamentary rules published by Speaker Reed of the House of Representatives. Under the head of motions for indefinite postponement, Mr. Reed says: "The motion for indefinite postponement is not only debatable itself, but throws open the whole question for debate. Inasmuch as an affirmative vote on this motion may decide the main question, the merits of the question must be open for discussion. The motion cannot be amended. It ranks with the motion to postpone for a day certain, to commit, and for the previous question." This confirms what Mr. Cochran has said. If you postpone a matter indefinitely that ends it. I should think the authority of the ex-Speaker of the House of Representatives ought to be good enough for the Committee on Rules.

Mr. Bowers — Mr. President, it seems to me that the Committee on Rules, if they had had before them some of these authorities which have now been presented, would have appreciated that the amendment offered by Mr. Cochran is correct, and it seems to me that, if the matter was now in the hands of that committee they would say that we would not be tied by the action of 1867. It seems to me that we cannot proceed in this Convention with any propriety to discuss a motion that may kill the entire subject under consideration with a rule that we cannot make any reference to that subject.

Mr. Root — Will Mr. Bowers yield a moment? In view of what has been said, so far as I have power to do so, I will accept the proposed amendment.

Mr. J. Johnson — Mr. President, I would like to inquire of the Committee on Rules whether the acceptance of this amendment, which, it seems to me, is quite a proper one, may not make necessary another amendment as to the time of debate. That is to say, we might use up the time allowed on the main question and then debate it over again unless it is so fixed that it shall count as the time allowed on the main debate.

The President — The question is on Mr. Cochran's amendment, which will be read by the Secretary, so that the wording will be clearly understood.

The Secretary read the amendment, as follows: To exclude from

the list which precludes debate on main question the sixth motion to postpone indefinitely.

Mr. Hirschberg — Mr. President, I would move an amendment, after the words "not amendable," by inserting the words "but debatable," to make it a little plainer.

Mr. Cochran — That would not cover debate on the main question.

Mr. Hirschberg — I think it would. If the motion to postpone indefinitely was debatable, it would cover what the gentleman desires.

The President put the question on Mr. Hirschberg's amendment, and it was determined in the affirmative by a vote of 66 ayes and 36 noes.

The President then put the question on Mr. Cochran's amendment, to exclude from the list, which precludes debates on main questions, the sixth motion, so that it will stand alone, and read "postpone indefinitely (not amendable but debatable)," and it was determined in the affirmative.

The President then put the question on the adoption of rule 44, as amended, and it was determined in the affirmative.

The President — The Secretary will read rule 45.

The Secretary read rule 45.

The President — Does any gentleman object to the adoption of rule 45 as read without amendment?

No such objection being made the President, under the order prescribed, declared rule 45 adopted, and it is so adopted as read.

The President — The Secretary will read rule 46.

The Secretary read rule 46.

The President — Does any gentleman object to the adoption of rule 46 as read, without amendment?

No such objection being made the President, under the order prescribed, declares rule 46 adopted, and it is so adopted as read.

The President — The Secretary will please read rule 47.

The Secretary read rule 47.

The President — Does any gentleman object to the adoption of rule 47 as read, without amendment?

No such objection being made the President, under the order prescribed, declares rule 47 adopted, and it is so adopted as read.

The President — The Secretary will read rule 48.

The Secretary read rule 48.

The President — Has any gentleman any objection to the adoption of rule 48 as read, without amendment?

No such objection being made the President, under the order prescribed, declares rule 48 adopted, and it is so adopted as read.

The President — The Secretary will read rule 49.

The Secretary read rule 49.

The President — Does any gentleman object to the adoption of rule 49 as read, without amendment?

There being no such objection made the President, under the order prescribed, declares rule 49 adopted, and it is so adopted as read.

The President — The Secretary will please read rule 50.

The Secretary read rule 50.

Mr. E. R. Brown — Mr. President, my absence has prevented me from calling the attention of the Committee on Rules to a proposed amendment to this section. I think that the experience of this Convention has already demonstrated that resolutions calling for information from any of the executive departments, etc., are liable to be drawn very loosely, and unless particular attention is directed to them by someone besides the mover, they are liable to have the Convention calling for information which already exists in the departments in Albany, or which has already been compiled, or which ought not to be called for. It is possible that resolutions which ought not to be called for may be passed by this Convention without receiving sufficient consideration. I, therefore, move to amend this rule so that subdivisions 1 and 2 will read as follows:

1. 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 adjournment or recess, shall lie over one day for consideration, after which they may be called up under their appropriate order of business.

2. Resolutions containing calls for information from any of the executive departments, from State, county or municipal officers, or from any corporate body, shall first be referred to the appropriate committee. Such committee shall report thereon within three days.

Mr. President, I move the adoption of this amendment.

Mr. Root — Mr. President, if I correctly understand the proposition, and I presume I do, it is entirely satisfactory, and, I think, quite proper.

The President put the question on the adoption of the amendment of Mr. Brown for the reconstruction of rule 50.

Mr. A. B. Steele — Mr. President, may there not be a little confusion as to what is meant by three days, should it not be three legislative days? If the resolution was offered on Friday, for instance, it would have to be reported on Tuesday, as it reads now.

Mr. E. R. Brown — I meant legislative days, Mr. President, and I accept Mr. Steele's suggestion.

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

The President then put the question on the adoption of rule 50, as amended, and it was determined in the affirmative.

The President — The Secretary will read rule 51.

The Secretary read rule 51.

The President — Has any gentleman any amendment to offer to rule 51? If not, the question will be on the adoption of rule 51 as read, without amendment.

And the President, under the order prescribed, declares rule 51 adopted, and it is so adopted as read.

The President — The Secretary will read rule 52.

The Secretary read rule 52.

The President — Has any gentleman any objection to the adoption of rule 52 as read, without amendment?

No such objection being made the President, under the order prescribed, declares rule 52 adopted, and it is so adopted as read.

The President — The Secretary will please read rule 53.

The Secretary read rule 53.

Mr. Bowers — Mr. President, rule 53 is the previous question. If adopted as part of the entire rules, with the protection given us by rule 56, I do not think there would be any objection to it; but I do not see how the minority can, upon the proposition just advanced that the previous question shall be put, acquiesce in it, and for that reason I consider the operation of how the previous question shall be taken to mean, by implication, that the previous question be put. We shall be compelled to vote against it unless its consideration be postponed until rule 56 be considered.

The President — Mr. Bowers asks for unanimous consent for a postponement of the consideration of rule 53 until rule 56 is reached.

Mr. Root — Mr. President, I must object to it.

The President — The Chair is of the opinion that the consideration of this rule cannot be postponed without unanimous consent under this order of business. The question is on the adoption of

rule 53 as it has been read, without amendment. The President put the question, and it was determined in the affirmative.

The President — The Secretary will read rule 54.

The Secretary read rule 54.

Mr. Vedder — Mr. President, I see by this rule that the Governor, Lieutenant-Governor and ex-Governors, etc., down to United States Senators and Congressmen, are entitled to admission to the floor. I would like to inquire where this leaves the President of the United States? Where does he come in?

The President — It leaves him out.

Mr. McClure — Mr. President, we assume on this side of the chamber that whenever the President of the United States shall desire to honor this body by his presence, the Convention, on both sides, shall rise *en masse*, and that the Chair will be requested to appoint a committee to wait upon him and escort him to the President's desk.

The President — The President has been informed that there were two sides to this chamber.

Mr. Vedder — At the suggestion of the gentleman from New York, I agree with him that both sides should rise in a body if the President of the United States should take occasion to visit this chamber, as the President has often represented both sides.

Mr. McClure — Mr. President, in response to what the Chair has said, I would state that the suggestion that there were two sides of this chamber came from the gentleman on the other side (Mr. Vedder).

The President put the question on the adoption of rule 54, as read, without amendment, and it was determined in the affirmative.

The President — The Secretary will read rule 55.

The Secretary read rule 55.

The President — Does any gentleman object to the adoption of rule 55, as read, without amendment? No such objection being made, the President, under the order prescribed, declares rule 55 adopted, and it is so adopted as read.

The President — The Secretary will read rule 56.

The Secretary read rule 56.

The President — The Chair understands the orders made by the house when the previous rule was postponed until this one was reached, to mean that their consideration should be postponed until rule 56 was reached and disposed of. If wrong in that the Chair

ought to be corrected. The question is on the adoption of rule 56. Does any delegate object to the adoption of rule 56?

Mr. Barhite — Mr. President, it would seem that the Committee on Rules has acted wisely in presenting to the consideration of this Convention rule 56. They have endeavored to steer between the extremes, the one of allowing unlimited debate upon any question that may come before this Convention, and the other extreme of placing entirely in the hands of the Committee on Rules the time to be allowed for such debate; but it seems to me that they have not provided for a proper time for debate on the report of the Committee on Rules. Rule 56 provides that whenever a standing committee shall make a report upon a constitutional amendment or other subject, the Committee on Rules may report a rule limiting the time of debate, and if it is approved or unquestioned by the Convention — I understand, of course, that the report of the Committee on Rules as to the amount of time which should be used upon debate would itself be debatable — we might run the danger of spending three days in debate in determining whether or not we should spend an hour in talking upon the main question. Any delegate might take an hour in stating why he would want to speak twenty minutes upon the main question, and any delegate might at that time give to the Convention his views upon any question he might want to discuss. It seems to me that any member ought to have a right to state to this Convention why he may be in favor of more or less time than that reported by the Committee on Rules, and, therefore, Mr. President, I offer the following amendment: Insert after the words "or may report a rule limiting the time of debate" the following "and upon such report no member shall speak more than once or more than five minutes."

Mr. Root — Mr. President, I think that is a perfectly proper suggestion.

Mr. Alvord — Mr. President, I think, sir, that I have a substitute that will meet all of this case. It is in the direction of showing to the Convention itself that it has the authority and power to order its own time and not leave it discretionary with the Committee on Rules but to the opinion of the Convention itself, and in order to arrive at a correct conclusion, it also provides that there shall be no unnecessary debate. There should not be unnecessary debate. The only object of the fifty-sixth rule, as I understand it, is to curtail debate within decent limits. Otherwise we may be sitting here a year before we get through. It is true, sir, that in the last Constitu-

tional Convention that power was exercised by the order of the Convention on each and every occasion. It seems to me that whether a person shall speak five or ten minutes or an hour or two hours in the debate upon the question is well enough to put it in the hands of the Committee on Rules to determine for the Convention and thus avoid a great space of time, which would unnecessarily be occupied, and bring us to the main issue. Mr. President, I offer this as a substitute for the whole rule.

The President — The Secretary will read Mr. Alvord's substitute.

The Secretary read Mr. Alvord's substitute as follows:

"All proposed action touching the rules and order of business shall be referred, as of course, to the Committee on Rules; such committee may sit during the session of the Convention without special leave, and report at any time on rules or order of business so referred to them. It will be in order to call up for consideration at any time a report from the Committee on Rules. Any member may object to its consideration until the next legislative day, and if sustained by twenty-four other members the consideration shall be postponed, but only once. Pending the final consideration thereof, but one motion (except by unanimous consent) that the Convention adjourn may be entertained, and no other dilatory motion shall be entertained until such report is fully disposed of. A motion to suspend the rules shall, in all cases, state specifically the object of the suspension, and every case of a suspension of a rule under such notice and motion shall be held to apply only to the object specified therein: Provided, That when ordered so to do by the Convention, whenever a standing committee shall make a report on a constitutional amendment or other subject, the Committee on Rules shall report a rule limiting the time of debate; and, if approved, such report shall stand as the time limited for debate on the subject-matter referred to in such rule, and the previous question or other motion to close debate, shall not be in order until the expiration of the time so allotted or the debate has been closed; the time thus allotted for debate shall be equally divided between those in favor of and those opposed to the subject-matter under consideration. All questions or motions authorized by this rule shall be decided at once without delay or debate."

The President — The Chair thinks if that could be put in such form that the members could note the alterations, which are very few and simple, in their own way, it would facilitate debate.

Mr. Hirschberg — Mr. President, that does not do away with the propriety of Mr. Barhite's amendment.

The President — Not at all. The question will be first on Mr. Barhite's amendment.

The Secretary will read the amendment of Mr. Barhite.

The Secretary read the amendment as follows: After the word "debate" in the ninth line of rule 56 insert "and upon such report no member shall speak more than once nor more than five minutes."

Mr. Vedder — Do I understand that the motion of the gentleman from Onondaga is a substitute for the whole rule?

The President — Mr. Alvord offers it as a substitute for the whole rule, as I understand it.

Mr. Vedder — If that is so, how could the question be put on the amendment offered by Mr. Barhite?

The President — The Chair understands the rule to be this: That when a substitute has been proposed to any matter to which an amendment has already been proposed it is necessary for the amendment to be put first in order that the house can be in a position to choose between the two propositions.

Mr. Alvord — So far as I am concerned I am willing to absorb and make a part of my substitute the amendment offered by my friend upon the right (Mr. Barhite).

The President — I suppose that will be satisfactory to the whole house. The question will then be upon the substitute or amendment offered by Mr. Alvord.

Mr. Mulqueen — Mr. President, I ask for the reading of Mr. Alvord's substitute.

The President — The Secretary will read the substitute of Mr. Alvord again.

Mr. Root — Mr. President, before the amendment is read again, may I say that Mr. Alvord's substitute is satisfactory to the majority of the Committee on Rules, and I think, so far as I am able to ascertain, the entire committee.

Mr. E. R. Brown — The Chair suggested that the slight modifications that were made in this rule could easily be indicated so that the members might be aware what the amendments made by Governor Alvord were. Are they in shape so that they can be indicated by the Secretary?

The President — I think the gentlemen can all insert the amendment if the Secretary will read slow enough.

The Secretary read the proposed substitute for rule 56, as follows:

Rule 56. All proposed action touching the rules and order of

business shall be referred, as of course, to the Committee on Rules; such committee may sit during the session of the Convention without special leave, and report at any time on rules or order of business so referred to them. It will be in order to call up for consideration at any time a report from the Committee on Rules. Any member may object to its consideration until the next legislative day, and if sustained by twenty-four other members, the consideration shall be so postponed, but only once. Pending the final consideration thereof, but one motion, except by unanimous consent, that the Convention adjourn, may be entertained, and no other dilatory motion shall be entertained until such report is fully disposed of. A motion to suspend the rules shall in all cases state specifically the object of the suspension, and every case of suspension of a rule under such notice and motion shall be held to apply only to the object specified therein. Provided that, when ordered so to do by the Convention, a standing committee shall make a report on a constitutional amendment or other subject, the Committee on Rules shall report a rule limiting the time for debate; and upon such report no member shall speak more than once nor more than five minutes. Such report shall stand as the time limited for debate on the subject-matter referred to in such rule, and the previous question or other motion to close debate shall not be in order until the expiration of the time so allotted, or the debate has been closed; the time thus allotted for debate shall be equally divided between those in favor and those opposed to the subject-matter under consideration. All questions or motions authorized by this rule shall be decided at once without delay or debate except as herein expressly allowed.

Mr. Mulqueen — Mr. President, I move to amend by striking out all after the word ——

Mr. Alvord (interrupting) — Will the gentleman give way for a moment until I can make a suggestion? I would suggest, Mr. President, in order to avoid a possibility that the last clause of this rule will affect Mr. Barhite's amendment which I have accepted, that the following words be added after Mr. Barhite's amendment ——

Mr. Root (interrupting) — Would it not answer the same purpose if we add to the substitute suggested by Governor Alvord the words "except as herein expressly allowed."

Mr. Alvord — That would be all that would be necessary, if we add the words "except as herein expressly allowed." I accept that amendment, Mr. President.

Mr. Mulqueen — Mr. President, it is difficult to propose an amendment to such an important rule read for the first time with

so many changes and additions here this morning; but I do propose an amendment fearing that I may not have another opportunity. My amendment is, that all after the word "provided" be stricken out and insert in place thereof "whenever a standing committee shall make a report upon a constitutional amendment or other subject, the Convention shall by resolution fix the time for debate upon the subject-matter referred to in said report."

Mr. President, as one member of this Convention, I am opposed to giving the Committee on Rules such arbitrary powers as they have sought to obtain by rule 56. With all due deference to the committee, I would like them to point to the Constitution and rules of any deliberative body and show me any such provisions as they have placed in rule 56. It seems to me, without wishing to cast any reflections upon any member of that committee, that they have sought by rule 56 to make themselves the all-important factors of this Convention; that the Committee on Rules shall run this Convention and not the delegates elected by the people. It may be true that that may be much easier for the delegates to this Convention, but can we do it? We have been sent here to represent constituencies, and can we say that the Committee on Rules shall take our place? Now they say they shall have the power to fix the time of debate subject to the approval of this Convention. There is the joker. They come to us, the Rule Committee, and they fix the time and many members of the Convention will vote to sustain them; whereas, if we had it out here in the Convention, how much time should be given to a given subject, other time might be given. Now, it seems that the object which actuated the Committee on Rules was to limit debate. They say that in this Convention there are many cranks who should be bottled up and not given an opportunity to express themselves upon the floor of this Convention. Well, members of this Convention have been sent here by different constituencies. They are the judges of the fitness and qualifications of their delegates. I know not what opinion the majority of the Committee on Rules may have of their own members of this Convention, but as yet I have not seen among the Democratic members any cranks or any member who desires uselessly to occupy the attention of this Convention upon the important questions that must come before it. If there be such among the Republican members, why not point them out to us now so that we may know them, and say here are cranks sent by constituencies of this State, and we cannot let them discuss, by the hour, questions upon this floor, and we must limit debate. No, gentlemen, there seems to be here a great fear of too much talk. That is not the danger of this Convention.

The danger of this Convention is that measures will be pushed through without proper consideration and proper debate upon them. Why cannot the Convention itself be intrusted to fix the hour of debate? Why should the Committee on Rules be given the power to say, if you please, that two hours or three hours should be given to a given subject? Then, that that time shall be parceled out to the members on both sides of the question? I want to ask who will parcel the time? Must members who desire to speak on the great questions here affecting the rights and privileges of the people go to the acting chairman of the Committee on Rules upon this floor, with hat in hand and ask if you will permit me to speak upon this important question for fifteen minutes? We, as delegates, have certain rights, and among those rights, whenever we can obtain the eye of the Chair, is the right to have full opportunity to discuss every question that comes before this house. I do not think it is fair to make the Committee on Rules the autocrats of this house. The object of their proposed rule is not to limit debate, but to prevent debate. We know here that King Caucus will rule in this Convention. We know that it ruled in fixing the chairmanships of the various committees and in the arrangement of the committees. We know that the gentleman who presides over your Caucus Committee will not hesitate to crack the party whip at any time and rush through the Convention important questions. Already have they called a caucus upon the question of adjournment, and if they do that what may we expect when we come to the great questions that are to be debated and argued by this Convention? I say to the gentlemen from certain sections of the State, if you wish to give all your powers to the Committee on Rules, when you go back to your people and are asked what part you have taken upon the debates here, then say to them that the majority named a Committee on Rules; they, in their wisdom, limited the time of debate; then they parceled out that time among certain speakers, and much as you would have liked to say something, you find that rule 56 will prevent you from so doing. The amendment I propose will leave it to the good sense and judgment of the Convention whether you will limit debate as the particular subjects arrive. It may be after we have discussed a question for two hours it will need no further discussion, or it may appear to the good sense of the Convention that the time should be extended. I say to you, gentlemen, if a caucus has not been called upon these rules that you will vote for the amendment, as the amendment will secure to every one the right to express his opinion upon every question coming before this Convention.

Mr. Deyo — Mr. President, I should like to ask the gentleman a question, and that is, whether he thinks under rule 56 that the Committee on Rules can fix the time for debate without the consent of the Convention?

The President — Mr. Mulqueen has probably not observed that Mr. Alvord inserted something in the first part of rule 56.

Mr. Mulqueen — Mr. President, in answer to the question of Mr. Deyo, I would say that the Committee on Rules now have the power to consider the subject in the first instance, if ordered by the Convention. Then, when they come back with the report, they come here as the majority of this body and ask that the report be adopted.

Mr. Bowers — Mr. President, I desire to say a few words on this proposed amendment. While I dislike to trespass so much on the time of the Convention on the settlement of this question of rules, I believe that a short statement now may serve to remove much of the misunderstanding that has heretofore existed, and enable us to complete the work this morning. The Convention is now confronted with the precise difficulty that the Committee on Rules had to meet and the minority members of this Convention must now finally determine whether, in substance, the proposed rules which in one sense enable the Convention to determine debate, and on the other hand compel the granting of a reasonable time for the hearing of all questions, shall be adopted or disapproved.

Addressing myself more especially at this time to the minority delegates in this house, I want to lay before the Convention the reasons that actuated their representatives on the Committee on Rules to ask and obtain what we considered the protection of rule 56. We knew, Mr. President, that in the Convention of 1821 the previous question was allowed. We knew that in the Convention of 1846 the previous question was allowed. We knew that in the Convention of 1867 the previous question was finally allowed. And we knew that it was within the power of this Convention, and that in all human probability they would exercise that power, to adopt the right to move the previous question in this Convention. That being the case what was the protection to be given the minority? What should they ask for, what should be granted them? We found, Mr. President, that the Convention of 1867 commenced its work by rejecting a rule as to the previous question, and that after some few months had expired a motion was made to reconsider that action, and that motion was carried, and the following rule was presented for the consideration of that body: "The previous question shall be 'shall the main

question be now put,' and if determined in the affirmative no further debate or amendment shall be in order, and the main question shall be on the passage of the resolution or other matter under consideration." Thereupon a delegate from the minority, Mr. Gerry from New York, offered the following amendment: "The Convention may, at any time by a vote of all its members present and voting, limit the time which the members shall occupy in the discussion of any motion or resolution, and the resolution to limit the time of debate shall be deemed a privileged motion, and shall be decided without amendment or debate." And Mr. Gerry said: "My object in offering this substitute is to do away with some difficulty which seems previously to have existed in the minds of many of the members of this Convention in relation to this rule of the previous question. Now, there are few of us who have listened during the past six weeks to the long and elaborate debates of a purely political nature, which have occupied the time of this honorable body in reference to the question of negro suffrage, without feeling convinced that it would surely become necessary for a proper regulation and government of the proceedings of this Convention, that some rule should be adopted, the practical effect of which would be to prevent a needless discussion on subjects of not material importance, and yet, at the same time, to secure to every member a right to be heard on matters about which there may be a considerable difference of opinion. My object in offering this resolution as a substitute for what is commonly and generally known as the previous question, is to secure to all gentlemen of this Convention a fair and just opportunity of being heard in relation to any particular proposition on which they may desire to speak, and at the same time limit the time to be occupied by them in speaking, in such manner that the time of this Convention be not needlessly frittered away in the discussion of questions that cannot be of moment to the people at large."

That question after considerable debate, in which my friend, Mr. Veeder, took a part, was defeated, and the reasonable request that the Convention fix a time for debate, to take the place of the previous question, was rejected, and the previous question, in precisely the form there presented, was passed; and so far as debate in the Committee of the Whole was concerned, so far as I am able to make out, they used to close it when they saw fit by a resolution of this character. I read from the debate on the eighth of August: "Mr. Williams offered the following resolution: Resolved, That further debate in Committee of the Whole on the report of a standing committee on the Legislature, its organization and, etc., be limited to five minutes, and that at 1 o'clock to-day the article be reported to the Convention

and immediately considered and continued the special order until disposed of." Therefore, Mr. President and gentlemen, we found that the result of the deliberation on this question in the Convention of 1867, was to leave an absolutely uncontrolled power in the majority to move the previous question whenever they saw fit, and the minority members of the Committee on Rules thought that if they could obtain the concessions which they fought for and lost in 1867, that they would be doing incalculable service to those whom they had the honor to represent. Therefore, it was, that we were satisfied to come to some understanding as to the limiting of time of debate, and we asked and were granted the concession that when that time had once been fixed, no previous question or other motion to close debate, which would apply in the Committee of the Whole, should be moved; and, therefore, this rule comes before the body of the house granting this protection. On every committee report and on every report on a constitutional amendment, either under the substitute offered by Mr. Alvord or under the rule as originally proposed, it is sent to the Committee on Rules in advance of the arising of any partisan feeling, to say what is a reasonable time for the consideration of this subject; and the Committee on Rules has upon its membership at least three members of the minority who have been endeavoring to perform their duty to their constituents, and they will there have an opportunity to present their views to a majority, two members of which majority, if joining with them, will give all that will be asked in the way of time; and among the members of that majority who are thus dispassionately in the first instance to consider this subject are the President of this Convention and the chairman of the Committee on Rules and the chairman of the Judiciary Committee. And for my own part I would rather trust to the responsibility they stand under to the people of the State, in the first instance, as to any partisan action, than I would to the action of a caucus committee. I may agree with all that has been said by my associates who seem to differ with me as to the advisability of this rule. I cannot, and no man can deny that when the time arrives and the majority party so desire, they can and will run this Convention by their caucus. But the caucus resolution which says we will give two hours for this debate, is the act of a hundred men, and no one is personally responsible for it. They may be governed by the most partisan influences. So, too, Mr. President, I do not understand the minority could even get a hearing in that caucus. I do not understand that the caucus would presume in advance to instruct the Committee on Rules what they were to do; and I have no hesitation in saying, sir, that I infinitely prefer to submit to the good judgment

of members such as those of whom I have spoken, the time for fair debate, than to leave it to the untrammeled action of the caucus. Nay, more, Mr. President, if it should transpire during the debate that further time is needed it is within the power of this Convention to extend it. There is nothing which compels the moving of the previous question when the time fixed shall have expired. It can be continued just as indefinitely as if there had been no time fixed. And if it is to be supposed that we are to get better treatment from the Caucus Committee to which the gentleman has referred than from the Committee on Rules, he may very easily ask for it at some time when he is dissatisfied with the action of that committee. More than that, Mr. President, a caucus committee would fix a time limiting debate, and come in here with a resolution to that effect, and they would put it through under the caucus resolution, and it could be moved by any member of the majority, and we would not even have the protection that you ordinarily get in legislative bodies by an appeal to some man recognized as a leader as to when or when not he should use the power that he has to close debate. Still more, Mr. President, let us assume that the autocratic Committee on Rules to which a question has been referred should desire to stifle debate and should come in with the majority report or, if the gentleman imagines they are to get it, a unanimous vote to stifle debate, is not the Convention still here to appeal to, and can you not argue the question on the report, and can you not then and there be heard and get an honest and deliberate determination as to what shall be the time of debate? I look upon the action of this Committee on Rules as tending to conserve the right of the minority, and I doubt exceedingly if at any time in the future of this Convention they will dare to make a report which is unfair and partisan in the limitation of debate. And if they do, we in the minority have the only appeal left to us, to the people of the State, to overturn such action. Now, Mr. President, I may not be actuated by the same views that actuate some other members of the minority. I have no doubt that many of them are much better capable of forming a judgment as to what should be done in a political Convention than I am or ever can be. But I must say that I shall at all times during the continuance of this Convention assume, until I have good reason to find to the contrary, that the minority members of every committee have endeavored to do what was best for their constituents. And more than that, Mr. President, I shall at all times, for myself, when I have demanded in committee a rule for the protection of the minority and gotten it, not hesitate to come into the Convention and say that I agreed to report

it; and I should ask my associates to sustain me in my position, and I believe that they will sustain me.

One more matter. We owe not only a duty to our constituents, but a duty to the whole people of the State. If the majority party come here and seek to conduct their business in an unfair manner, the people will take care of it. If they come here seeking to do justice, and seeking to give fair consideration to the minority, every time they offer it, it is our duty to take it and not unnecessarily question the matter, for the people of the State will not condone or forgive partisan action which is taken by the mere power of the votes of the majority. In my judgment and that of my associates on this committee, we felt that when these rules as a whole were adopted the majority offered what was as fair as we could expect to get, that we had got all in the end that we could by any possibility hope for, and we, therefore, joined in that report, and I hope that no amendment will be made by the minority to-day which will justify the majority in departing from granting rule 56, which they now stand bound to adopt, and with the exception of immaterial errors, so far as the substance of it is concerned, sir, I stand for it to-day as I did when I first addressed the Convention upon the question. I believe it is an honest rule, adopted by an honest committee, and that in the end the people of the State will say that we were right in enacting it. Bear in mind that it gives a protection never before granted in a Constitutional Convention to a minority. And for these reasons I oppose the amendment of the gentleman from New York (Mr. Mulqueen). (Applause.)

Mr. Deyo — Mr. President, as one of the minority of the Committee on Rules, and being the only other member present besides Mr. Bowers, I desire to say that I concur fully in all that has been said by him. I regret exceedingly, Mr. President, that it was not my privilege on Tuesday to be present when, I understand, some criticisms were made about the action of that committee. Of course, I cannot speak in the light of having any knowledge of what was then said, but after hearing the speech which Mr. Bowers has just made I concur fully in all that he said. The reasons which actuated us as the minority of the committee at the time these matters were under consideration have been fully stated by him. They were the reasons which actuated us at that time, and which I think now fully justify the position we took. The previous question, the naked previous question as stated in rule 53, is now by this rule 56 made to apply to the Committee of the Whole, and every departure from that rule as stated in rule 53 I regard as a distinct concession to the minority

of this body, and as such I voted for and joined in the unanimous report.

The President put the question on Mr. Mulqueen's amendment, and it was decided in the negative.

Mr. Roche — Mr. President, I move to strike out the words "twenty-four" after the words "sustained by," and insert instead the word "fifteen." That is on the eighth line of the rule. It seems to me, Mr. President, that that number is ample to demand that the report of the committee should stand over for one day, and be considered by the Convention. It will place the matter upon a more popular basis than it now is. It occurs to me that, perhaps, when the Committee on Rules fixed this number at twenty-four they had in mind the total membership of this Convention, namely, one hundred and seventy-five, and, having that in mind, they believed that number twenty-four was not too large a number to demand that the report of the committee should lie over for one day. But as a matter of fact, Mr. President, it already appears that a large number of the members absent themselves from the sessions of this Convention. Indeed, on Tuesday last, we were doing business here in the debating of these rules when it was clear that a quorum of this Convention was not in attendance. I can readily imagine that on certain days of the week when members are preparing to return to their homes, the attendance in this Convention may run down to a bare quorum. So, it seems to me that if at such times the report of the Committee on Rules is under consideration, it will be hardly fair to those interested in important questions that may be affected by the report of that committee, to call for twenty-four of their number to rise in their places and ask that the consideration of that report shall lie over for one day in order that members may know what it is and how these questions in which they are interested are to be affected by it. I therefore submit, Mr. President, that in justice to those who may be and are now in minorities, and I do not mean political minorities, upon some of the questions that may come before this Convention, it is only fair that the number should be reduced from twenty-five, as called for by the present rule, down to fifteen.

Mr. Vedder — Mr. President, just a word on this question. I am heartily in favor of the amendment of the gentleman from Onondaga. I believe there ought to be a committee to which should be referred the matter of time in debate. I was not in favor of the rule as reported by the committee because I believed that the report ought to be upon the suggestion of the whole Convention instead of being upon the suggestion of the committee. It now is in the power of the

Convention to refer this matter to the Committee on Rules, which is the most appropriate committee in the Convention to which it could be referred, and then the parties, if there be two sides to one question, can go before that committee and can then get the proper time after hearing the discussion. One more and just a word, and that is this: We have heard from certain parties in this chamber a number of times about "caucus," as if a caucus was the most awful thing that could be called in this Convention or any other deliberative body. I happen, Mr. President, to belong to a party that believes in freedom of thought, in freedom of discussion, in freedom of speech, and they have no master but the majority, and when a matter of great consideration to the State and to the people of it is up for discussion, they are in the habit of getting together and discussing the matter with each other, and then abiding by the decision of the majority. That is the system upon which our government is founded. Such a party as that will always have a caucus; but a party which permits no political expression, which expresses no independent thought, which is governed by a central power, by an autocrat, have but one duty to perform, and that is to hear and to obey.

Mr. Root — Mr. President, I demand the previous question.

Mr. Roche — Mr. President, on an important rule like this it seems to me to be very unfair to put it through without full opportunity for discussion.

The President — The previous question is only demanded upon your amendment.

The President put the question on ordering the previous question, and it was determined in the affirmative.

The President then put the question on Mr. Roche's amendment to substitute "fifteen" for "twenty-four," and it was determined in the negative.

Mr. Roche — Mr. President, I desire to move an amendment as follows: After the word "therein," in line 6, page 15, insert the words "provided, that when a matter has been considered in Committee of the Whole one day, the Convention may direct that the Committee on Rules may report a rule limiting the time of debate," and so forth. The evident purpose is that the Convention shall not make an order, when a matter has been considered in Committee of the Whole once, directing the committee to fix a time limit.

Mr. Becker — Mr. President, I hope this amendment will not prevail. This amendment brings up in a very large degree the merits of the amendment suggested by the gentleman from New York, and

it goes to the meat of the question as to whether this Convention is going to be run for a long period of time simply at the mercy of every one who desires to express his sentiments upon any question before the Convention, or whether a reasonable time limit for debate may first be fixed, and then that time for debate reasonably apportioned among those in favor of, and opposed to the question under consideration. I do not believe there are any gentlemen in this Convention who should be denominated either by thought or by words as cranks. I believe that the majority of this Convention, no matter what political party they belong to, come here with the express purpose and intention of doing the very best possible thing for the benefit of the people of this State. But, sir, we have here now upon the files of this house, if I am correctly informed, between one hundred and fifty and two hundred proposed amendments to the Constitution of this State. They touch every possible subject. Many of them relate to matters which are purely matters of legislation, and not of constitutional law, and yet every gentleman who has introduced such an amendment here, either upon his own motion or upon the bidding of some organization of which he is a member or with which his party may be connected, either directly or indirectly, will find it his duty to say something in explanation thereof. Why do we have committees? Why not throw every amendment that is introduced here into the body of the house? Why are they sent to committees and hearings ordered upon them, if it is not to boil down these indiscriminate matters and get them into something tangible? If that is a fact, isn't it entirely proper that before the debate shall take effect upon any of these questions, if the Convention shall elect, and I understand that the substitute proposed by the distinguished parliamentarian from Onondaga to provide for that particular method of disposing of a matter, that a resolution be ordered giving the power to the Committee on Rules, on which committee the minority is fairly and, indeed, ably represented, to determine the question of how long a time the Convention shall devote to that subject, the power being reserved to order an extension of that time if it is deemed necessary. I think the majority of this committee, whether it did its work by conservative action or by that concerted opinion and action which marks goodness and intelligence, has done a wise thing in conceding to the minority the rights which they demanded. I believe, upon the question of apportionment, or any other subject of a political character, a nearer approach to a harmonious action which will be ratified by the people of this State will be attained, if the time for debate is limited, than in any other way. I believe on the questions affecting the judiciary, on which

among the legal profession there is a difference of opinion, and an honest difference of opinion, that we will come to some sort of a result if we have a limit to the debate. I believe this is true of every question upon which the committees will report, and which is germane to the matter for which this Convention has been summoned by the people of this State. Believing as I do that the majority has the power and will not hesitate to exercise it in an emergency, after the time limit for debate has expired, to close debate, I hope the amendment offered by Mr. Roche will not prevail, and that the substitute offered by the gentleman from Onondaga will pass without alteration or change.

The President — The question will be on the amendment of Mr. Roche. The Chair understands that Mr. Roche's amendment prohibits the Convention from putting any limit upon the debate upon any proposition until the matter has been considered one legislative day in Committee of the Whole.

The President put the question on Mr. Roche's amendment, and it was determined in the negative.

Mr. McMillan — Mr. President, I move the previous question on the substitute offered by Mr. Alvord.

Mr. E. R. Brown — May I ask a question of the gentleman?

Mr. McMillan — Mr. President, I decline to withdraw the motion under any circumstances.

Mr. Roche — I desire to offer two amendments.

The President — The question is not debatable.

Mr. Roche — I would like the privilege of offering the amendments.

Mr. McMillan — I will withdraw the motion for the purpose of allowing the gentleman to send his amendments to the desk, and for that purpose only, and with the understanding that he will renew the motion.

Mr. Roche — Mr. President, my first amendment is after the words "Committee on Rules," on line eight, insert the words "by a vote of not less than six of its members," and my next amendment is, after the word "consideration," at the end of the rule, insert "and shall not be less than six hours, nor shall any question relating to suffrage, apportionment, judiciary appropriation or corporations be limited to one legislative day if ten members shall demand that such questions shall stand over until the next day."

The President put the question on Mr. Roche's first amendment, and it was determined in the negative.

The President put the question on Mr. Roche's second amendment.

Mr. Roche — Mr. President, the Senate rules, I believe, which are the rules of a much more political body than this body ought to be, provide that the time of debate, when a time limit is reported by the Committee on Rules, shall not be less than six hours. It seems to me that upon the important questions that will come before this Convention for discussion, there should be, if we are to be limited as to the time of debate, some minimum of time fixed below which even the Committee on Rules cannot go and cannot deprive the minority of the members upon any question from having a fair opportunity of being heard; and the second portion of the amendment is to secure, not by the grace of a partisan majority, or by the grace and consideration of the Committee on Rules, but as a matter of right in the rules themselves, full discussion for at least more than one session of the Convention, of what it must be apparent to all the members will be the important subjects before this Convention, namely, those which I have named in this proposed amendment. Now, Mr. President, I do not care to discuss the view taken by Mr. Bowers as to whether more consideration is to be expected from the Committee on Rules, or *vice versa*. He can entertain what opinions he chooses on that subject. It is his privilege. I prefer that the rights of the members here, whether in the majority or minority, and we may be in the majority on several questions one day, and another day in the minority, shall be secured by the rules themselves and not dependent upon the whim or caprice or prejudice of any members of the Convention or upon the good will of the Committee on Rules itself, which upon some questions may be deprived of its power and its willingness to be fair by the pressure which will come behind it from a majority of the Convention upon such questions as may assume a political or partisan character. I think, therefore, Mr. President, in order to secure without question the rights of minorities upon all the questions which may come before this Convention to a full discussion of the important matters which will be reported here, the rule should be amended in the manner suggested.

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

The President — The question is on the substitute offered by Mr. Alvord.

Mr. Blake — Mr. President, I desire to call the attention of the Convention to the words "such notice and motion" in line fifteen of the rule.

Mr. McMillan — I object, Mr. President.

Mr. Blake — It is a correction. It is simply a correction. I cannot find that there is any antecedent to these words. I suppose the rule has been followed from the rule in the manual. I move to strike out the words "notice and."

The President — That will be on the fifth line of page 15.

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

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

The President put the question on the adoption of rule 56 in its amended form, and it was determined in the affirmative.

The President — The question is on the adoption of rule 26, which was suspended the other day until rule 56 was reached and passed upon. The Secretary will read rule 26.

The Secretary read rule 26.

Mr. Johnson — Mr. President, I desire to request of the Convention that the Committee on Cities be excused in order to attend a meeting, which they have called for this hour. I ask that they be excused from further attendance at this morning's session.

The President — If there is no objection, the members of the Committee on Cities will be excused.

Mr. Becker — Mr. President, I move that the Convention now take a recess until three o'clock.

Mr. Root — Mr. President, I hope that won't prevail. Won't you withdraw that for a moment, Mr. Becker?

Mr. Becker — I withdraw it for a moment.

Mr. Root — Mr. President, it is of the utmost importance that the Judiciary Committee should meet this afternoon not later than three o'clock for the purpose of finally disposing of the question in regard to the writ of prohibition which has been referred to them, and if the Convention meets at three o'clock the Judiciary Committee cannot. It seems to me, sir, that the Convention ought to be able to get together at two o'clock. We ought to be able to dispose of these rules in half an hour. I do not believe there is anything else to be debated.

Mr. Becker — I will withdraw my motion.

The President — The question is on the adoption of rule 26, which was passed the other day until rule 56 was considered.

Mr. McClure — Mr. President, I only desire to suggest that in view of the fact that rule 56, as it has been adopted, does not provide for a limit of time being fixed in every case that the words " when fixed " might be placed after the word " time," so that the last words will read " unless the limit of time when fixed has expired."

Mr. Root — Mr. President, it does not seem to be necessary. I do not think that we ought to take up time upon it.

Mr. McClure — Mr. President, I only wish to say, in calling the attention of the Convention to this suggestion that I have made that, inasmuch as the rule now adopted provides that upon certain matters there shall not be any time fixed, that the provision in this rule 26, referring to the limit of time which is to be acted upon, is senseless unless the amendment I propose is made.

The President — Do you object to it, Mr. McClure, as it has been read?

Mr. McClure — No; I will withdraw the amendment.

The President put the question on the adoption of rule 26, and it was determined in the affirmative.

The President — The question is on the adoption of rule 27, which was passed the other day until rule 56 had been disposed of. Has any delegate any objection to the adoption of rule 27 as read? No such objection being made, the President, under the order prescribed, declares rule 27 adopted, and it is so adopted.

The President — The question now is on the adoption of rule 57. Has any delegate any objection to the adoption of rule 57 as read, without amendment? No such objection being made, the President declares rule 57 adopted, and it is so adopted.

The President — The question is on the adoption of rule 58. Does any delegate object to the adoption of rule 58 as read? No such objection being made, the President declares rule 58 adopted, and it is so adopted.

The President — The question is on the adoption of rule 59. Has any delegate any objection to the adoption of rule 59? No such objection being made, the President declares rule 59 adopted, and it so adopted.

The President — The question is on the adoption of rule 60. Does any delegate object to the adoption of rule 60 as read? No

such objection being made, the President declares rule 60 adopted, and it is so adopted.

The President — The question is on the adoption of rule 61.

Mr. Bush — Mr. President, I move an amendment to rule 61, as follows: After the first sentence insert the following: "On the final passage of proposed amendments to the Constitution, the affirmative votes of a majority of all the delegates elected to the Convention shall be necessary." There is nothing in the rules that provides for this question. It seems to me that upon the final passage of a proposed amendment to the Constitution the affirmative vote of a majority of the delegates elected to this Convention should be necessary. In the Legislature it is necessary that a majority of all the members elected to the Legislature vote in favor of a measure in order to pass it. It seems to me that it should also be necessary in this Convention to have a majority of the Convention necessary to pass upon any proposed amendment.

Mr. Root — Mr. President, it seems to me that that is a serious question quite different from any now presented in these rules, and that the gentlemen of the Convention are entitled to have notice of its consideration and an opportunity to speak. I suggest that the consideration of that rule should lie over until a future time.

Mr. Bush — Until when?

Mr. Root — Until some future time, I don't care when. The application of it will not arise for many weeks. I find that there is a good deal of variety of opinion among the members of the Convention on that subject, and it seems to me that there ought to be full opportunity for them to consider the question.

Mr. Bush — Mr. President, I wish to be entirely fair, and it is a subject which requires consideration, and serious consideration, by the members of this Convention. I feel that it is absolutely necessary to make some provision, and in order that the gentlemen may have ample time to discuss it, I suggest that it be made a special order for to-morrow morning.

Mr. Hirschberg — If in order, I ask unanimous consent that Mr. Bush's amendment be referred to the Committee on Rules, to consider and report.

Mr. Roche — To report next Tuesday.

Mr. Hirschberg — I accept that.

Mr. Roche — Mr. Bowers requests that I consent to make it Wednesday.

Mr. Hirschberg — I consent to that.

The President — Unless there is objection to the adoption of rule 61 in its present form——

Mr. Bush (interrupting) — Mr. President, it is an amendment to rule 61 which I proposed.

Mr. Hirschberg — Mr. President, I also offer an amendment to the same rule, and ask that it be referred to the Committee on Rules at the same time. It is to the effect that on the final passage of a proposed amendment to the Constitution any member may call for the ayes and noes.

Mr. Root — There is a provision there now providing for that.

Mr. Roche — Mr. President, it is not necessary, because we fixed that on Tuesday when we adopted rule 37. It was amended so that on the final passage of every constitutional amendment the ayes and noes could be called for.

Mr. Hirschberg — Then I withdraw the amendment.

The President — Unless there is objection Mr. Bush's amendment to rule 61 will be referred to the Committee on Rules to report next Wednesday.

The President — The question is on the adoption of rule 62 as read, without amendment.

Does any delegate object to the adoption of rule 62? If not, the President, under the order prescribed, declares rule 62 adopted as read, without amendment, and it is so adopted.

The President — The question is on the adoption of rule 63.

Mr. Dickey — Mr. President, I desire to inquire for information as to whether this rule fully recognizes the right of the presiding officer to count a quorum when the members are in their seats and refuse to vote? If it does not, I wish to offer an amendment.

Mr. Root — Mr. President, I think it does fully recognize that right. I think it provides that when a quorum is present or, by their presence, in the Convention.

Mr. Dickey — I only wanted to inquire for information so that Speaker Reed might be fully indorsed.

Mr. Riggs — Mr. President, I offer the following amendment: Strike out after the word "conduct" and insert "and any member or members so offending shall be cited before the Committee on Privileges and Elections which, after inquiring, shall report to the Convention for such action as the facts shall seem to warrant."

Mr. President, I am one of those Democrats who spoke and wrote in favor of Speaker Reed when he became the object of so much

attention for his course in Congress. I received the censure of many Democrats for my attitude at that time. However, the rule as it now stands is Tom Reedism run mad, and I am surprised that any men calling themselves Democrats should allow a unanimous report from the Committee on Rules on such a rule as this. This rule will degrade this Convention to the level of a New York bar-room where a "bouncer" is kept. If a customer does not behave the bar-keeper points his finger at him and the bouncer proceeds to "bounce" him. So, in this Convention under this rule, if a member shall, for any reason, decline to vote, the President may point his finger at him, and the Sergeant-at-Arms may at once eject him from the floor without the slightest inquiry into his reasons for so declining.

Now I want to know if that is consistent with the dignity of this Convention. I don't object to the ordinary treatment of any member, who shall so misconduct himself as to make an assault upon another member, being removed; but in the case of a member who refuses to vote, the rules are unfair. I hope, Mr. President, that this matter will not be allowed to stand as it is now. It is the rule of the "Donnybrook fair," a word and a blow, and the blow comes first. I think a man offending in the way of refusing to vote before he is banished should at least be heard, and the Committee on Privileges and Elections seems to be the proper place to refer such an offense.

Mr. Root — Mr. President, I think that is reasonable.

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

Mr. McClure — I move, Mr. President, after the word "Convention," in the second line of the rule, there may be added these words, "the measure upon which less than a quorum has voted shall be declared lost." The reason for that, Mr. President, is emphasized by something that transpired here on Tuesday, when the Chair announced the total vote taken upon a measure having less than a quorum. The measure received only eighty-two or eighty-three votes, a quorum being eighty-six. Now, no measure upon which less than a quorum has voted should be declared passed by this Convention. It seems to be the ordinary parliamentary rule that whenever the Chair announces a vote, the aggregate of which forms less than a quorum of the body, and according to my friend, Mr. Reed, ex-Speaker of the House of Representatives, whose manual I fortunately have in my hand, that when it appears by the announcement of the vote that less than a quorum voted, there remains nothing for the house to do but to adjourn, unless a call of the house is ordered. Now, it is not necessary to argue that on the vote of fifty members

an important matter might be declared passed. Therefore, I ask that the amendment prevail.

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

Mr. McClure — Oh, that is too partisan on a question like this.

The President — The question is, shall the main question now be put?

Mr. Meyenborg — I ask that the vote be taken by ayes and nays.

Mr. Cassidy — I will withdraw the motion.

Mr. Bush — Mr. President, the amendment of the gentleman from New York is, in my opinion, entirely unnecessary. No presiding officer can declare an amendment carried when less than a quorum has voted. It is the duty of the Chair to declare the amendment lost.

Mr. McClure — That is a reflection upon the President of this body which I, although I did not help to elect him, would not make, because the Chair on Tuesday did declare a measure carried upon which less than a quorum voted.

The President — And no member appealed from the decision of the Chair.

Mr. McClure — One member called the attention of the Chair to the fact.

Mr. Root — Mr. President, I think the amendment of Mr. McClure wholly unnecessary, and I hope the rule will be adopted as it is, with Mr. Riggs's amendment.

The President put the question on Mr. McClure's amendment, and it was determined in the negative.

The President then put the question on the adoption of rule 63, as amended, and it was determined in the affirmative.

The President — The question now is on the adoption of rule 64. Does any delegate object to the adoption of rule 64 as read, without amendment? No such objection being made the Chair declares rule 64 adopted, and it is so adopted.

The President — The question is on the adoption of rule 65. Does any delegate object to the adoption of rule 65 as read, without amendment? No such objection being made the President declares rule 65 adopted, and it is so adopted.

The President — The question is on the adoption of rule 66. Does

any delegate object to the adoption of rule 66 as read, without amendment? If not the President declares rule 66 adopted, and it is so adopted.

The President — The question is on the adoption of rule 67. Does any delegate object to the adoption of rule 67 as read, without amendment? If not the President declares rule 67 adopted, and it is so adopted.

The President — The question is on the adoption of rule 68. Does any gentleman object to the adoption of rule 68 as read, without amendment? If not the President declares rule 68 adopted, and it is so adopted.

The President — The question is on the adoption of rule 69. Does any delegate object to the adoption of rule 69 as read, without amendment? If not the President declares rule 69 adopted, and it is so adopted.

The President — The question is on the adoption of rule 70.

Mr. Becker offered the following amendment:

Add at the end of rule 70 "the Printing Committee may, in its discretion, order to be printed, upon such price and terms as may be agreed upon by such committee, a sufficient number of copies of such Journal and such reports, to supply each newspaper, except monthly papers and trade papers, in the State with one copy thereof, and may cause the same to be sent by mail to such newspapers.

Mr. Roche — Mr. President, is it the intent of this proposed amendment to allow the Printing Committee to make an independent contract? As I understand it, there is now in existence a contract for printing the reports and proceedings of this Convention, and it is a contract made by certain State officers in pursuance of law. The wording of this amendment would seem to enable the Printing Committee to go outside and make a contract for printing the same documents which are already contracted for.

The President — The Chair so understands it. I do not know whether Mr. Becker intends it so or not.

Mr. Becker — Mr. President, I desire to say a few words in explanation of this resolution. I know the hour is late, but it is quite an important matter. Perhaps we can dispose of it in such a way as to be entirely satisfactory and not take much time. I find that there are in this State, on reference to the tables in Rowell's Newspaper Directory, outside of the journals which I have denominated as trade journals and monthlies, fourteen hundred and ten papers to which this resolution would apply. As the Convention meets four

days in the week, and has four sessions, it would only require four sets, and inasmuch as this matter is already set up, it is only a matter of so many more turns of the press and so much more paper and ink to print the necessary number of copies. It is entirely probable that arrangements can be made with the post-office authorities so that it can be entered as second-class matter and sent out at a very small cost, and even under the prevailing rates, if not sent as second-class matter, the expense would be one cent for four ounces. So the expense of this whole matter, assuming that this Convention does not sit much longer than the limits fixed by the statute, namely, about the fifteenth of September, would not be very great. The reasons that I ask that this resolution be adopted are also few in number and can be simply expressed. While the Associated Press gives us admirable reports and the United Press as well, of course they only send out the matter of this Convention in very brief form. Now, the success or failure of the work of this Convention depends very largely upon the educational work that can be done in reference to it. The time in which that work can be done after the results of the labors of the Convention is in shape will be very limited. The press throughout the State which does not take the Associated Press or United Press Dispatches, obtains its information mostly from the great journals of the State. It is very necessary that they have something showing exactly what action was taken upon any particular question, and showing what particular questions from time to time have come before the Convention, so they can understand it and take an interest in it, and write their editorials on it and be ready when the time comes to correct any misconceptions that may go forth on any matters. I am informed by the gentleman having the contract in charge that under the present terms of that contract, which call for ten pages for one cent to be printed, the expense for printing would be very small indeed, and they have even gone so far as to say to this committee that if this resolution is adopted they will use their force of mailing clerks, which is a considerable trouble, for the purpose of putting these documents in wrappers and sending them as the committee may direct.

It does not direct the Printing Committee to do this. It says in their discretion, if, upon inquiry, it is desirable to do so, and the expense is not too much. Therefore, I say if any gentleman is satisfied that this resolution ought to pass, I move that it be referred to the Committee on Rules, with a request to report on the first legislative day of next week. If any gentleman objects, I will withdraw this as an amendment to the rule and ask unanimous consent to

submit it as to a separate proposition to be referred to the Printing Committee, with directions to report on the first legislative day of next week.

Mr. Roche — On Wednesday, I would suggest, when the Committee on Rules reports.

Mr. Becker — Well, on Wednesday. However, Mr. President, as some of the gentlemen seem to object to it, I will withdraw it and give notice that I will bring it up in another form at the first opportunity.

The President put the question on the adoption of rule 70, and it was adopted.

The President put the question on the adoption of rule 71.

Mr. Roche — I move to amend by inserting after the word "printed" in the second line the words "and five hundred copies of the debates of the Convention." It seems that these debates are now being printed and put upon the members' desks and the object of my amendment is to secure the number of five hundred bound for the use of the members and these libraries.

Mr. Root — Mr. President, I do not think we ought to undertake to embalm our imperishable eloquence in all the libraries of the State at public expense.

Mr. Roche — Mr. Root, may I ask why they are being printed now if you do not propose to embalm them.

Mr. Root — They are being printed because the administration which was in power prior to the 1st of January, 1894, chose to make a contract for it.

Mr. Roche — It seems that the administration which was in power in 1867 and 1868, and which represented the political party to which my friend belongs, chose to make a contract for doing the very thing which this last administration, to which he refers, has done, and that the Convention in 1867 and 1868, which was Republican by a majority of its members, did have its debates in the form in which they are now being printed, and did cause them to be bound for the use of the Convention and for deposit in State libraries and other institutions. I desire to say, Mr. President, it seems to me that it is a matter which will address itself to every lawyer. The debates ought to be printed. They ought to be deposited in the library of the Court of Appeals and the law libraries of the different judicial departments of the State, with the county clerks and in the Senate and Assembly libraries, and for this reason: Questions often arise in the courts as to the intent or meaning of propositions, as

to the meaning of sentences, as to the meaning of provisions in the Constitution, and every lawyer knows that it a common thing for the courts to refer to the proceedings and debates on the adoption of such provisions for the purpose of ascertaining what was the object which the Convention had in mind in framing and adopting them. It is done in the courts throughout the land, and very often the courts have decided questions after reference to the proceedings and debates of the Convention, after ascertaining what was in the minds of the Convention and what was the purpose and the object of the amendment. It is for the benefit of the members and the people at large and for the enlightenment of the courts, and it is only fair that these proceedings which are being printed should be bound for the benefit of the Convention and the people, and for deposit in the State libraries and other institutions.

Mr. Durfee — Mr. President, the Committee on Printing have to-day submitted for the consideration of this Convention certain facts in regard to the printing which is being done, and which may be done under the existing contract. I apprehend that it will appear, Mr. President, when this matter comes to be considered by the members of the Convention that the publication of the debates of this body will entail a very large expense and I presume that the question will present itself to the minds of the delegates whether or not the object to be attained will warrant the expense which will be incurred in such publication. To forestall, as the adoption of this proposed amendment would, the consideration of that question, upon information which we shall derive from the report made this morning by the Committee on Printing, when it shall be placed upon our files, seems to me to be extremely unwise. This matter, if it is thought desirable subsequently, should be brought up as an independent proposition so that it may receive careful consideration upon a full understanding of the proposition on the part of all. It should not now be incorporated in the rules, and so lead to future embarrassment, which, I apprehend, will arise. I hope, Mr. President, that this amendment will not prevail.

Mr. Roche — Mr. President, if there is no objection, I will withdraw it and ask that rule 71 be referred back to the Committee on Rules for further consideration, and that the committee be directed to report thereon on Wednesday next.

Mr. Acker — I object.

The President — Mr. Roche's motion is out of order. Do you withdraw your amendment?

Mr. Roche — No, sir.

Mr. Bowers — Mr. President, what is the objection? I move that this amendment of Mr. Roche's be referred to the committee. It seems to me that it does not require unanimous consent.

Mr. Root — Why cannot Mr. Roche make it a resolution and have it referred to the Committee on Printing? The idea of the Committee on Rules was that this rule does not preclude the Convention from taking such further action as it may see fit. It merely fixes the number of these particular documents which shall be bound.

Mr. Roche — I will adopt the suggestion of Mr. Root and will bring the matter up in another form.

Mr. McMillan — I desire to offer an amendment that the word "five" at the beginning of the rule be changed to "six." I do this upon the suggestion of the State librarian that they are not able to procure similar documents from other States, except by the way of exchange. In view of the suggestion of the State librarian I move that the figure "five" be changed to "six" in both places.

Mr. Root — I accept that.

The President put the question on the adoption of Mr. McMillan's amendment, and it was determined in the affirmative.

The President put the question on the adoption of rule 71, and it was determined in the affirmative.

Mr. McClure offered a resolution providing that before the rules are finally adopted as a whole they should be reprinted as amended.

Mr. McClure — The object of this resolution is that these rules have been so generously amended, and the rules may be so mixed up that we ought to have them upon our files as a whole before they are finally adopted.

The President — The Chair rules the latter part of Mr. McClure's resolution out of order, inasmuch as all the rules previous to rule 71 have been finally adopted under a former order of the Convention.

Mr. Becker — I desire to offer an amendment by adding an additional rule as follows, as the matter which it affects has not been covered by the rules or by statute. It is in reference to the officers of the Convention:

Rule 72. The officers of the Convention appointed by the President shall perform such duties as he may prescribe, and for any breach of duty any such officer may be removed and his successor appointed by the President. The officers of the Convention

appointed by the Secretary shall perform such duties as he may prescribe, and for any breach of duty any such officers may be removed and his successor be appointed by the Secretary.

Mr. Root — That seems to be a very proper rule.

The President put the question on the adoption of rule 72, and it was determined in the affirmative.

The President — The Chair will ask the gentlemen to remain in their seats until the motion to adjourn or take a recess is put, as the rules so require. The Secretary has some announcements.

The Secretary read the following announcement: There will be a hearing in general session of the Committees on Education, Charities, Legislative Powers and Taxation on Wednesday and Thursday, June sixth and seventh, at 2.30 P. M., in the Assembly chamber, on the proposed amendments prohibiting the payment of public money to institutions wholly or partly under sectarian control.

The Committee on State Finances and Taxation will meet at half past three o'clock.

The Committee on Judiciary will meet at three o'clock in the Senate library.

On account of conflicting committee meetings the Committee on Education will not meet to-day, but will meet on Tuesday, June fifth, at three o'clock.

Mr. Vedder — In order that the announcement I made under motions and resolutions will not be forgotten, I desire to announce again that the Committee on Legislative Powers will meet to-day at three o'clock.

Mr. Cookinham — I move that the Convention do now adjourn.

The President put the question on the motion to adjourn, and it was determined in the affirmative. Whereupon, the Convention adjourned to meet to-morrow morning at ten o'clock.

Friday, June 1, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber at the Capitol, Albany, N. Y., June 1, 1894.

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

The Rev. A. Kennedy Duff offered prayer.

The President — The Secretary will read the Journal of yesterday.

The Assistant Secretary read the Journal of Thursday, May 31, 1894.

The President — Unless some amendments are offered the Journal, as read, will stand approved. Has any delegate any amendments to offer? If not, the Journal is approved as read.

The first business in order will be the presentation of memorials, petitions and remonstrances.

Mr. Whitmyer presented the petition of Miss E. D. Bradley and 2,292 others, of Richmond county, praying that the word "male" be stricken from the Constitution, signed by 1,537 women and by 755 men. Vote of Richmond county in 1893, 9,648.

Referred to the Committee on Suffrage.

Mr. T. W. Fitzgerald presented the petition of Rev. W. G. Thrall, Mr. J. W. Furnside and 2,036 others, of Schenectady county; women 1,281, men 755. Vote of Schenectady county in 1893, 7,108.

Referred to the Committee on Suffrage.

Mr. Root — Mr. President, I present a memorial and petition of many women of the city of New York against striking out the word "male" from the Constitution. I do not know how many, for I have not counted them, but many thousand, and for their superior beauty, intelligence and virtue I am ready to do battle against all comers. (Laughter.)

The petition referred to by Mr. Root was a protest from Mrs. G. White Field, Mrs. Clarence E. Beebe, Mrs. Robert Chapin and several thousand other ladies of New York city against striking the word "male" from the Constitution.

The protest was accompanied by a statement of just what they have undertaken to do, and of the reasons why they have deemed it necessary to take any action, made by the executive committee, consisting of Mrs. Francis M. Scott, chairman; Mrs. Clarence E. Beebe, Mrs. David H. Greer, Miss Elinor G. Hewitt, Miss Florence Lockwood, Mrs. A. M. Dodge, Mrs. George White Field and Mrs. Richard Watson Gilder, who have had charge of this protest.

Referred to the Committee on Suffrage.

Mr. Moore presented a petition of the Woman's Christian Temperance Union of Clinton county, praying for full enfranchisement of women, signed by several hundred women and also several hundred men.

Referred to the Committee on Suffrage.

Also, the petition of the Women's Christian Temperance Union of Clinton county, praying for an amendment to the Constitution prohibiting traffic in intoxicating liquors.

Referred to the Committee on Legislative Powers and Duties.

Mr. McArthur presented a petition of several citizens of Warren county, requesting the constitutional prohibition of the manufacture and sale of intoxicating liquors.

Referred to the Committee on Legislative Powers and Duties.

Mr. Davenport presented the petition of Mrs. Clara Hillsinger and 752 others, of Delaware county, praying that the word "male" be stricken from the Constitution, signed by 474 women and 278 men. The vote in Delaware county in 1893 was 10,152.

Referred to the Committee on Suffrage.

Mr. Countryman presented the petition of Sarah I. C. Hitt and 5,681 others, of Albany county, signed by 2,901 women and 2,780 men. Vote of Albany county in 1893 was 36,662.

Referred to the Committee on Suffrage.

The President — The next order of business is notices, motions and resolutions by districts numerically. The Secretary will call the roll of districts.

The Secretary called the districts.

Mr. Hill — Mr. President, I offer the following resolution:

The Secretary read the resolution, as follows:

R. 46.— Resolved, That the Committee on Contingent Expenses be requested to take into consideration and report upon the question of compensation of the stenographer of the Convention for his attendance and the taking of stenographic notes of debates and proceedings of the Convention, and for the performance of such other duties as are prescribed by the rules of this Convention.

Referred to the Committee on Contingent Expenses.

Mr. Becker — Mr. President, I desire now to call up the resolution I offered May twenty-fourth and renewed yesterday, in regard to sending copies of the Journal to the newspapers of the State, and move that it be now read.

The President — The Secretary will read the resolution.

The Secretary read the resolution (No. 30):

Resolved, That the Committee on Rules ascertain and report on the first legislative day of next week the propriety of furnishing a daily report of the proceedings of this Convention to each of the newspapers published in this State, and the estimated expense thereof.

Mr. Roche offered the following amendment:

Add at the end thereof: "And that the committee also report as to the cost of printing and binding five hundred copies of the debates

of the Convention, to be distributed in the manner and to the persons named in rule 71."

The President — Does Mr. Becker accept that amendment?

Mr. Becker — I do.

Mr. Becker moved to amend the resolution by striking out the word "rules" and inserting in lieu thereof the word "printing."

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

Mr. Hamlin — I would like to inquire when the Committee on Printing is required to report?

The President — The Secretary suggests Tuesday.

Mr. Hamlin — I would suggest that it is not practicable for the committee to report on Tuesday. We will not be able to consider the matter before that day. I, therefore, suggest that we should be given one more day.

Mr. Becker — I suggest that the resolution does provide for it.

The President — The Secretary will read the resolution as amended.

The Secretary read the resolution as follows:

"Resolved, That the Committee on Printing ascertain and report on the second legislative day of next week the propriety of furnishing a daily report of the proceedings of this Convention to each of the daily newspapers printed in this State, and the estimated expense thereof, and that the committee also report as to printing and binding five hundred copies of the debates of the Convention, to be distributed in the manner and to the persons named in rule 71."

Mr. E. R. Brown — Mr. President, I think this matter ought to go to a committee. Is this on the question of referring to a committee?

The President — The question is on referring to the Committee on Printing for report.

The President put the question on the adoption of the resolution, and it was determined in the affirmative.

Mr. Hottenroth — Mr. President, could I inquire when we will receive the information that the Compiler has prepared as to what the manual shall contain, which was promised to the Convention the other day?

The President — The chairman of the Committee on Printing reported yesterday that the volume would not be ready for two or three weeks.

Mr. Kerwin — Do I understand from the chairman of the Printing Committee that that report did bear this information we were after, but that the book itself would not be ready for three weeks?

Mr. Hamlin — That was a table of contents I offered yesterday, which was ordered printed and placed on the members' desks. I am informed by the Compiler that the book will not be ready for three weeks.

Mr. Kerwin — As I understand it now, the table of contents will be printed and put upon our desks?

Mr. Hamlin — Yes, sir.

Mr. J. I. Green — Mr. President, I notice in the printed overture the one number, 75, introduced by me, there is a wrong word used. In the tenth line the word "presiding" should be "prosecuting," and I ask that the correction be made.

The President — Mr. J. I. Green calls attention to an error in the printed copy of proposed constitutional amendment number 75. If there are no objections the correction will be ordered.

The President — The next order of business is the presentation of proposed amendments to the Constitution. The Secretary will call the roll by districts.

The Secretary called the roll by districts.

O. 133.— Mr. E. R. Brown offered a proposed amendment to section 7 of article 1 of the Constitution, so as to include therein the right to take private property for the drainage of low lands.

Referred to the Committee on Preamble.

O. 134.— Mr. Abbott offered a proposed amendment to article 4 of the Constitution, adding a new section creating a counsel of revision to revise legislative bills, and so forth.

Referred to the Committee on the Governor and Other State Officers.

Mr. Abbott — Mr. President, at the suggestion of Mr. Roche, I would ask that the amendment also go to the Committee on Powers and Duties of the Legislature.

The President — Unless there is objection, it will be so referred.

O. 135.— Mr. Abbott also offered a proposed amendment to section 5 of article 4 of the Constitution, relating to pardoning power of the Governor.

Referred to the Committee on the Governor and Other State Officers.

O. 136.— Mr. McIntyre offered a proposed amendment to sec-

tion 7 of article 8 of the Constitution, in relation to liabilities of stockholders and directors of corporations.

Referred to the Committee on Corporations.

O. 137.— Mr. Kellogg offered a proposed amendment to article 6 of the Constitution, relating to the powers of justices of the Supreme Court in certain cases.

Referred to the Judiciary Committee.

O. 138.— Mr. Nichols offered a proposed amendment to section 3 of article 2 of the Constitution, in regard to absent electors in the military or naval service of the United States.

Referred to the Committee on Suffrage.

O. 139.— Mr. Turner offered a proposed amendment to the Constitution relating to home rule for cities.

Referred to the Committee on Cities.

O. 140.— Mr. Porter offered a proposed amendment to article 10 of the Constitution, relative to the qualifications of coroners and deputy coroners, requiring that they be regular graduates of medicine.

Referred to the Committee on County, Town and Village Officers.

Mr. C. B. McLaughlin — Mr. President, I am directed by the Committee on County, Town and Village Government to report back for the consideration of the Convention proposed constitutional amendment number 49, amending article 3 of the Constitution, relating to public officers, with the recommendation that it be sent to the Committee on Legislative Powers and Duties. It seems proper, considering the subject-matter of the proposed amendment, that it should go to that committee, and I move that it be sent to the Committee on Legislative Powers and Duties, and to discharge the Committee on County, Town and Village Government from the further consideration thereof.

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

Mr. Lyon presented the following report from the Committee on Contingent Expenses:

The President — The Secretary will read the report.

" The Committee on Contingent Expenses, to which was referred the communication of Mr. J. S. Saunders, Postmaster of the Convention, regarding the appointment of an Assistant Postmaster, would respectfully report:

" That the acts providing for the Convention to revise and amend

the Constitution provide for the appointment of a Postmaster, but contains no provision authorizing the appointment of a separate official, to be known as an Assistant Postmaster.

"The committee, after investigation, believes that any needed assistance in the post-office department can be obtained from among the ten messengers in the service of the Convention, as is at present being done, and still leave the messenger service at least amply sufficient for all the needs of the Convention.

"Under rule 72, the President of the Convention has the power to detail one or more messengers to render such assistance as may be necessary.

"The committee, therefore, reports adversely upon the application for the appointment of an Assistant Postmaster."

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

Also, the Committee on Contingent Expenses, to which was referred the resolution directing the Secretary of this Convention to have notices of committee meetings posted upon a bulletin board, and to have some person in charge to give necessary information in regard thereto as is desired by members and others, at an expense of $300 for the session, would report:

"That the acts creating the Convention do not seem to contemplate the employment of a separate person to render the service mentioned.

"That if, in the opinion of the Convention, it is desirable that notices of committee meetings be bulletined, in addition to being read from the Secretary's desk, the President, under authority given him by rule 72, may direct the Janitor or Assistant Janitor, one of the messengers or other employe of the Convention, to post the notices so prepared by the Secretary, without additional charge.

"The committee, therefore, reports adversely upon the resolution for the appointment of an additional person to post notices and give information at an additional expense to the Convention of $300, and recommends that the President of the Convention designate an employe or permit some other person to perform such service, if desirable, but without any charge whatever for the services so performed."

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

Mr. Hirschberg — Mr. President, the Committee on Privileges and Elections yesterday heard arguments from the respective coun-

sel in the two contests from Buffalo. The testimony has been taken in those cases, and it forms a very bulky volume of upwards of two thousand pages. It has been customary in legislative contests to have such testimony printed. The arguments yesterday contained the gist of the testimony and the claims of the different counsel of what that testimony disclosed, and I would move that the Committee on Printing be authorized to have a sufficient number of copies of the arguments printed and distributed among the members.

The President — To designate the usual number?

Mr. Hirschberg — Five hundred copies; that is one-half of the usual number. I desire to give notice of it to-day, as I will call it up on Tuesday.

Mr. Kerwin — I would like to ask Mr. Hirschberg if it is the intention to have the testimony taken by the committee printed?

Mr. Hirschberg — No; it will not be printed. The committee has five copies of testimony in typewritten form, and it can be referred to if necessary.

Mr. Hamlin — Mr. President, the Committee on Printing expected to have their report on the general subject of printing ready this morning. It has been delayed, but will be ready in a few minutes. I would like to move that it be printed and laid on the table.

The President — Mr. Hamlin, from the Committee on Printing, asks leave to present a report on the general subject of printing, and that it be laid on the table and printed for the general information of the members before it is taken up for consideration.

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

Mr. Root — Mr. President, I submit the report of the Judiciary Committee on the question referred to it in respect to the writ of prohibition issued out of the Supreme Court, and restraining the Convention or purporting to restrain the Convention from further action in the matter of the contested seat of Herman F. Trapper.

The President — The Convention will understand that it is necessary that this shall be acted upon to-day, as the writ of prohibition is returnable to-morrow, and unless other direction is given, the report, which is in print and ready for distribution among the members, will be read by the Secretary.

Mr. Root — Mr. President, if you will direct the Sergeant-at-Arms to take possession of these copies and distribute them among the members, it will facilitate matters.

The President — The Sergeant-at-Arms will take charge of tne distribution of the copies.

The President — The Secretary will proceed with the reading of the report.

The Secretary read the report of the committee:

REPORT OF THE COMMITTEE ON JUDICIARY.

To the Convention:

The Committee on Judiciary return herewith the writ of prohibition issued out of the Supreme Court commanding the Convention "to desist and refrain from any further proceedings in the matter of proving, examining, investigating, deciding or judging upon the qualification or election of Herman F. Trapper, or abridging or intermeddling with the rights or privileges of said Herman F. Trapper as a member of said Convention or as a delegate of said Convention" and reports thereon:

The Convention has been created by the direct action of the People and has been by them vested with the power and charged with the duty to revise and amend the organic law of the State.

The function with which it is thus charged is a part of the highest and most solemn act of popular sovereignty and in its performance the Convention has and can have no superior but the People themselves.

No court or legislative or executive officer has authority to interfere with the exercise of the powers or the performance of the duties which the People have enjoined upon this, their immediate agent.

The Convention has been expressly authorized by the existing Constitution and the vote of the People to revise and amend the Constitution. It has also, by necessary implication, been endowed by the same Constitution and vote, with all the powers essential to the exercise of the powers expressly conferred.

Among the powers so conferred by necessary implication, are some of a judicial nature affecting the organization and existence of the Convention itself. Among these are the powers to discipline its members, to repress disorder, to try, condemn and punish persons who disobey its process, and to judge of the qualifications and elections of its members.

These powers are not included among those conferred upon the judiciary in the general distribution of powers to the three great departments, for the purposes of the ordinary government of the State under the Constitution.

They are deemed to be inherent to the legislative bodies which emanate directly from the People, because necessary to their independence and effective action. They are conferred upon every such body by the simple act of its creation and without the necessity of an express grant.

This was the common law of England and of the Colony of New York on the 19th of April, 1775. It has always been the law of this State and universally throughout the United States.

A Constitutional Convention is a legislative body of the highest order. It proceeds by legislative methods. Its acts are legislative acts. Its function is not to execute or interpret laws, but to make them. That the consent of the general body of electors may be necessary to give effect to the ordinances of the Convention, no more changes their legislative character, than the requirement of the Governor's consent changes the nature of the action of the Senate and Assembly.

It is far more important that a Constitutional Convention should possess these safeguards of its independence than it is for an ordinary Legislature; because the Convention's acts are of a more momentous and lasting consequence and because it has to pass upon the power, emoluments and the very existence of the judicial and legislative officers who might otherwise interfere with it. The Convention furnishes the only way by which the people can exercise their will, in respect of these officers, and their control over the Convention would be wholly incompatible with the free exercise of that will.

That the Constitutional Conventions of this State do possess among these inherent powers the power to judge of the qualifications and elections, of their members, has been expressly declared by high judicial authority and by the Legislatures of 1866, 1893 and 1894. It is in accordance with all approved text writers, and with the general usage of other States. We know of no authority whatever to the contrary. It is a necessary conclusion from the underlying principles upon which our government rests.

Our conclusion is,

That the people of this State have conferred upon the Convention the exclusive authority and have charged upon it the duty, to judge of the qualifications and election of Herman F. Trapper.

That the members of the Convention, by accepting the office, and by their oaths of office, have bound themselves to perform the duty, of passing upon the election of Mr. Trapper; and no

other course is open to them, but to proceed with the performance thereof.

We report herewith, for the information of the Convention, a full statement of the law prepared by a sub-committee, and adopted by this committee.

Believing that the writ of prohibition heretofore issued ex parte, is the result of a misapprehension, we recommend that the views of the Convention, as embodied in the foregoing report, be transmitted by the Secretary of the Convention, to the Supreme Court, with a respectful remonstrance against its entertaining jurisdiction.

ELIHU ROOT,
Chairman.

The Secretary commenced the reading of the report of the sub-committee.

Mr. Hawley — Mr. President, I move that the reading of the report of the sub-committee be dispensed with.

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

The President — This report having been received without objection, the question before the Convention is upon its adoption.

Mr. Root — Mr. President, I move the following resolution:

R. 48.— Resolved, That the report of the Committee on Judiciary be and the same is hereby adopted, and that the views of the Convention as embodied in the said report be transmitted by the Secretary of the Convention to the Supreme Court, with a respectful remonstrance against its entertaining jurisdiction.

The President — Mr. Root will please send his resolution to the desk in writing.

Mr. Forbes — Mr. President, we have not had this report distributed on all of the desks and, therefore, cannot intelligently vote upon it.

Mr. Root — I should say, Mr. President, perhaps, that the printer promised to have two hundred copies of the report here before this time. I understand that he sent only a portion of the copies, and that the others are on the way here.

Mr. Platzek — Mr. President, I move a reconsideration of the vote by which the reading of the report of the sub-committee was dispensed with, and to have it read, and then, I believe, we would be in a position to act.

The President put the question on the motion to reconsider, and it was determined in the negative. Ayes 42, noes 55.

The President — The question is on the adoption of Mr. Root's resolution.

Mr. Becker — Mr. President, I hope that the motion which was last voted down will be reconsidered.

How could you ask these gentlemen to vote upon this report intelligently until they have an opportunity to hear it?

Mr. Hawley — Mr. President, the report has been read in full; the report of the committee.

The President — The report of the sub-committee, which states the view of the law, adopted by the full committee, has not been read.

Mr. Root — Mr. President, I think the subject is too grave for the Convention to pass upon it without full information. I regret very much that the printer has not furnished us sufficient copies for all the gentlemen. I hope they will be here in a few minutes, and if the gentlemen do not wish to hear the report of the sub-committee read, consideration should be deferred until the rest of the copies arrive. I suppose that, unless there is some other business of importance before the Convention, that the time might be occupied in listening to the report of the sub-committee. That report was adopted by the Judiciary Committee without a dissenting voice, and is a very instructive and full statement of the principles and the law regarding bodies of this character, and exhibits the learning and ability for which Mr. Marshall is so justly distinguished. Unless there is special reason for devoting the time of the Convention to other business, I think, until these other reports are received, the Convention will be pleased to listen to the reading of the report of the sub-committee.

Mr. Hirschberg — Mr. President, almost every member present has a printed copy of this report. I would suggest, since this motion has been voted down, that Mr. Marshall, who prepared the report, state the general features of the report, and the argument which is to be presented to the court.

Mr. C. H. Truax — Mr. President, I want to say a few words upon Mr. Root's resolution, and before I say those words I would like to have the Secretary read the report of the sub-committee to be found on page 4 of Document 5.

The President — This requires unanimous consent. The Chair is guided by rule 48, which provides that no motion shall be reconsidered a second time.

Mr. Marks — Mr. President, I move that the consideration and adoption of this report be laid over until twelve o'clock. That will give an opportunity for the other printed copies to be brought in, and give the members an opportunity to read the report in the meantime. Others who have read can loan their copies to members who have not. I think we can take it up at twelve o'clock and get through in a very short time.

Mr. Vedder — Mr. President, I would follow the suggestion of the gentleman from Orange (Mr. Hirschberg) that Mr. Marshall or Mr. Truax may, in explaining this matter to the Convention, read the whole of the sub-committee's report to the Convention.

Mr. C. H. Truax — I ask that the Clerk read, as a part of my argument, the report of the sub-committee. I will read it myself if the Convention wish.

Objection was made to the Secretary reading the report.

Mr. Bowers — Is there any objection made to the Secretary reading the report? We could hear it better.

The President — Objection was made by a delegate.

Mr. Truax thereupon proceeded to read the report of the sub-committee, as follows:

REPORT OF THE SUB-COMMITTEE ADOPTED AND REPORTED BY THE JUDICIARY COMMITTEE.

To the Committee on Judiciary:

A question of high privilege is presented for the consideration of the Convention. Herman F. Trapper, who claims to be a duly elected member of this Convention, has applied to the Supreme Court for a writ of prohibition whereby he seeks to restrain this body from taking any further action touching his rights to a seat in the Convention, and to require it "to refrain from any acts interfering with or in any manner abridging the rights of the petitioner as a member of the said Convention, so long as the petitioner shall comply with the rules and regulations adopted for the government of the said Convention." He denies the jurisdiction of this body to determine the contest, which is now pending, with respect to his right to a seat in the Convention, on the ground that such determination involves a judicial act, and that the Supreme Court alone possesses the jurisdiction to decide all controversies relative to the elections, returns and qualifications of members of the Constitutional Convention.

The remedy to which resort has been taken to restrain the Con-

vention from its contemplated action is a writ of prohibition, issued out of the Supreme Court. The issuance of this writ involves the assertion by the tribunal whence it emanates, that the body to whom it is directed is an inferior tribunal, usurping powers which it does not possess, and encroaching upon a jurisdiction beyond its purview. (Quimbo Appo v. People, 20 N. Y., 531; Thompson v. Tracy, 60 N. Y., 31.)

The logical conclusion from this definition must be, that in order to warrant judicial interference in the pending juncture, it must be determined, first, that the Constitutional Convention is inferior to the Supreme Court, and, secondly, that it has no jurisdiction to pass upon the qualifications and elections of its members.

We proceed to the consideration of these questions. Prior to the adoption of the Constitution of 1846, the organic law of this State contained no provision for a Constitutional Convention, although such conventions were ordered by the people pursuant to recommendations of the Legislature, and held in 1801, 1821 and 1846.

Article 13, section 2, of the present Constitution, provides:

"At any general election to be held in the year 1866 and in each twentieth year thereafter, and also at such time as the Legislature may by law provide, the question, 'Shall there be a Convention to revise the Constitution and amend the same?' shall be decided by the electors qualified to vote for members of the Legislature, and in case a majority of the electors so qualified, voting at such election, shall decide in favor of a Convention for such purpose, the Legislature, at its next session, shall provide by law for the election of delegates to such Convention."

The Constitutional Convention is thus one of the recognized elements of our constitutional government. Whenever the people shall determine that such Convention is to be held the duty is devolved upon the Legislature to provide by law for the election of delegates to the Convention. The voice of the people calls the Convention into being. Their mandate is the warrant by which the Convention acts. The power of the people to revise and amend their Constitution is exercised by them in the Convention created by their fiat, through the delegates elected by them.

Under the present Constitution changes in the organic law can be originated in but one of two methods. Either by means of a Constitutional Convention called into existence by the people, or by the action of the majority of the members elected to a Senate and Assembly, subsequently referred to another Legislature to be chosen at the next general election to Senators, and agreed to by a majority of all

the members elected to each house. Should two Senates and two Assemblies fail to concur in any proposed amendment to the Constitution, no change can be wrought except in the manner provided by article 13, section 2.

It is of the greatest importance that a body chosen by the people of this State to revise the organic law of the State, should be as free from interference from the several departments of government as the legislative, executive and judiciary are, from interference by each other. Unless this were so, the will of the people might easily be nullified by the existing judiciary or Legislature.

Should the latter attempt to enact a law prohibiting the Constitutional Convention from restricting the existing powers of the Legislature, the act would be at once recognized as an unwarranted invasion of the rights of the people. How does the action of a court which seeks to restrain the Convention in the transaction of its business, differ from the case supposed? It might happen, as it has frequently occurred, in other public assemblies, that the members elected to the Constitutional Convention were so narrowly divided in sentiment, that upon a single vote might depend the passage or defeat of a measure abolishing an existing court. If a writ of prohibition could tie the hands of the Convention, a judge of some court whose existence was at stake, might perpetuate his tribunal by the allowance of a writ identical with that which has been served upon this Convention. To sustain such a contention would amount to a nullification of the will of the people; would perpetuate an institution against the express wishes of the sovereign.

There is high authority in support of the proposition that a Constitutional Convention is, in effect, a gathering of the people in their sovereign capacity. Such was the declaration of Mr. Livingston in the New York Convention of 1821. He said: "The people are here themselves. They are present by their delegates. No restriction limits our proceedings. We are standing on the foundations of society." In 1836 George M. Dallas of Pennsylvania declared a Constitutional Convention to be "the provided machinery of peaceful revolution." He said: "It is the civilized substitute for intestine war. When ours shall assemble it shall possess within the territory of Pennsylvania every attribute of absolute sovereignty, except such as may have been yielded and are embodied in the Constitution of the United States. What may it not do? It may reorganize our entire system of social existence, terminating and prescribing what is deemed injurious, and establishing what is preferred."

In the Illinois Convention of 1847, Mr. Peters said: "We are the sovereignty of the State. We are what the people of the State would be if they were concentrated here in one mass meeting. We are what Louis XIV said he was, 'We are the State.'"

The Constitutional Convention, held in Pennsylvania in 1872, was created by an act of the Legislature of that State, and did not derive authority in any manner from the Constitution. The statute provided a method for the submission of the work of the Convention to the people. The Convention adopted an entirely different method, which was declared illegal by the Supreme Court of Pennsylvania in Wells v. Bain (75 Pa. St., 39); Woods' Appeal (75 Pa. St., 59), upon grounds not applicable to a Convention ordered as this Convention is, by the people under authority of the Constitution. The action of the courts was, nevertheless, considered a breach of the prerogatives of the Convention, the report of a committee consisting of some of the ablest lawyers in the State was adopted, the material portions of which were as follows:

"A proceeding to which the Convention was a party, has, in effect and result, brought into controversy some of the fundamental principles of constitutional government. The opinion that has been pronounced in this proceeding contains doctrines, which, in our judgment, ought not to be left unchallenged. We believe them to be subversive of some of the absolute rights of the people. We, therefore, submit for the action of the Convention, the following resolutions:

"1. Resolved, That this Convention was called by authority of the people, as determined by their vote under the Act of 1871, declaring that a Convention should be called to amend the Constitution of this Commonwealth, and that this vote was a mandate to the Legislature, which that body was not at liberty to disobey or modify.

"2. Resolved, That the Constitution of the State is the only recognized form of its government, and the people having expressly reserved to themselves the right to alter, reform or abolish their government in such manner as they think proper, and declared that such right shall forever remain inviolate, this Convention deems it to be its duty to declare that it is not in the power of any department of an existing government to limit or control the powers of a Constitutional Convention called by the people to reform their Constitution; and that the Convention, subject to the Constitution of the United States, is answerable only to the people from whom it derived its power."

Jamieson, in his work on Constitutional Conventions, which was written with the express purpose of refuting the claims of those who asserted the identity of the Convention and the people, admits that in the United States the Constitutional Convention belongs to the legislative class of assemblies. He says, at section 420, "By this is meant that its proper function is to elaborate to a certain extent to be determined by the tenor of its commission, the fundamental law, much as the Legislature enacts the ordinary municipal law. Of these two species of law, the distinction between which has been already explained, it is the most important thing to note that the one denominated fundamental law is, generally speaking, the work only of a Convention, a special and extraordinary assembly, convening at no regularly recurring periods, but whenever the harvest of constitutional reforms has become ripe, while, on the other hand, the ordinary statute law, whose provisions are tentatory and transient, is, regularly, at least, the work of a Legislature, a body meeting periodically at short intervals of time. It is thoroughly settled that, under our Constitutions, State and Federal, a Legislature cannot exercise the functions of a Convention — cannot in other words take upon itself the duty of framing, amending or suspending the operation of the fundamental law. Being the supreme law of the land, all departments of the government are subject to the control, for from and under it they derive both their commissions and their existence; and to permit either of them to modify it would be to invert the relations of dependence on which the safety of the whole system depends. This has never been doubted since the early days of the republic."

In Goodrich v. Moore (2 Minn., 61), the Supreme Court of the State declared that a Constitutional Convention is the highest legislative assembly recognized in law, invested with the power of enacting or framing the supreme law of the State. It has full control of all its proceedings, and may provide in such manner as it sees fit, to perpetuate its records; and, although the Convention may have been called together by legislative authority, that body has no right to select officers for the Convention or otherwise control the transaction of its legitimate business. Mr. Justice Atwater, speaking for the court, said: "The admission of such a right in the Legislature would place the Convention under its entire control. * * * It would have less power than a town meeting, and be incompetent to perform the objects for which it convened. It would be absurd to suppose a Constitutional Convention had only such limited authority. * * * It must have plenary power for this and all the incidents thereof. The fact that the Convention assembled by the

authority of the Legislature renders it in no respect inferior thereto, as it may well be claimed whether, had the Legislature refused to make provision for calling a Convention, the people in their sovereign capacity would not have had the right to have taken such measures for confirming the adoption of the Constitution as to them seemed meet."

In Loomis v. Jackson (6 W. Va., 708), the court reached the following conclusions upon a similar question: "First, that a Constitutional Convention lawfully convened does not derive its power from the Legislature but from the people. Second, that the powers of a Constitutional Convention are in their nature sovereign powers. Third, that the Legislature can neither limit nor restrict them in the exercise of these powers."

Treating the Constitutional Convention then, as a legislative body, whose function is the revision and amendment of the Constitution, the question arises whether, in the absence of express constitutional grant, it is precluded from adjudging the election and qualification of its members.

From what has been already said, it is manifest that the existence of such power is essential to the preservation of its efficiency; that the intervention of the executive, legislative or judicial departments of the government in the deliberation of the Convention and in the conduct of its business would be fraught with great danger, and would tend to destroy that independence which is so essential to the proper performance of the high duties imposed upon it by the people. The sessions of the Convention must necessarily be of short duration. The public welfare demands expedition. The delay incident to the trial of an election contest before a judicial tribunal, conducted in accordance with the usual forensic methods, would practically lead to great public injury. It is, therefore, important that the power to render a speedy, final and summary decision, should be invested in the body which is immediately concerned in securing its own efficient action.

It can hardly be contended that this body, which by its single act, may perform the function of originating changes in the organic law, was not intended by the people to have all the powers of self-protection and independence deemed necessary for the Legislature, which is permitted to exercise that high prerogative only through the concurrence of two successive Senates and Assemblies. While it is true that the power of making such determination is by article 3, section 10 of the Constitution, expressly conferred upon the Senate and Assembly, and that by the Constitution of the United States similar powers are also vested in both houses of Congress; yet, it is

well settled that such provisions are only declaratory, and that even in the absence of such express authority, the inherent power to act as the judge of the qualifications and elections of its members exists in every deliberative assembly, emanating directly from the people, even though it involves the exercise of judicial power. An examination of the authorities upon the subject may be useful. May, in his work on the "Law of Parliament" (8th ed., p. 56), says:

"Another important power peculiar to the Commons, is that of determining all matters touching the election of their own members. This right has been regularly claimed and exercised since the reign of Queen Elizabeth, and probably in earlier times, although such matters have been ordinarily determined in Chancery. Their exclusive right to determine the legality of the returns and the conduct of returning officers in making them, was fully recognized in the case of Barnardiston v. Soane, by the Court of Exchequer Chamber in 1674 (6 Howell, St., Tr., 1092), by the House of Lords in 1689 (Ib., 1119), and also by the courts, in the cases of Onslow in 1680 (2 Vent., 37), and of Prideaux v. Morris in 1702 (2 Salk., 502; 1 Lutw., 82; 7 Mod., 13)."

Perhaps the most instructive account of the possession and exercise of this parliamentary power is that given by Hallam, who, while speaking of the reign of Elizabeth, says, in his Constitutional History of England, vol. 1, page 273: "The Commons asserted in this reign, perhaps for the first time, another and most important privilege, of determining all matters relative to their own elections."

"Difficulties of this nature, had, in former times, been decided in Chancery, from which the writ issued, and into which the return was made. Whether no cases of interference on the part of the house had occurred, it is impossible to pronounce, on account of the unsatisfactory state of the rolls and journals of Parliament under Edward IV, Henry VII and Henry VIII. One remarkable entry may be found, however, in the reign of Mary, when a committee is appointed "to inquire if Alexander Nowell, prebendary of Westminster, may be of the house, and it is declared by them next day that an Alexander Nowell, being prebendary in Westminster, and thereby having a voice in the Convocation House, cannot be a member of this house; and so agreed by the house and the queen's writ to be directed for another burgess in his place." (Journals, I, Mary, p. 27.) Nothing further appears on the record bill.

In 1586, the house appointed a committee to examine the state and circumstances of the returns for the county of Norfolk. The fact was that the chancellor had issued a second writ for this county on the ground of some irregularity in the first return, and a different

person had been elected. Some notice having been taken of this matter in the Commons, the speaker received orders, signifying to her majesty's displeasure that the house had been troubled with a thing impertinent for them to deal with, and only belonging to the charge and office of the lord chancellor, whom she had appointed to confer with the judges about the return for the county of Norfolk, and to act therein according to justice and right. The house, in spite of this peremptory inhibition, proceeded to nominate a committee to examine into and report the circumstances of these returns, who reported the whole case, with their opinion that those elected on the first writ should take their seats, declaring further, that they understood the chancellor and some of the judges to be of the same opinion, but that they had not thought it proper to inquire of the chancellor what he had done, because they thought it prejudicial to the privilege of the house to have the same determined by others than such as were members thereof. And though they thought very reverently of the said lord chancellor and judges, and knew them to be competent judges in their places, yet in this case they took them not for judges in Parliament in this house, and thereupon required that the members, if it were so thought good, might take their oaths and be allowed of by force of the first writ, as allowed by the censure of the house, and not as allowed by the said lord chancellor and judges; which was agreed unto by the whole house. This judicial trial over their elections was not the last. A committee was appointed in the session of 1589 to examine into sundry abuses of returns, among which is enumerated that some are returns for new places, and several instances of the house's deciding on elections occur in subsequent parliaments."

Mr. Cushing, in his work on the Law and Practice of Legislative Assemblies, chapter 6, section 1, page 146, says:

"The present Constitution of the House of Commons is, to a considerable extent, the result of a series of struggles between it, on the one hand, and the sovereign or lords, or both, on the other. One of the earliest of these conflicts, and one of the most interesting, is that which terminated in the establishment of the right of the Commons to be the exclusive judges of the returns, elections and qualifications of their own members. This right, after having been claimed and exercised, at one time by the king and council, at another by the House of Lords, and again by the lord chancellor, was declared by a resolution of the Commons in 1624 and has ever since been admitted to belong exclusively to the house itself, as 'its

ancient, natural and undoubted privilege.'" (Glanville, LXXXIII, 60.)

"This power is so essential to the free election and independent existence of a legislative assembly that it may be regarded as a necessary incident to every body of that description, which emanates directly from the people; it is also, out of abundant caution, conferred upon or guaranteed to most of the legislative assemblies of the United States, by express constitutional provisions."

Mr. Justice Story, in his work on the Constitution, section 833, says:

"It is obvious that a power must be lodged somewhere to judge of the elections, returns and qualifications of the members of each house composing the Legislature; for otherwise there could be no certainty as to who were legitimately chosen members, and any intruder or usurper might claim his seat, and thus trample upon the rights, privileges and liberties of the people. Indeed, elections would become, under such circumstances, a mere mockery, and legislation the exercise of sovereignty by any self-constituted body. The only possible question on such a subject is as to the body in which such a power shall be lodged. If lodged in any other than the legislative body itself, its independence, its purity, and, even its existence and action, might be destroyed or put into imminent danger. No other body but itself can have the same motive to preserve and perpetuate these attributes; no other body can be so perpetually watchful to guard its own rights and privileges from infringement, to purify and vindicate its own character and to preserve the rights, and to sustain the free choice of its constituents. Accordingly, the power has always been lodged in the legislative body by the uniform practice of England and America."

In volume 1, page 235, of Kent's Commentaries, the author says:

"Each house is made the sole judge of the election and return and qualification of its members. The same power is vested in the British House of Commons, and in the Legislatures of the various States, and there is no other body known to the Constitution, to which such a power might be safely trusted. It is requisite to preserve a pure and genuine reputation, and to control the evils of irregular, corrupt and tumultuous elections; and as each house acts in those cases in a judicial character, its decisions, like the decisions of any other court of justice, ought to be regulated by known principles of law, and strictly adhered to for the sake of uniformity and certainty."

Judge Cooley, in his Constitutional Limitations (6th ed., at p. 158), says:

"There are certain matters which each house determines for itself, and in respect to which its decision is conclusive. It chooses its own officers, except where, by Constitution or statute, other provision is made; it determines its own rules of proceeding; it decides upon the election and qualification of its own members. These powers it is obviously proper should rest with the body immediately interested, as essential to enable it to enter upon and proceed with its legislative functions without liability to interruption and confusion. To determine questions concerning contested seats, the house will exercise judicial power, but generally in accordance with a course of practice which has sprung from the precedents in similar cases, and no other authority is at liberty to interfere."

The powers asserted by the House of Commons were also recognized in the Colonial Assemblies, one of the first cases being that recorded in Smith's History of the Province of New York, page 223, published in 1776, where the author says:

"All these who opposed you were disobliged with the Governor; among those Mr. DeLancey was the most considerable for his wealth and popular influence. He was very rigid in his religious profession, one of the first builders, and by far the most generous benefactor of the French church, and therefore left it with the utmost reluctance. Mr. Burnett, before this time, had considered him as his enemy, because he had opposed the prohibition of the French trade; and this led him into a step which, as it was a personal indignity, Mr. DeLancey could never recollect without resentment. This gentleman was returned for the city of New York in the room of a deceased member, at the meeting of the Assembly in 1725. When he offered himself for the oaths Mr. Burnett asked him how he became a subject of the crown. He answered, that he was denized in England, and his excellency dismissed him, taking time to consider the matter. Mr. DeLancey then laid before the house an act of a notary public, certifying that he was named in a petition of denization, granted in the reign of James the Second — a patent of the same kind, under the great seal of this province, in 1686 — and two certificates, one of his having taken the oath of allegiance according to an act passed here in 1683, and another of his serving in several former Assemblies. The Governor, in the meantime, consulted the chief justice, and transmitted his opinion to the house, who resolved in favor of Mr. DeLancey.

"What Colonel Morris' opinion was, I have not been able to discover. Governor Burnett's conduct was thought to be unconstitutional, and an invasion of the rights of the Assembly, who claimed the exclusive privilege of determining the qualifications of their own members."

(Vol. 5, documents relating to N. Y. Colonial History, p. 761; vol. 8, documents relating to N. Y. Colonial History, pp. 192, 319.)

In 1 Hammond's Political History of New York, 62, the author says:

"By the Constitution, article 12, in connection with article 9, the Senate are constituted judges of their own members. The Colonial Assemblies had always exercised the right of judging whether their members were duly elected; a right which seems to me inherent in all representative bodies."

Some of these authorities were cited with approval by Judge Folger, in People ex rel. Hatzel v. Hall (80 N. Y., 121), where, after referring to the powers of the House of Commons as defined by Cushing, he says: "The same author says that the power is so essential to the free election and independent existence of a legislative assembly that it may be regarded as a necessary incident to every body of that description which emanates directly from the people; and that the constitutional provisions are out of abundant caution."

In 1846, while a bill relating to the appointment of delegates to the Convention, which had been provided for in the previous year, was pending before the Legislature, the Assembly referred the proposed act to the justices of the Supreme Court, requesting them to communicate forthwith to the house whether, in their opinion, the delegates to be chosen by the Convention should be selected according to the old apportionment or the new. The court, consisting of Judges Bronson, Beardsley and Jewett, in the course of their opinion, rendered in response to the legislative request, used the following significant language:

"The Legislature is not supreme. It is only a part of that absolute sovereignty which resides in the whole people. Like other departments of the government, it acts under a delegation of powers, and cannot rightfully go beyond the limits which have been assigned to it. This delegation of powers has been made by the fundamental law, which no one department of the government, nor all the departments united, have authority to change. That can only be done by the people themselves. A power has been given to the Legislature to propose amendments to the Constitution, which, when approved

and ratified by the people, became a part of the fundamental law. But no power has been delegated to the Legislature to call a Convention to revise the Constitution. That is a measure which must come from, and be the act of the people themselves. Neither the calling of a Convention or the Convention itself is a proceeding under the Constitution. It is above and beyond the Constitution. Instead of acting under the forms and within the limits prescribed by that instrument, the very business of a Convention is to change those forms and boundaries as the public interest may seem to require. A Convention is not a government measure, but a movement of the people, having for its object a change, either in whole or in part, of the existing form of government.

"As the whole people have not only omitted to confer any power on the Legislature to call a Convention, but have also prescribed another mode of amending the organic law, we are unable to see that the act of 1845 had any obligatory force at the time of its enactment. It could operate by way of advice, or recommendation, and not as law. It amounted to nothing more than a proposition or suggestion to the people to decide whether they would or would not have a Convention. That question the people have settled in the affirmative, and the law derives its obligation from that act and not from the power of the Legislature to pass it."

"The people have not only decided in favor of a Convention, but they have determined that it shall be held in accordance with the provisions of the Act of 1845. No other proposition was before them, and, of course, their votes could have had reference to nothing else. They have decided on the time and manner of electing delegates and how they shall be apportioned among the several counties.

"If the act of the last session is not a law of the Legislature but a law made by the people themselves, the conclusion is obvious that the Legislature cannot annul it, nor make any substantial change in its provision. If the Legislature can alter the rule of representation, it can repeal the law altogether, and thus defeat a measure which has been willed by a higher power.

"A change in the fundamental law, when not made in the form which the law has prescribed, must always be a work of the utmost delicacy. Under any other form of government than our own, it could amount to nothing less than a revolution. The greatest care should, therefore, be taken that nothing be done which can give rise to doubts or difficulties in the choice of delegates or the harmonious organization and action of the Convention. A controversy about the number of delegates to which any county is entitled may lead to

irregular and disorderly proceeding at the election, and an imperfect expression of the will of the electors in the choice of delegates. It may embarrass the inspectors of elections and the canvassers of votes. It may also tend to disorder in the Convention where the question must finally be settled, who are and who are not members of the body."

This language is the more significant in view of the fact that neither the Act of 1845 nor the Act of 1846 contained a provision similar to that found in the Act of 1893, conferring upon the Convention the power to adjudge the qualifications and elections of its members.

That a body of this character must *ex necessitate* be invested with quasi-judicial powers with respect to its organization and the conduct of its business, although there is no express grant of power in the Constitution, becomes further evident from the numerous adjudications recognizing the right of legislative bodies to expel their members, and to punish for contempt, not only those who are constituents of the body exercising the power, but also strangers who may be guilty of disorderly conduct, recusant witnesses, and others who perform acts tending to obstruct its proceedings.

In Hiss v. Bartlett (3 Gray, Mass., 473), Chief Justice Shaw said, in a case involving the right of the Legislature to expel one of its members:

"There is nothing to show that the framers of the Constitution intended to withhold this power. It may have been given expressly in other States, either *ex majori cautela*, or for the purpose of limiting it by requiring a vote of more than a majority.

"It is suggested that the true remedy is by impeachment. But that form of proceeding has never been applied to members of the Legislature, and would be slow, laborious and expensive, and inadequate to the object sought to be attained. Impeachment lies only for purpose of punishment, by deprivation of office, and disqualification to hold office, leaving the offender still liable to indictment, if the offense be indictable.

"The power of expulsion is a necessary and incidental power, to enable the house to perform its high functions, and it is necessary to the safety of the State. It is a power of protection. A member may be physically, mentally or morally, wholly unfit; he may be afflicted with a contagious disease, or insane, or noisy, violent and disorderly, or in the habit of using profane, obscene or abusive language. It is necessary to put extreme cases to test a principle. If the power exists, the house may necessarily be the sole judge of the

exigency which may justify and require its exercise. As to the law and custom of Parliament, the authorities cited clearly show that the jurisdiction to commit and also to expel, has long been recognized, not only in Parliament, but in the courts of law, for the purpose of protection and punishment.

"But there is another consideration, which seems to render it proper to look into the law and practice of Parliament, to some extent. I am strongly inclined to believe, as above intimated, that the power to commit and expel its members was not given to the House and Senate respectively, because it was regarded as inherent, incidental and necessary, and must exist in every aggregate and deliberative body, in order to the exercise of its functions, and because without it such a body would be powerless to accomplish the purposes of its Constitution; and therefore any attempt to express or define it would impair rather than strengthen it. This being so, the practice and usage of other legislative bodies, exercising the same functions, under similar exigencies; and the reasons and grounds, existing in the nature of things, upon which their rules and practice have been founded, may serve as an example and as some guide to the adoption of good rules, when the exigencies arise under our Constitution. But independently of parliamentary custom and usages, our legislative houses have the power to protect themselves, by the punishment and expulsion of a member."

In People ex rel. McDonald v. Keeler (99 N. Y., 463), the power of the Senate to punish a witness summoned before an investigating committee was involved. The proceedings were instituted under the provisions of the Revised Statutes, which were, however, claimed to be unconstitutional in that they permitted the Senate to exercise a power judicial in its nature, and that the Constitution, being silent on the subject, intended to withhold from the Legislature the right to exercise such judicial functions. The objection was, however, disapproved by the court, Judge Rapallo saying:

"At the time of their enactment, as appears by the note of the revisers, it was assumed that, although the State Constitution of 1821 was silent upon the subject of the privileges of the Legislature or of either house, yet that it was not intended to deprive the two houses of the power which the revisers characterized as indispensable, of punishing contempts, which it had then been determined by the Supreme Court of the United States, in the case of Anderson v. Dunn (6 Wheat., 204), was possessed by the houses of Congress by necessary implication, the Constitution of the United States being equally silent upon the subject, and it was deemed proper to provide a legislative definition of those privileges of the houses and their

members, the breach of which should be regarded as a contempt. With this view the new provisions were framed. (See note to tit. 2, chap. 7, part 1, R. S.)

"The Constitution of the United States declares, in terms, that the judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time order and establish. Although no similar declaration is contained in the Constitution of this State, still it is a recognized principle that in the division of power among the great departments of government, the judicial power has been committed to the judiciary, as the executive power has been committed to the executive department, and the legislative to the Legislature, and that body has no power to assume the functions of the judiciary to determine controversies among citizens or even to expound its own laws, so as to control the decisions of the courts in respect to past transactions. (People v. Supervisors, 16 N. Y., 432.) To declare what the law shall be is a legislative power; to declare what it is, or has been, is judicial. (Thompson, J., in Dash v. Van Kleeck, 7 Johns., 498.) But notwithstanding this general division of powers, certain powers in their nature judicial are, by the express terms of the Constitution, vested in the Legislature. The power of impeachment is vested in the Legislature. Each house is made the judge of the qualifications and elections of its own members. The power of removal of certain judicial officers for cause is given by the Constitution to the Senate and Assembly, and involves inquiries judicial in their nature, and by statute certain other officers may be removed by the Senate on recommendation of the Governor. (1 R. S., 125, sec. 41.) I think it would be going too far to say that every statute is necessarily void which involves action on the part of either house, partaking in any degree of a judicial character, if not expressly authorized by the Constitution. Where the statute relates to the proceedings of the legislative body itself, and is necessary or appropriate to enable it to perform its constitutional functions, I cannot regard it as such an invasion of the province of the judiciary as should bring it within an implied prohibition of the State Constitution. That instrument contained no express provision declaring any of the privileges of the members of either house, except that for any speech or debate in either house, the member shall not be questioned in any other place. Even the privilege of exemption from arrest during the sessions is not declared. No power to keep order or to punish members or others for disorderly conduct or to expel a member is contained in the State Constitution as it is in the Constitution of the United States. All these matters are, in this State, left under the

regulations of the statutes, and there is not even express authority to enact such statutes. (R. S., chap. 7, tit. 2.) The necessity of the powers mentioned is apparent, and is conceded in all the authorities (see Cooleys' Const. Lim., 133), yet it is equally apparent that statutes upon the subject must authorize some action partaking of a judicial character. If that feature is a fatal objection, it annuls all the statutory provisions in which it appears. * * *

"The same principle which renders it the duty of the courts to hold legislative action illegal when it unduly encroaches upon the province of the judiciary, forbids interference by the latter with the action of legislative bodies or the exercise of their discretion in matters within the range of their constitutional powers."

In Wilkens v. Willet (4 Abb. Ct. App. Dec., 601), the court, considering the general power of Congress to subpoena witnesses to testify before it, and to punish disobedience of its process, said:

"That the power exists admits of no doubt whatever. It is a necessary incident to the sovereign power of making laws; and its exercise is often indispensable to the great end of enlightened, judicious and wholesome legislation. The power is rather judicial in its nature, but in a legislative body exists as an auxiliary to the legislative power only. In the earlier history of the country, from which our institutions, both of law and legislation, are principally derived, judicial and legislative functions existed in and were exercised by the same body. And when they were afterwards separated, and each came to be exercised by a separate tribunal or body, the legislative body necessarily retained a sufficient amount of the judicial power to enable it to investigate fully and to comprehend thoroughly any and every subject upon which the body proposed to act in its legislative capacity. This included the power to subpoena witnesses to give evidence, to compel them to attend and testify, and to punish for disobedience and contempt in refusing to attend, or in refusing to testify upon attendance. The power to punish for disobedience and contempt is a necessary incident to the power to require and compel attendance."

These authorities are an ample refutation of the claim that the judiciary alone has the right to exercise power judicial in its nature, and that it is necessary that in all cases the right should be expressly conferred.

It is equally well settled that where the power is lodged in a legislative body to judge of the elections, returns and qualifications of its own members, such power is exclusive and cannot by its own consent, or by legislative action, be vested in any other tribunal or

officer, and cannot be questioned by the executive or judicial departments of the government. (Opinion of the justices, 56 N. H., 570; State v. Gilmore, 20 Kan., 551; State v. Tomlinson, Id., 692; People v. Mahaney, 13 Mich., 481.)

Thus far the question has been considered upon the theory that the Convention, in passing upon the election and qualification of its members, acts in a quasi-judicial capacity. This, however, is by no means conceded. It is merely a power inseparable from, inherent in, and incidental and necessary to, the political powers possessed by the Convention or by any legislative body. Every department of the government and every officer in every department in the performance of his duties must frequently act in a quasi-judicial capacity. Questions of expediency, of public policy, frequently arise which, although they call for the exercise of judgment and discretion, are not proper subjects of judicial cognizance. Controversies often arise with respect to the organization of a Legislature and as to which of several governments of a State, is a constitutional government. None of these can come within the jurisdiction of the courts for judgment or decision, because these bodies are subject to no judicial authority. A political problem arises, which can only be determined by public opinion, compromise or a resort to force. (Luther v. Borden, 7 How. [U. S.], 1; State of Georgia v. Stanton, 6 Wall., 50; Jones v. United States, 137 U. S., 217; In re Cooper, 143, U. S.; Kerr v. Trego, 47 Pa. St., 292; Robertson v. State, 109 Ind., 79.)

In the first of these cases Mr. Justice Woodbury, in his dissenting opinion, which, however, on this point, was in entire accord with that of the majority of the court, said:

"Fortunately for our freedom from political excitements in judicial duties, this court can never, with propriety, be called on officially to be the umpire in questions merely political. The adjustment of these things belongs to the people and their political representatives either in the State or the general government."

So it has been held that the chief executive officer of a State in the exercise of his political or executive powers or the functions which are confided to his discretion by the Constitution is entirely independent of the judiciary, and the latter cannot use its process either to direct or to prohibit the performance of such executive acts or to regulate the manner of their exercise. (Commonwealth v. Denison, 24 How. [U. S.], 66; In re Dennett, 32 Maine, 508; Mauran v. Smith, 8 R. I., 192; State v. Governor, 25 N. J. [Law], 351.)

In the case last cited, Chief Justice Greene said:

"All the powers conferred by the Constitution on the Governor

are political powers, all the duties enjoined are political duties. Touching all the powers conferred on the executive by the Constitution, he is entirely independent of the control of the judiciary, being responsible to the people alone and liable to impeachment for misdemeanor in office.

"While it is the acknowledged duty of courts of justice to exert all their appropriate powers for the redress of a private wrong, it is no less a duty sedulously to guard against any encroachment upon the right or usurpation of the powers of the co-ordinate departments of government in the delicate and complicated machinery of our republican system, it is of the utmost importance that each department of the government should confine itself strictly within the limits prescribed by the Constitution.

"It is obvious that the exercise of the power now invoked will have a direct and immediate tendency to bring the executive and judicial departments of the government into conflict. It cannot alter the principle that in the present case the Governor assents to the application. We have Mr. Jefferson's authority for saying that if the Supreme Court had granted a mandamus in the case of Marbury v. Madison (1 Cranch, 137), he should have regarded it as trenching on his appropriate sphere of duty; that he had instructed Mr. Madison not to deliver the commission, and that he was prepared, as president of the United States, to maintain his own construction of the Constitution with all the powers of the government against any control that might be attempted by the judiciary, in effecting what he regarded as the rightful powers of the executive and Senate within their peculiar departments." (Jefferson's Works, vol. 4, pp. 75, 317, 372.)

What is true of the relations between the judicial and the executive departments of the government, is equally true of the relations of the former with the legislative departments. While it is within the undoubted province of the courts to pass upon the constitutionality of acts performed by such bodies, their judicial functions are in suspense until there has been action. To attempt to interfere with the co-ordinate branches of the government, so as to prevent them from acting at all, or to prescribe the methods to be pursued, would be a direct attack upon our political system.

Irrespective of these important considerations there is another reason why the Supreme Court does not possess the right to prohibit the Convention from considering the pending contest. The clause of the Constitution which creates the Constitutional Convention requires the Legislature "to provide by laws for the election of delegates to such Convention." This leaves it within the discre-

tion of the Legislature to regulate the method of conducting the election and of determining the result, so long as it does not infringe upon the powers properly pertaining to the Convention. In the exercise of this authority the Legislature, in the act of 1893, providing for the election of delegates, declared that the Convention should have the power to judge the elections and qualifications of its members. This was a legitimate exercise of the power conferred upon the Legislature by the Constitution. The election provided for was an election subject to the power of the Convention to pass upon the qualifications and elections of the persons claiming to be elected.

The provision was, moreover, ratified and adopted by the people in electing delegates to exercise the powers so provided for. The election of delegates under this law was the election of officers to exercise this specific power, among others. In the words of Judges Bronson, Beardsley and Jewett, above quoted, "The people have not only decided in favor of a Convention, but they have determined that it shall be held in accordance with the provisions of the act."

LOUIS MARSHALL,
CHARLES H. TRUAX,
ELIHU ROOT,
Sub-Committee.

Mr. Truax — Mr. President, I have somewhat lost my voice in reading part of my argument, and therefore, will desist troubling the Convention any further.

Mr. Lincoln — Is the question of Mr. Root's resolution before the Convention?

The President — That is the subject before the Convention.

Mr. Lincoln — Mr. President, I think this is the first instance in American history where the judiciary has challenged the right of a Constitutional Convention to determine the election and qualifications of its own members. This Convention is the highest representative body of the people of the State. We meet here to organize possibly a new government, if you please, to revise and amend the fundamental law of our State. Clearly we ought to have the right to determine who are the members of this Convention. But I heartily concur with that part of this report which suggests that this Convention transmit to the Supreme Court a respectful protest against that court entertaining jurisdiction. We certainly cannot afford to ignore the Supreme Court. We certainly cannot be so discourteous as that. Nevertheless, we must assert our dignity as I believe and maintain the prerogatives of this Convention.

Now, Mr. President, I beg leave to submit a few facts, the result of an independent investigation by myself relating to this writ of prohibition. The report of the committee, which is an exceedingly able and strong argument, presents very exhaustively the law upon this question. I have taken some pains to try to ascertain what has been the practice on that question in the United States, and for that purpose I have examined more or less fully the journals and debates and reports of ninety-four Constitutional Conventions which have been held in the Union. About half of these Conventions took some action bearing upon the question of the eligibility and election and qualification of its members. About half of that number took no action at all, partly for the reason that the act calling the Convention prescribed a peculiar mode of election and certification of the result of the election of delegates, and there was no contest; nobody appeared to contest any seat in any district, and the proclamation of the Governor or the certificate of some other officer was taken as conclusive, the delegates appearing in their places without contest. Now, in that class, I have grouped the Constitutional Conventions held in the Southern States immediately after the war and during the reconstruction period. Those Constitutional Conventions were called by act of Congress, and the election of the delegates was under the supervision of a military officer who certified to the result and his certificate was deemed conclusive, and he made an order in the course of his military duties calling the Convention together and transmitting to the Convention, when assembled, a list of the persons who had been elected, so that in those Conventions no question arose. All the questions relating to the election and qualifications of delegates had been settled beforehand by military authority. But I have found in the reports of the various State Conventions and I have not had access to all of them because they are not all in the State library, a large number of Conventions where some action was taken on this question. In some of them a Committee on Credentials was appointed whose report was purely formal. In several of them contests were settled by the Convention. I desire to submit briefly a statement of the results of this examination so far as action was in fact taken by the Convention. The first upon my list is the State of Alabama, where, in 1875, the Convention appointed a Committee on Contested Seats, but I think no contest was in fact considered by the Convention. In Arkansas in 1861 and 1864 the same action was taken. In California a similar action was taken, and while upon the subject of California, I beg to say that the first Convention in that State was held in 1849 to organize a State government. The Convention was called by General Riley,

acting Governor of the territory, who prescribed the number of delegates to be elected and the districts for which they were to be elected, by a proclamation. When the Convention assembled, he transmitted an order or a certificate to the Convention in which he stated who were the delegates elected and in which he also stated that in one district there was a contest. He did not suggest that he, as Governor, nor any tribunal in the territory would take cognizance of that contest, but he said this: "The question is left for the decision of your honorable body, which is deemed the proper judge of the election returns and qualifications of its own members," and that Constitutional Convention in California passed the contests submitted and determined who should have seats in the Convention. In Florida, in 1862, a Committee on Credentials was appointed. In Georgia, in 1861, the Convention decided contests as to seats in the Convention. In Indiana, in 1850, the Convention decided two contests. In Iowa, in 1846 and 1867, there were Committees on Credentials in both Conventions. In Kansas, in 1849, the Constitutional Convention acted on contests and decided them. In Kentucky, in 1890, there was a committee appointed, but I may say here that Kentucky has a provision in its Constitution which makes the Constitutional Convention the judges of the election and qualifications of its own members, and it is the only State in the Union which has that provision in its Constitution. In Louisiana, in 1844 and 1866, the Constitutional Convention decided contests as to seats. In Maryland, in 1849, 1864 and 1867, the Convention assumed jurisdiction to pass upon contests. In Massachusetts, in 1779, in the Federal Convention, or the Convention called to consider the Federal Constitution, in 1788, in 1820 and 1853, the Convention took cognizance of the contests and the qualifications of its members. I may say that in that Convention of 1779, which was a Convention called in Massachusetts to organize a State government, Samuel Adams was a member, and John Hancock, John Adams, Stephen Choate and a large number of other distinguished citizens of Massachusetts sat as delegates. In Michigan, the act which called several Conventions in that State, gave express power to the Convention to pass upon the election of the members. In Minnesota, in 1857, the Convention took similar action, appointing a Committee on Contested Seats. In Mississippi, in 1868 and 1890, there was a Committee on Credentials. In Missouri, in 1861, 1863 and 1865, we find similar action; in Nevada, in 1864, we find similar action, and in New Hampshire, in 1876 and 1889, in New Jersey, in 1844, and North Carolina in 1865 and 1875. In the latter year, 1875, the Convention decided the question of contested seats between dele-

gates. In North Dakota, in 1889, there was also a Committee on Credentials; in Oregon in 1857, in Pennsylvania in 1879 and in Rhode Island in 1842. In that Convention there were contests decided by the Convention. In South Carolina, in 1865, the Convention decided contests as to seats. In Tennessee, in 1870, we find a Committee on Credentials was appointed, and in Texas, in 1866, there was a committee appointed to pass upon the title of delegates to seats in the Convention. In Vermont, in 1821, 1828, 1843, 1850, 1857 and 1870, committees were in some of those years appointed, and in some years delegates were admitted upon motion after an examination by the Convention into their qualifications, without the appointment of a committee. In Virginia, in the first Convention, the reports of which I have had access to, in 1788, there was a Committee on Credentials, of which Benjamin Harrison was chairman, John Randolph, then Governor, and John Marshall, afterwards chief justice, were also members of that committee, and they were instructed to inquire into the election of delegates and report to the Convention. That duty they performed. Again, in 1829, there was a State Convention in Virginia, called for the purpose of revising the Constitution. That Convention appointed a Committee on Privileges and Elections. In that Convention we find some distinguished men. James Madison was a delegate, and called the Convention to order. Chief Justice Marshall left his seat on the bench for a season to take part as a delegate in the deliberations of that body. John Tyler was also a delegate, the Governor of the State was a delegate, and numerous other men, more or less famous in State and national history, were delegates. To go back to Virginia, in 1850, 1861 and 1867, we find the same course pursued in the Constitutional Conventions. In Wisconsin, in 1846 and 1847, substantially the same proceedings were had. There was a Committee on Credentials, which passed upon the qualifications of the members. That completes my list of those States, Mr. President, which have taken positive action in relation to these questions.

But there is another feature of this. The act of 1893, which called this Convention, contains an express provision that this Convention may decide upon the election and qualifications of its own members. Now, New York is not alone in having statutes of that kind. I have found nineteen statutes in eleven different States having that same provision incorporated, and where the Constitution, like ours, contained no provision on the subject. Alabama, Arkansas, Indiana, Kentucky, Maryland, Massachusetts, Michigan, Missouri, New Hampshire, New Jersey and Rhode Island all have passed statutes calling Constitutional Conventions and providing

in those statutes that the Convention shall be the judge of the election of its members.

Now, in addition to the law furnished by the Judiciary Committee, it seemed to me to be of some value to find out what has been the practice in this country in Constitutional Conventions upon this question, and I find that, without any exception, the practice has been uniform from first to last in favor of the Convention exercising the prerogative of deciding who were elected members.

Now, Mr. President, I do not care to continue this discussion further, but it seems to me that, in addition to the very able report of the Judiciary Committee, enough has been shown to establish beyond controversy the proposition that any Constitutional Convention, especially that this Convention, has a supreme and indisputable right to determine the election and qualifications of its own members. (Applause.)

The President — Does Mr. Marks insist upon his motion?

Mr. Marks — Not at this stage, Mr. President.

The President — The Sergeant-at-Arms will call in the members before taking the vote.

The President put the question on the adoption of Mr. Root's resolution, and it was decided in the affirmative.

The President — It seems to be carried, and it is unanimously, and will so be entered on the record.

The President announced the designation of Charles S. Francis as reporter of the Troy Daily Times.

Mr. Goodelle — If it is in order, I would like to inquire what the Committee on Printing has done in relation to the resolution referred to them yesterday in regard to the publication and distribution of proposed amendments to the Constitution, so that the delegates may have them on coming in in the morning?

Mr. Hamlin — In compliance with the Resolution we have made inquiries of The Argus Company, and they report that some delay has been caused, and we have not investigated sufficiently to find out whether this is a proper statement or not, but I think that by Tuesday next that there will be no difficulty on this score. At the beginning of the Convention there is necessarily a little friction, but I think that matters will be so straightened out by Tuesday next that there will no longer be any trouble. The committee will look into the matter further in case there is any necessity in the future.

Mr. Moore — Mr. President, I would like to ask Mr. Hamlin if the

book on statistics which he said would be ready to-day is to be had now?

Mr. Hamlin — The report was made yesterday and will be on the table shortly in regard to the table of contents.

Mr. Goodelle — I desire to announce that there will be a meeting of the Committee on Suffrage in the Assembly Chamber on Thursday evening of next week at eight o'clock. This will be known as the State meeting, and as I understand, will be the last meeting which the suffragists desire.

On motion of Mr. Kellogg, the Convention adjourned.

Tuesday, June 5, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber at the Capitol, Albany, N. Y., Tuesday, June 5, 1894.

The Convention was called to order by President Choate at ten o'clock.

Right Rev. Bishop William Croswell Doane offered prayer.

The President — The Secretary will read the Journal of Friday.

The Assistant Secretary read the Journal of Friday, June 1, 1894.

The President — The Journal will be approved as read unless some amendments are offered. Does any delegate offer any amendment? The Journal is approved as read.

The President — The first business in order will be the presentation of memorials.

Mr. Lester — I have the honor, Mr. President, to present to the Convention a petition for equal suffrage, signed by 1,246 residents of the county of Saratoga, 712 women and 531 men.

Referred to the Committe on Suffrage.

The President — The Chair has received two petitions. The petition of the New York yearly meeting of the Religious Society of Friends for the Prohibition of the Liquor Traffic.

Referred to the Committee on Powers and Duties of the Legislature.

Also, petition of the New York yearly meeting of the Religious Society of Friends, for the abolition of the death penalty.

Referred to the Judiciary Committee. I think that last, however, should go to the Committee on State Prisons and Punishment of Crime.

The resignation has been received of George H. Bassett, appointed Committee Clerk, and John J. Brown of the same district (sixteenth) is appointed in his place.

Are there any other memorials or petitions to be presented?

The next business in order is communications from State officers. Has the Secretary received any communications?

Notices, motions and resolutions, to be called for by districts. The Secretary will call the districts.

The Secretary called the districts.

Mr. J. I. Green — Mr. President, if this be the proper time, I would like to call up for consideration the resolution offered by me a few days ago in reference to obtaining some information from the district attorneys of the counties of the State.

The President — Will you please state the day it was offered so that the Secretary can find the resolution?

Mr. J. I. Green — I believe it was last Wednesday.

The Secretary read the resolution as follows:

Mr. J. I. Green offered the following resolution (No. 39):

Resolved, That the district attorneys of each county of this State be requested by the Secretary to forward to this Convention a list of the persons indicted for the commission of crime in their respective counties and now actually confined in the prisons of their respective counties awaiting trial, together with the date of their arrest, indictment and for what cause they were indicted; also, a list of the persons actually confined in the prisons of their respective counties awaiting trial, with the date of their arrest and the cause.

Mr. Green — Mr. President, I desire to say that the object of that resolution was in regard to the proposition to amend the Constitution which was submitted by me on the twenty-fifth day of May, and which amendment was, the latter part of it, " nor shall any person be actually confined in any prison after indictment and awaiting trial for any cause for a longer period than ten months." I have been informed, sir, that in certain prisons of certain counties of the State there are persons indicted for the commission of crimes who are incarcerated for months and some for years, and I believe, sir, that such a resolution would be eminently fit and proper in order that the delegates to this Convention be made aware of the fact as to what persons are actually confined in prison after indictment, so that if there be any amendment necessary to protect them, we will have the information before us.

The President put the question on the adoption of the resolution, and it was determined in the affirmative.

Mr. Hirschberg — Mr. President, I call up the resolution I offered last Friday in reference to printing the arguments in the contested election of the Thirtieth District.

The Secretary read the resolution as follows (No. 47):

Resolved, That the Committee on Printing be directed to cause five hundred (500) copies of the arguments of the respective counsel in the contests in the Thirtieth District made before the Committee on Privileges and Elections, to be printed for the use of the Convention instead of the evidence.

Mr. Hirschberg — Mr. President, I move the adoption of that resolution. I have the manuscript, and it contains sixty-eight pages of type-written matter.

Mr. Hill — Mr. President, it seems to me that the number to be printed is hardly adequate for the uses of the Convention, and if the gentleman who offered the resolution will permit, I would suggest that the number be made one thousand.

Mr. Hirschberg — I accept the amendment.

The President put the question on the resolution as amended, and it was determined in the affirmative.

Mr. Banks — I offer the following resolution, which the Secretary will please read, and then I will ask unanimous consent that it be now passed. It is in regard to printing.

The Secretary read the resolution, as follows:

R. 49.— Resolved, That when a proposed constitutional amendment is introduced amending existing sections of the Constitution, the new matter shall be underscored, and, when printed, shall be italicised, and all portions of such sections proposed to be omitted by the amendment shall be included in brackets.

Mr. Kerwin — Mr. President, on the ground that it is not in conformity with the printing contract, I object to the consideration of this resolution to-day.

The President — The resolution giving rise to debate, the resolution stands over under the rule until to-morrow.

Mr. Banks — Mr. President, if you will allow me, I would suggest that this does come under the printing contract. There is nothing new. It is merely showing that whatever amendment is put in shall be underlined and what is omitted shall be put in brackets.

The President — Perhaps Mr. Kerwin did not understand the resolution as read. The Secretary will read the resolution again.

The Secretary again read the resolution.

Mr. Kerwin — Mr. President, I do not wish to debate this. I wish merely to state that the contract for which this work is being done is a progressive contract, and it is some years back since the original contract was drawn. That contract reads that all amendments shall be set in italics. We have now amendments to the Constitution, as printed, underscored. If you will notice proposed amendment number ten you will see that the whole page is underscored, and we workmen in this State do not propose to allow that work to be done by machinery while the hand compositors walk the streets of the cities of this State. For that reason I make the objection. The italics cannot be done on the machine.

The President — The resolution will stand over.

Mr. Barrow — I desire to call up the resolution offered by myself some days ago calling for information from the Secretary of State. As I understand it, on the day this resolution was offered a rule was adopted by which all resolutions of that character were referred to the appropriate committees. I would like to inquire if this requires a motion in order that it may go to the appropriate committee.

The President — The Chair does not recall the rule referred to. Rule 50 provides that a resolution calling for information from any department or corporate body shall lie over for one day. I do not think any other resolution in regard to this matter has been adopted. The Secretary will read the resolution.

The Secretary read the resolution, as follows (No. 45):

Resolved, That the Secretary of State be requested to furnish to this Convention from such data as may be in his possession, as near as may be, the number of manufacturing and business corporations organized under the laws of other States for the purpose of conducting business within this State during the period of three years last past, together with such information as may be in his possession as to the causes which have led to the organization of such corporations without the State; and that the said Secretary also report such information as may be in his possession, if any, as to the organization by citizens of this State of corporations under the laws of other States to do business therein, and the reasons which have actuated such organizations to do business in other States rather than under the laws of this State.

Mr. Barrow — Mr. President, I move the adoption of the resolution.

The President put the question on the adoption of the resolution, and it was determined in the affirmative.

Mr. Barrow — Mr. President, I offer the following resolution:

The Secretary read the resolution, as follows:

R. 50.— Resolved, that this Convention submit to the people for their approval as the work and deliberation of this Convention a revised Constitution, and not amendments only.

Mr. Barrow — Mr. President, I desire to give notice that I will bring that resolution up for consideration next Wednesday.

The President — Mr. Barrow's resolution will lie over.

Mr. Tibbetts — Mr. President, I offer the following resolution:

The Secretary read the resolution, as follows:

R. 51.— Resolved, That the Secretary of this Convention be instructed to forward to the Chair of Constitutional History at Cornell University, each morning, unbound copies of all its proceedings.

The President put the question on the adoption of the resolution, and it was determined in the affirmative.

Mr. Tibbetts also offered the following resolution, which the Secretary read, as follows:

R. 52.— Resolved, That two bound copies of the Journal, debates and reports of this Convention be distributed to Cornell University, one copy thereof to the general library and one copy to the law library.

Mr. McMillan — Mr. President, I would suggest that that resolution lie over for the reason that I understand the Convention has not determined yet to publish the debates. I ask that the resolution lie over.

The President — This resolution giving rise to debate will lie over until to-morrow.

Mr. I. S. Johnson offered the following, which the Secretary read, as follows:

R. 53.— Resolved, That the Secretary be requested to procure, have printed and placed on the files of the members a copy of the contract entered into by the State officers with The Argus Company for the printing of the proceedings, etc., of this Convention.

The President — My impression is that is already in possession of the Committee on Printing, is it not, Mr. Hamlin?

Mr. Hamlin — I was about to remark that that portion should be on the files this morning. I understand it will be on the files to-morrow morning.

Mr. Johnson — Mr. President, if that is to be in the possession of the Convention, I withdraw the resolution.

The President — It had better lie over until to-morrow morning.

Mr. Alvord — Mr. President, under this order of business, sir, I desire to rise to a question of high privilege. In the course of human events this day closes one hundred years of the official life of the county of Onondaga. We meet to-morrow for the purpose of celebrating this centennial. My people in that county, sir, where I was born and still reside, are aware of the fact that creeping very close up to that time I am also soon to be a "centennial." They desire, therefore, in their great economy, that this centennial of mine should be celebrated with theirs. I have consented to it upon the ground of economy alone. Inasmuch, sir, as it will not do to play Hamlet with Hamlet out of the play, I desire to be present to-morrow to enjoy, sir, the double celebration, and for that reason I ask the permission of this honorable body, through you, that I may be absent to-morrow and the coming day thereafter from my duties in the Convention. (Applause.)

Mr. Goodelle — Mr. President, in behalf of the county of Onondaga I request and hope that the application will be granted, but I place it upon entirely different grounds from what my distinguished colleague places it. We are aware, for the preservation of the great commonwealth of Onondaga for the next one hundred years, it is quite essential that it be well salted at this time, and we know of no one who is better calculated to bestow that saline ingredient upon the county than my distinguished friend. (Applause.)

The President — The question is on the application of the gentleman from Onondaga to be excused. It seems to the Chair that he ought to be allowed a whole week to recover from this celebration.

The President put the question on excusing the gentleman from Onondaga.

The President — The motion is carried, and it is a unanimous vote.

The President — The next motion will be the introduction of proposed amendments to the Constitution.

Under this order of business the following proposed amendments were offered:

O. 141.— Mr. Sandford presented a proposed amendment to sec-

tion 7, article 1 of the Constitution, concerning the compensation to be made for private property taken for public use.

Referred to the Committee on Preamble.

O. 142.— Mr. C. F. Truax offered a proposed amendment to section 2, article 13 of the Constitution, relating to Constitutional Conventions.

Referred to the Committee on Constitutional Amendments.

O. 143.— Mr. Dickey offered a proposed amendment to section 1, article 2 of the Constitution, providing that twenty years shall be the voting age.

Referred to the Committee on Suffrage.

O. 144.— Mr. Danforth offered a proposed amendment to section 2, article 13 of the Constitution, relative to the powers of Constitutional Conventions.

Referred to the Committee on Constitutional Amendments.

O. 145.— Mr. Roche offered a proposed amendment to section 3, article 1 of the Constitution, relating to religious liberty.

Referred to the Committee on Preamble.

O. 146.— Also, a proposed amendment to section 13, article 3 of the Constitution, relating to the passage of legislative bills.

Referred to the Committee on Legislative Powers and Duties.

O. 147.— Mr. Rogers presented a proposed amendment to section 18, article 3 of the Constitution, increasing or decreasing the official term of elective officers.

Referred to the Committee on Legislative Powers and Duties.

O. 148.— Mr. Banks presented a proposed amendment to the Constitution relative to the debt limitation of cities.

Referred to the Committee on Cities.

O. 149.— Mr. Goodelle presented a proposed amendment to section 10, article 3 of the Constitution, inhibiting the Legislature from judging the qualifications of its own members.

Referred to the Committee on Legislative Powers and Duties.

O. 150.— Also proposed amendment to section 1, article 2 of the Constitution, relating to the qualifications of voters.

Referred to the Committee on Suffrage.

Mr. Alvord offered the following proposed amendment:

O. 151.— Proposed amendment to section 9 of article 4 of the Constitution, relative to bills presented to the Governor for his signature.

Referred to the Committee on Powers and Duties of the Legislature.

Mr. Hawley (by request) offered the following proposed amendments:

O. 152.— Proposed amendment to section 5 of article 4 of the Constitution, relative to the pardoning power.

Referred to the Committee on Governor and Other State Officers.

O. 153.— Also proposed amendment to article 3 of the Constitution by adding a section relative to legislative powers and duties.

Referred to the Committee on Powers and Duties of the Legislature.

O. 154.— Also proposed amendment to sections 16 and 23 of article 3 of the Constitution, relative to the advertisement of local or private bills in official papers before their introduction.

Referred to the Committee on Powers and Duties of the Legislature.

O. 155.— Also proposed amendment to section 13 of article 3 of the Constitution, relative to the houses in which bills may originate.

Referred to the Committee on Powers and Duties of the Legislature.

O. 156.— Mr. Doty offered a proposed amendment to section 10 of article 8, relative to giving or loaning the credit of the State, and to abolish section 9 of article 7.

Referred to the Committee on State Finances and Taxation.

Mr. I. S. Johnson offered the following proposed amendments:

O. 157.— Proposed amendment to section 2 of article 2 of the Constitution, relative to bribery at elections, caucuses or conventions.

Referred to the Committee on the Judiciary.

O. 158.— Also proposed amendment to section 1 of article 12 of the Constitution, relative to oaths of office.

Referred to the Committee on Judiciary.

Mr. Root — Mr. President, I beg to call the attention of the Chair to the rules in respect to the reference of calls for information.

The President — Rule 50?

Mr. Root — Mr. President, Mr. J. I. Green of New York a few moments ago offered a resolution calling for information, and the Chair announced that it would lie over one day for consideration. Under the rule which has not yet been printed, except in the debates, but which was adopted by the Convention, the following is the provision in regard to all such matters: " Resolutions containing calls for information from any of the executive departments, from State, county or municipal offices or from any corporate body shall

be referred first to the appropriate committee. Such committee shall report thereon within three days." I beg to suggest that that resolution be now referred to the appropriate committee instead of lying upon the table until to-morrow.

The President — The Chair has not a copy of this rule as amended. What was the subject of your resolution, Mr. Green?

Mr. Green — It had reference to the district attorneys.

The President — Will the Secretary please read the resolution?

The Secretary again read the resolution.

The President — That must be referred to the Committee on State Prisons.

Mr. Hottenroth — Mr. President, does that rule apply to the resolutions calling for information that were put in before the rule was adopted?

The President — I suppose that a resolution which had taken its place under the former rule, and which is on the table under those former rules is now affected, not having otherwise been disposed of before the rules adopted on Thursday or Friday.

Mr. J. I. Green — Mr. President, may I ask the gentleman from New York where I can find that rule to which he has just referred?

Mr. Root — It can be found on page 101 of the debates, near the top of the page.

The President — Reports of standing committees are now in order.

Special orders. Is there anything left over and set down for to-day?

The Chair has a very agreeable duty to perform in extending an invitation from Mrs. Pruyn, who requests the pleasure of the company of the members of the Constitutional Convention at supper at nine o'clock this evening, the fifth day of June, to meet the Chancellor, Vice-Chancellor and Regents of the University of the State of New York, at her residence, No. 13 Elk street.

There was to be a consideration of the report of the Committee on Printing, but I understand that it will not be ready until to-morrow. Is that so, Mr. Hamlin?

Mr. Hamlin — Owing to some delay in securing the copy, the printer informs me that he is not able to have it ready this morning, but will have it ready to-morrow morning.

The President — There was a rule, 71, to come up for consideration.

Mr. Hirschberg — That was to come up on Wednesday.

The President — What is the further pleasure of the Convention?

Mr. McClure — I move that we now adjourn.

Mr. Vedder — If the gentleman will allow me, I would like to give notice that the Committee on Legislative Powers and Duties will meet at 4 P. M. to-day in room 3.

The Secretary read the following announcement:

The Sergeant-at-Arms requests the Secretary to ask the members to leave on their desks their files, and not lock them up, in order that the new matter may be placed in order.

The Secretary announced a meeting of the Judiciary Committee immediately upon adjournment.

Mr. Parkhurst — Mr. President, I beg to give notice that the Committee on County, Town and Village Officers will meet at three o'clock.

Mr. Francis — Mr. President, the Committee on Bill of Rights and Preamble will meet in room No. 2 immediately upon the adjournment of the Convention.

Mr. Root — Mr. President, I offer the following resolution:

The Secretary read the resolution as follows:

R. 54.— Resolved, That the invitation of Mrs. Pruyn, to meet the Chancellor, Vice-Chancellor and Regents of the University of the State of New York, be accepted by the Convention, with its grateful acknowledgement.

The President put the question on the adoption of the resolution, and it was unanimously adopted.

Mr. McClure — Mr. President, I desire to ask of the Chair, in order to obtain in some way information as to when the proposed amendments which have been introduced here will be printed and placed upon the files of the members? I notice that members meet in committee and have not before them any of the material that has been offered in the Convention, for the reason that the propositions have not been printed.

The President — The Secretary informs me that they are all printed and all on the files. They are distributed in separate files.

Mr. McClure — Mr. President, I have been asked to state that the Journal does not appear to have been printed after the twenty-fourth of May.

The President — That is the fault of the printer.

Mr. McClure — I move that the Convention do now adjourn.

The President put the question, and it was determined in the affirmative, whereupon the Convention adjourned until to-morrow morning at ten o'clock.

Wednesday, June 6, 1894.

The Constitutional Convention of the State of New York met in the Assembly chamber at the Capitol, Albany, N. Y., June 6, 1894.

The Convention was called to order by President Choate at ten o'clock.

The President — I am happy to present to the Convention Father Malone, the newly elected regent of the University of the State of New York, who has kindly consented to open our proceedings this morning.

Father Malone — Mr. President and delegates, allow me to say that it is a great pleasure for me to be here under those circumstances, because I am in the presence of the elected representatives of the people of this great State, elected to do the most important work that can be entrusted in the hands of her citizens, and therefore, in connection with this thought, allow me to ask upon your work and action the blessing of Almighty God; that He may aid you in every way that is good for the work in which you are engaged; that He may come to your assistance with His wisdom; to direct your action so that the result of this Convention will prove that the State of New York is making progress in the right direction. We ask God to bless you in this great work. We ask the Father to bless you who has created us; the Son, who, by His sacrifice on the cross, redeemed us all, and the Holy Spirit of that Blessed Trinity that is in the world working for the sanctification of men's souls, that He be with you to-day, to-morrow, and every day in which you are engaged in this Convention, that the happy results that the community at large are looking for may be brought before that community, and that the Holy Spirit will abide with you to the end of your lives.

The President — The Secretary will read the Journal of yesterday.

The Assistant Secretary read the Journal of Tuesday, June 5, 1894.

The President — The Journal, as read, will stand approved unless amendments are offered. Has any delegate any amendments to offer? The Journal is approved as read.

The Chair announced, in order to promote the dispatch of business in the Convention, and especially the convenience of members in having their files prepared that all the pages and all the

messengers will be required to report to the Sergeant-at-Arms every morning at eight o'clock, and also immediately after the adjournment of the day, whenever it takes place, and that all the clerks will be required to report to the Secretary at nine o'clock in the morning.

The presentation of memorials being in order, the Chair presented the petition of the American Patriotic League for an amendment to the Constitution, prohibiting appropriations for sectarian purposes, and it was referred to the Committees on Education and Charities.

Mr. Cookinham presented the petition of Rev. R. L. Bachman and others, of Utica, against appropriating public money for sectarian purposes.

Referred to the Committees on Education and Charities.

Mr. Foote presented the petition of the officers representing the Women's Indian Association of Rochester, praying for an amendment to the Constitution relating to Indian education.

Referred to the Committee on Indians.

Mr. Durfee presented the petition of Theron G. Yeomans and seventy-three other citizens of the towns of Walworth and Marion, in Wayne county, for an amendment prohibiting appropriations for sectarian purposes.

Referred to the Committee on Education and Charities.

Mr. E. R. Brown presented the petition of Myra R. Libby, Anna C. B. Devendorf and 3,349 others of Jefferson county, praying that the word "male" be stricken from the Constitution. The petition was signed by 2,344 women and 1,106 men. The vote of Jefferson county in 1893 was 1,417.

Referred to the Committee on Suffrage.

Mr. Pool presented the petition of the board of trustees of the village of North Tonawanda in favor of equal suffrage.

Referred to the Committee on Suffrage.

The President — Has the Secretary any communications from State officers?

The next business in order is notices, motions and resolutions, to be called for by districts, numerically. The Secretary will call the districts.

The Secretary called the districts.

Mr. Johnston offered the following resolution:

R. 55.— Resolved, That the Secretary of this Convention be and he is hereby directed to communicate with the Governor of the State

and the mayors of the different cities thereof for the purpose of ascertaining to what extent civil service reform prevails in appointments to office under the State government and the government of the municipalities thereof respectively; how long in force; the manner of its execution; the appropriations for and the expense of its maintenance for each year; also, the nature and extent of the benefits, if any, derived by the State and cities through its enforcement, and particular and special benefit as distinguished from those accruing prior to the enactment of the civil service reform law.

That upon the receipt of such information by the Secretary, he shall communicate the same to this Convention.

The President — I believe that should go to the Committee on Cities for report under the new rule. It is so referred.

Mr. Hottenroth offered the following resolution:

R. 56.— Resolved, That the Secretary of the Convention communicate with the Secretary of State, with the mayors of cities, and also with such other persons as the Committee on Railroads shall designate, to obtain:

1. A list of railroads and elevated and street surface railways in this State for the construction and operation of which franchises have been granted, but which have not been constructed; or if partly constructed, the extent of such construction.

2. A list of railroads and elevated and street surface railways in this State for the construction and operation of which franchises have been granted, and which have been constructed, but which are not operated, or if partly operated, the portions operated.

And also the location of the routes, the dates of the granting of the franchises, by whom granted, and whether the corporations controlling them were organized under general laws or special statutes.

The President — This resolution is referred under the rules to the Committee on Railroads.

Mr. Hirschberg — I desire to give notice that a meeting of the Committee on Privileges and Elections will be held in Senate room No. 3 immediately after the adjournment this forenoon.

Mr. Banks — Mr. President, I desire to call from the table my resolution in regard to printing.

The President — Mr. Banks's resolution of yesterday will be read.

Mr. Van Denbergh — Mr. President, will the number of that resolution be given, so that we can find it upon our files?

The President — It has not yet been printed, Mr. Van Denbergh.

The Secretary read the resolution, as follows (No. 49):

"Resolved, That when a proposed Constitutional amendment is introduced amending existing sections of the Constitution, the new matter shall be underscored and, when printed, shall be italicized, and all portions of such sections proposed to be omitted by the amendment shall be included in brackets."

Mr. Banks — Mr. President, this was objected to yesterday by my colleague from Albany, and we have since talked the matter over. He has an amendment to make to it which is acceptable to me, and I think the house will then pass it without objection.

Mr. Kerwin — Mr. President, in making objection to this resolution yesterday, I noticed my colleague's resolution did not carry out fully the provisions of the law under which this contract is let. I offer the following amendment which can be inserted at the end of it, and which reads as follows: "And if a committee recommends striking out certain words, the amendment shall be printed stricken through." That, Mr. President, is in strict conformity with the contract for printing as let.

The President — I understand Mr. Banks accepts that.

Mr. Banks — I do.

Mr. Durfee — Mr. President, it seems to me that this is a very proper matter to be referred to the Committee on Printing. There may be some occult significance to this proposed resolution. Not being familiar with printing matters particularly, I do not quite see the point of it, but at any rate it occurs to me that, as we have a committee charged with the duty of looking after the printing and contracts relating thereto for this Convention, it would be eminently proper to have the resolution referred to them, and that we may act upon the subject after the receipt of their report. I, therefore, move that the resolution be referred to the Committee on Printing.

Mr. Banks — Mr. President, this resolution is a very proper one to pass. We are now having a mass of proposed amendments laid before us. You cannot tell just what the amendments are. You cannot pick them out. The same rule was adopted and has been in use for the last four years in both the Senate and Assembly. If you will look at rule 31 of the Assembly you will find this very same rule. I hope that the gentleman's motion will be voted down.

Mr. Kerwin — Mr. President, I hope this motion will not prevail. As my colleague states, the matter is aggregating on the files here under the title of Convention overtures. Some of the amendments are underscored and others are not. The printers fought in the last

Legislature and got adopted in the Senate the same provisions contained in the resolution offered by Mr. Banks. It is taken verbatim from that rule. Rule 31 says: "When a bill is introduced amending an existing law the new matter shall be underscored, and when printed shall be italicized, and all portions of the law proposed to be omitted by the amendment shall be included in brackets. Every bill, immediately upon its introduction and so forth (relating to where the bill shall go, and then the rule goes on to say), except in cases where the committee recommends striking out certain words, in which case they shall be printed 'stricken out.'" Now, Mr. President, it ought not to be necessary to introduce this resolution into this Convention, or in the last Legislature, if the contractors doing State work lived up to their contract. The contract for the State printing is a progressive contract. The contract of 1894 reads that the work shall be performed under the same conditions as the work of 1893 was, and the contract of 1893 reads that the work shall be performed under the same conditions that the contract of 1892 was. In 1892 there wasn't a machine in the city of Albany. The printing machine was unknown here. The work was all done by hand composition. After the machines came into use the contractors undertook to do this work by underscoring the amendments, which is done with a heavy rule and can be done on the machines, to the detriment of the workmen of the city of Albany. Why should we tolerate any such abrogation of the contract as this is? I hope, for the benefit of the idle workmen, you will let the men get to work and print the bills as they ought to.

Mr. Kellogg — Mr. President, it seems to me, sir, that this matter is a proper one to refer to the Committee on Printing. I notice by the reading of the resolution that the terms used are technical. I think that it should be referred to the Committee on Printing, so as to perfect it and put it in proper form. I have no doubt that this will be beneficial, and that the Committee on Printing will report promptly on the matter. I think everything, Mr. President, introduced into the Convention ought to go to the committees and not pass through the Convention without deliberate and mature consideration. I hope the motion of the gentleman will pass.

Mr. Durfee — Mr. President, the remarks of the gentleman from Albany illustrate the importance of a reference of this resolution. Evidently, in his contemplation at least, and he is familiar with this matter, the resolution is one of very considerable importance. I think it extremely doubtful whether the members of this Convention generally are so well informed in regard to that matter as to be

prepared to pass upon an important question relating to it without further consideration, and without further examination, either personally or through a committee of this body. As the gentleman from the Twenty-third has remarked, whatever is just and right and proper for this Convention to do we may trust the Committee on Printing to report in favor of our doing, and if it were otherwise, upon the coming in of their report, we may trust this Convention to take such action as justice and equity shall require.

The President put the question on Mr. Durfee's motion to refer the resolution to the Committee on Printing, and it was determined in the affirmative.

Mr. Tibbetts — Mr. President, I call up my resolution of yesterday directing the distribution of two bound copies of the Journal, debates and reports of the Convention to Cornell University. I have heard no objection to the adoption of the resolution offered. I only heard the objection that we may not decide, because of the great cost, to print these debates, and I suppose a discussion upon that question would not be germane to this resolution, and I do not see how a discussion of it can affect this resolution. If it is decided not to publish these debates we will be in the same position with reference to this as we would be under rule 71. If they are printed they will get them. If they are not printed, they will not get them.

The President — The Secretary will read Mr. Tibbetts's resolution.

The Secretary read the resolution as follows (No. 52):

" Resolved, That two bound copies of the Journal, debates and reports of this Convention be distributed to Cornell University, one copy thereof to the general library and one copy to the law library."

Mr. Kellogg — Mr. President, while I appreciate fully the great work which is being done by Cornell University, yet we have a school in my county which I do not propose shall take a back seat for anything. It is just as good a school as there is in the State, and has nearly as many students as any institution of learning within the State; I refer to the Oneonta Normal. Now, Mr. President, I do not believe that the Oneonta Normal School should take precedence over any other Normal School of the State of New York. Therefore, I move to amend this resolution by inserting the Normal Schools of the State.

Mr. McDonough — Mr. President, I move as an amendment that all the incorporated colleges and universities of the State be added.

Mr. McMillan — Mr. President, I move that this resolution lie on

the table until it has been determined whether or not these debates are to be printed.

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

Mr. Hawley — Mr. President, I desire to ask the Committee on Printing when we are to have the proposed constitutional amendments on the files. The files run now to number 140, but sixty of the proposed constitutional amendments are absent from the files up to that number. Beginning with number 5 and scattered along irregularly through the entire number, sixty of them are missing.

The President — The Chair made careful inquiry from all the parties concerned, and was satisfied that the matter of the printing of the amendments was proceeding as rapidly as possible. Mr. Hamlin may be able to explain more fully.

Mr. Hamlin — They may possibly be so on Mr. Hawley's file. As far as the printing is concerned, I think the 140 proposed amendments are now all on file. It may happen that some of the members' files have not been completed.

The President — This shows the necessity of the announcement that was made by the Chair a little while ago in regard to the attendance of pages and messengers, and I meant to add to that that delegates are requested not to send the pages or messengers out of this building until after the adjournment for the day. The supply of service in both directions is very short and less than half what the Assembly, with a smaller number, had, and the Sergeant-at-Arms cannot perform the service of completing the files in the morning if the delegates send the pages or messengers away on other business.

Mr. Becker — I desire to give notice that there will be a meeting of the Committee on Legislative Organization at three o'clock on Thursday in room No. 3, Assembly side, at which time it is believed that certain action of the Committee on Cities will be brought up for consideration before that committee also.

Mr. Lincoln — I call up the resolution introduced by me last week, relative to alien voters, and move its adoption. It will be found on page 95 of the debates.

The President — The Secretary will read the resolution.

The Secretary read the resolution, as follows (No. 43):

" Whereas, Sixteen States, to wit: Alabama, Arkansas, Colorado, Florida, Indiana, Kansas, Louisiana, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Oregon, South Dakota, Texas and

Wisconsin, by their Constitutions, grant the right of suffrage to aliens who have filed a declaration of their intention to become citizens, but who have not been naturalized, thus permitting persons to participate in the government of their country who are subjects of a foreign power, and who owe allegiance neither to the State nor to the United States, thereby giving rise to occasions when the vote of the aliens may change the course of government; therefore,

" Resolved, That it is the sense of this Convention that such grant of suffrage is contrary to the spirit of our American Constitution; that the right of suffrage ought to be uniform throughout the Union, and that no person ought to be permitted to vote who is not a citizen of the United States.

Resolved, That we hereby request Congress to recommend and submit to the several States, for their consideration, a proposed amendment to the National Constitution requiring all voters to be citizens, and prohibiting any State from granting the right of suffrage to any person who is not a citizen of the United States.

Resolved, That the Secretary of this Convention immediately transmit a copy of these resolutions to the President of the Senate of the United States and also to the Speaker of the House of Representatives.

Resolved, That we hereby respectfully request the Senators and Members of Congress from this State to urge the adoption by Congress of a concurrent resolution providing for the submission of the proposed amendment."

Mr. Dickey — I move that the resolution be referred to the Committee on Suffrage. I think it is a matter which should have more mature consideration given to it than the hasty reading and determination here.

Mr. Deady — Mr. President, I move that the resolution lie on the table.

The President — The motion to lie on the table takes precedence and the question will be on the motion to lie on the table.

The President put the question on Mr. Deady's motion to lie on the table, and it was determined in the negative.

The President then put the question on Mr. Dickey's motion to refer the resolution to the Committee on Suffrage, and it was determined in the affirmative.

The Secretary announced that the Committee on Canals would meet at three o'clock this afternoon in Assembly committee room No. 2.

The President — Propositions for constitutional amendment are in order, and the Secretary will call the districts.

The Secretary called the districts.

O. 159.— Mr. Jenks offered a proposed amendment to section 3 of article 11 of the Constitution, providing that honorably discharged soldiers and sailors of the late Civil War, who are inmates of soldiers and sailors homes, shall be deemed residents, qualified to vote for national or State officers.

Referred to the Committee on Suffrage.

Mr. Hedges — Mr. President,I call for the reading of the proposed amendment in full.

The Secretary read the proposed amendment.

The President — The gentlemen are reminded that under the rules, as they now exist, full reading of the amendments can only be by unanimous consent, as the Chair understands it.

O. 160.— Mr. Lauterbach offered a proposed amendment to article 3 of the Constitution of the State of New York, relating to the method of the enactment of laws by the Legislature.

Referred to the Committee on the Powers and Duties of the Legislature.

O. 161.— Mr. Arnold offered a proposed amendment to section 5, article 4, creating a board of pardons composed of the Governor and three retired justices of the Supreme Court.

Referred to the Committee on Governor and Other State Officers.

O. 162.— Mr. A. B. Steele offered a proposed amendment to sections 15, 16, 17 and 18 of article 6, relating to County and Surrogate's Courts and establishing County District Courts.

Referred to the Committee on Judiciary.

O. 163.— Mr. E. R. Brown offered a proposed amendment to section 9, article 6 of the Constitution, to provide for the appointment of justices of the Supreme Court to fill vacancies.

Referred to the Committee on Judiciary.

Mr. Marshall — Mr. President, the Committee on Judiciary has deemed it proper to place before the members of the Convention the work done by the Constitutional Commission of 1890, and for the purpose of permitting the members to study the work done by that commission and also to present the work to the people, I have been ordered by the Committee on Judiciary to introduce the following proposed amendment to article 6 of the Constitution:

The Secretary read the title of the proposed amendment, as follows:

O. 164.— "Proposed constitutional amendment to article 6, relating to the judiciary and embodying the recommendations of the Constitutional Commission of 1890."

Mr. Deady — Mr. President, I call for the reading of the proposed amendment.

Mr. McMillan — I object.

The President — Objection being made, this will be referred to the Judiciary Committee.

O. 165.— Mr. H. A. Clark offered a proposed amendment to article 3, section 5 of the Constitution, in relation to the powers of the Legislature as to the division of counties and towns and the organization of new counties and towns.

Referred to the Committee on County, Town and Village Government.

Mr. Clark — Mr. President, I think that should properly go to the Committee on Powers and Duties of the Legislature.

The President — Do you think that would be the more proper reference, Mr. Clark? The amendment not having been read in full, I was unable to judge.

The amendment will be referred to the Committee on Powers and Duties of the Legislature.

O. 166.— Mr. Hawley offered a proposed amendment to article 6, section 15, in relation to Courts of Sessions.

Referred to the Judiciary Committee.

O. 167.— Also proposed constitutional amendment to article 1, section 17 of the Constitution, as to commissioners to codify the laws of the State.

Referred to the Committee on Judiciary.

O. 168.— Mr. Doty offered a proposed amendment to amend section 7, article 8 of the Constitution, relative to the giving or loaning of money or credit by counties, cities, towns or villages.

Referred to the Committee on Cities, and also to the Committee on County, Town and Village Government.

O. 169.— Also, to amend section 1, article 8 of the Constitution, relative to the creation of corporations.

Referred to the Committee on Corporations.

O. 170.— Mr. Woodward offered a proposed amendment to the preamble and bill of rights of the Constitution.

Referred to the Committee on Preamble and Bill of Rights.

O. 171.— Mr. Lincoln offered a proposed amendment to article 6, relating to Surrogate's Courts.

Referred to the Committee on Judiciary.

O. 172.— Also, a proposed amendment to section 15, article 6, relating to County Courts.

Referred to the Committee on Judiciary.

The President — The next business is reports of standing committees.

Mr. Root — Mr. President, I beg leave to report a resolution from the Judiciary Committee.

The Secretary read the resolution, as follows:

R. 57.— "Resolved, That the Secretary of State be requested to furnish to the Convention all printed and written information as to the condition of litigation and business of courts, which was laid before the Judicial Commission of 1890, and also that each county clerk and each clerk of a court of record be called upon for a copy of the last printed calendar of the court; such information and documents, when received, to be referred and transmitted to the Judiciary Committee."

Mr. Root — Mr. President, I move the adoption of the resolution.

The President — I understand that comes from the Judiciary Committee?

Mr. Root — It comes from the Judiciary Committee.

The President — That will be in order for present consideration.

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

Mr. Root — Mr. President, I ask consent to take up the one remaining rule, perhaps a little out of the order of standing committees.

The President — Unless objection is made, the final report of the Committee on Rules, on rule 61, which is the only one left unfinished, will now be taken up. The Secretary will read the rule as it is now offered by the Committee on Rules. Is this a substitution, Mr. Root?

Mr. Root — No, this is an addition.

The President — The Secretary will read rule 61, as reported by the Committee on Rules, and then read the following proposed addition:

"No constitutional amendment shall be adopted unless by the assent of a majority of all the members elected to the Convention."

Mr. Marks — Mr. President, I notice the amendment reads, "a majority of the members elected to the Convention." There are a number of vacancies in the Convention of members who have been elected. I think some provision should be made for that.

The President — The Chair might state that the amendment conforms exactly to the provision in the State Constitution as to the final passage of laws by the Legislature, which is to the effect that every law for its final passage requires the affirmative votes of a majority of all the members elected to the Legislature.

Mr. E. R. Brown — Mr. President, there is a distinction to be made between the Legislature and this body, in view of the fact that no vacancies in this body have been filled or are likely to be filled; and if a majority of the members of the Convention sitting are in favor of a proposed amendment that would be a sufficient protection, and it might determine whether amendments should be adopted or not.

Mr. McClure — Mr. President, I hope the amendment will be adopted as read. It seems to me that the vote called for, for the passage of any amendment to the Constitution should have the number voting for it suggested by the amendment; that is, a majority of all the members elected.

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

The President put the question on the adoption of rule 61, as amended, and it was decided in the affirmative.

The President — It is now to be hoped that these rules will be printed as speedily as possible. Has any other standing committee any report to make?

Mr. Hamlin — Mr. President, I desire to call up from the table the report of the Committee on Printing for the consideration of the Convention.

Mr. Vedder — Mr. President, I desire to ask the Chairman of the Committee on Printing if he will not give way for an instant, that I may make a report from a standing committee. It will not take half a minute.

Mr. Hamlin — Certainly.

Mr. Vedder, from the Committee on Powers and Duties of the Legislature, to which was referred the proposed constitutional amendment (O. 73) introduced by Mr. Vedder to amend section 15 of article 3 of the Constitution, in relation to the passage of bills, reported in favor of the passage of the same, with some amendments.

The President — I suppose, Mr. Vedder, that goes to the Committee of the Whole. It is so referred.

REPORT OF COMMITTEE ON PRINTING.

The Committee on Printing, to whom was referred an inquiry as to the status of printing required by the Convention, and the terms of the contract made therefor, respectfully report:

That the facts, so far as they have been able to ascertain the same, and the provisions of law relating to those facts, are substantially as follows: Section 8, chapter 8 of the Laws of 1893, originally provided:

"It shall be the duty of the Secretary of State, Attorney-General and Comptroller, who shall be in office on the first day of January, eighteen hundred and ninety-four, to cause to be prepared and ready for said Convention, at the commencement of its session, a suitable manual, two copies of which shall be furnished to each member and officer of the said Convention, and the expense of which shall be paid by the Treasurer, upon the warrant of the Comptroller."

Section 12 of said act also provides that:

"The Comptroller and Secretary of State are hereby authorized and required, in the month of March, eighteen hundred and ninety-three, to receive proposals and make a contract for all the printing, binding and other supplies necessary for said Convention, and such contracts shall be awarded under the provisions of the legislative law regulating legislative printing, so far as applicable to the supply of the printing, binding and other supplies necessary for said Convention."

Under the powers given by the provisions of law above recited, and in compliance with the requirements of article 4, section 71 of chapter 681, of the Laws of 1892, regulating the printing of session laws, the honorable Secretary of State and Comptroller, on the 27th day of November, 1893 (some eight months after the time when they were required to act), published a proposal for printing and binding, and other supplies necessary for the Constitutional Convention, pursuant to chapter 8 of the Laws of 1893, and that they would receive sealed proposals until the 27th day of December, 1893, at eleven o'clock A. M., for furnishing all the printing, binding and other supplies necessary for the Constitutional Convention, provided for by that act. That thereafter the said Secretary of State and Comptroller, on the 30th day of December, 1893 (the last secular day of their official term), awarded the contract for furnishing

the said printing, binding and supplies to The Argus Company, a corporation having its chief place of business at Albany, N. Y.

(*Copy.*)

This agreement made this thirteenth day of December, in the year of our Lord one thousand eight hundred and ninety-three, by and between the People of the State of New York, by Frank Rice, Secretary of State, and Frank Campbell, Comptroller, acting under and by virtue of an act of the Legislature of said State, being chapter 8 of the Laws of 1893, entitled "An act to amend chapter three hundred and ninety-eight of the Laws of eighteen hundred and ninety-two, entitled 'An act to provide for a convention to revise and amend the Constitution,'" passed January 27, 1893, as parties of the first part, and The Argus Company, of the City of Albany, N. Y., party of the second part.

Witnesseth, That whereas the said Secretary of State and Comptroller having, in accordance with the act above referred to, given and caused to be duly published a notice that they, the said Secretary of State and Comptroller, would receive proposals for the printing and supplies provided for and specified in said act, and the said party of the second part having, in accordance with the provisions of the said act and the terms of the said notice, made and delivered to the said Secretary of State and Comptroller, bids and proposals in writing, to do and perform the public printing and furnish supplies specified in said act, and which notice of said Secretary of State and Comptroller, and said bids and proposals in writing of said party of the second part, as hereto annexed, and which, together with said chapter 8 of the Laws of 1893, it is agreed form a part of this agreement.

And the said printing having been, on the 30th day of December, 1893, duly awarded by said Secretary of State and Comptroller to the said party of the second part in accordance with the provisions of the said chapter 8 of the Laws of 1893, and the terms and specifications of said notice, bids and proposals hereto annexed, and the several covenants and agreements contained therein, under the limitation aforesaid, the party of the second part hereby covenants, promises and agrees to and with the party of the first part, the people of the State of New York, that he, the said party of the second part will, at some suitable place in the city of Albany and State of New York, execute, perform and do with accuracy and dispatch all the printing, and furnish all the supplies provided for in said chapter 8 of the Laws of 1893, and furnish all the paper and supplies, do all the folding, binding, collating, stitching and trimming

provided for in the said act, and which may be ordered by the Constitutional Convention to be held under the provisions of said act, and deliver the same at the time and in the manner, and at such place or places as said Convention may direct, and at and for the particular sum or sums and detailed price or prices, and upon the computation and conditions respectively referred to and set forth in said bids, and proposals hereto annexed.

And the party of the first part, the People of the State of New York, agree to pay as the consideration or price for the work agreed so to be done and performed and material furnished by the said party of the second part the sum or sums, price or prices set opposite respective detail items and specifications of said work and materials aforesaid, to be paid by the Comptroller upon the certificate of the proper officer of the said Convention and upon vouchers in due form, to be rendered to the Comptroller.

But the Comptroller may, in his discretion, make advances for work done and completed to his satisfaction and in all cases after due audit by the Comptroller.

It is expressly understood and agreed that the said party of the first part shall withhold from such payment or payments until the completion of the said work, such (sum) which shall equal, as near as may be, fifteen per cent of such contract price.

And it is further agreed that each page of documents or journals shall be set in long primer type, and that the pages shall be of the same size and contain the same number of lines as the Senate documents and journals of the year 1893.

And it is further understood and agreed that the paper to be used for the documents and journals shall be of the same size and weight and equal in quality to the best used in printing the Senate documents for 1893, and the paper for the bills shall be of the same size and weight and of quality equal to that used for Senate and Assembly bills for 1893, and that the work in all respects as to type or otherwise, shall be executed in the same manner, as the work of said 1893, the lines in each section of the bill to be numbered and with sufficient space between them for interlineations, and that any extra copies of messages, records, reports or documents required by said Convention, shall be bound by the said party of the second part in paper covers in a usual manner, unless otherwise ordered by concurrent resolution, or unless otherwise provided for by said chapter 682 of the Laws of 1892, known as the Legislative Law.

The manual referred to in said chapter 8 of the Laws of 1893, shall be similar in size and style and printed upon the same quality

of paper, as the manual printed for the Constitutional Convention of 1868, and it is hereby further expressly understood and agreed that all the printing necessary under the requirements of said act, shall be promptly executed, and should the Convention at any time require any part of the work to be performed in extra haste, the work thus required shall be so done without extra charge therefor, and the usual number of documents required by chapter 682 of the Laws of 1892, and all extra documents for members, officers and reporters of the Convention, not delivered during the session of the Convention, shall be printed and delivered to the Secretary of State, properly bound when ordered by the Convention to be bound, and in laying out the journals and documents for binding, they shall be so arranged that each volume shall contain not less than one thousand pages, unless with the written consent of Secretary of State and Comptroller, and it is further understood and agreed that this contract includes cartage and delivery of books, blanks and other printed matter and supplies at such places in the city of Albany as the proper officers of the Convention may direct.

And it is further understood and agreed that this agreement shall not be assigned to any person or persons without the written consent of the Secretary of State and Comptroller.

And it is expressly understood and agreed that the Secretary of State and Comptroller shall be at liberty and have the right at any time to revoke, abrogate or annul this contract for failure or non-performance as to any of its provisions on the part of the party of the second part.

In witness whereof, we, the Secretary of State and Comptroller of the State of New York, being the officers described in the statute referred to, having power to award the contract for the printing and supplies specified in said act, at a regular meeting held by us, have hereunto affixed our seals and set our hands, the day and year first above written.

FRANK RICE,
Secretary of State.

FRANK CAMPBELL,
Comptroller.

THE ARGUS COMPANY,
By WM. MCM. SPEER,
Treasurer.

BID OF THE ARGUS COMPANY FOR CONVENTION PRINTING.

Albany, *December* 27, 1893.

To the Honorable Secretary of State and the Comptroller:

The Argus Company, a domestic corporation, with its principal place of business at the southwest corner of Broadway and Beaver street, in the city of Albany, propose to do all the public and Constitutional Convention printing and binding, and all the work connected therewith, and to furnish all stationery and all other supplies which may be required for the State of New York, at the prices and on the conditions herein named, and agree to comply fully with the requirements of law relating to the public or Constitutional Convention printing, and in quantity, quality and manner set forth, described and provided in the advertisement or notice calling for proposals for said printing, namely:

For each thousand ems of composition for bills.....	$0 09
And for paper, presswork, pressing, folding, stitching and trimming of each four pages for 640 copies.....	42
For each additional 100 copies thereof, for paper, presswork, pressing, folding, stitching and trimming for each signature of four pages, when ordered by statute.....	40
For each 1,000 ems of composition of resolutions.....	09
And for paper, presswork, printing, folding, stitching and trimming, of each four pages, for 640 copies.....	42
And for each additional 100 copies thereof, for paper, presswork, pressing, folding, stitching and trimming, and for each signature of four pages, when ordered by statute...	40

Journals, documents, messages from the Governor, reports of standing or select committees, and the testimony taken before such committees, when ordered to be printed, and reports and communications made in pursuance of the law, or of a resolution of the Convention, at the prices following:

For one thousand ems of plain matter.....	$0 39
For each one thousand ems of ruled or rule and figure composition	78
For the paper, presswork, pressing, folding, stitching and trimming, of each signature of eight pages, for 719 copies	3 95
And for the paper, presswork, pressing, folding, stitching and trimming of each additional 100 copies of journals or documents, for each signature of eight pages.....	80

When extra copies of messages from the Governor, reports of standing or select committees, reports and communications made in pursuance of the law, or of a resolution of the Convention, are ordered by statute to be printed and bound, the price for binding to be as follows:

For binding in paper covers, extra copies of reports ordered as above set forth, per copy..... $0 00¼
For binding in cloth extra copies of reports, ordered as above set forth, per copy..... 18

And for engraving on stone, steel or wood, and printing maps, plans and illustrations including cutting, folding and pasting the same, and for stationery and supplies, and for binding, except as specified above, and for any further work, and including the printing of the dates or a daily report or record other than the Journal, the price to be paid shall in no case exceed the lowest rate current for work of the desired quality in Albany and New York city at the time the said work may be done.

THE ARGUS COMPANY,
Per WM. MCM. SPEER,
Treasurer.

In regard to this contract it is to be said that your committee is informed that it was awarded on competitive bids. On the other hand, it apparently is subject to the criticism that it was based on what are known as "unbalanced bids," that is, bids at extremely low prices for printing and binding, of which little was likely to be required, and very remunerative prices for similar labor and material, of which a large amount was quite sure to be needed. Thus it will be observed that the price for each thousand ems of composition for bills and resolutions is nine cents, while the price for each one thousand ems of composition of the same kind for journals, documents and reports of committees is thirty-nine cents. When it is understood that an average day's work for a competent printer is about six thousand ems, the disproportion is apparent. So it appears that the price for paper, presswork, pressing and folding, stitching and trimming of each four-page form for 640 copies is only forty-two cents, while for the same material and labor for 719 copies of eight-page forms, $3.95 is the price designated. It will be further noticed that for the debates, or record other than the Journal, the price to be paid is not designated, but "in no case to exceed the lowest value current in Albany and in New York city at the time the said work may be done." At the time this contract was made, it

must be remembered that no compilation other than a manual had been authorized, and of course the contract does not in terms apply to printing other than that required by the act of 1893, unless the stipulation "to execute, perform and do with accuracy and dispatch all the printing and furnish all the supplies provided for in said chapter 8 of the Laws of 1893, and furnish all the printing and supplies and do all the folding, binding, collating, stitching and trimming provided for in said act, and which may be ordered by the Constitutional Convention," is construed to cover this additional matter. Your committee further report that, subsequent to the execution of the above-mentioned contract, and on the 30th day of March, 1894, section 8, chapter 8, Laws of 1893, was materially amended whereby the office of Compiler was created and that officer apparently endowed with very extensive authority over the action of this Convention in reference to its printing and other supplies.

The provision of the amended law, so far as it affected the preparation and publication of the preliminary compilations of this Convention, is as follows:

"It shall be the duty of the Secretary of State, Attorney-General and Comptroller, who shall be in office on the 1st day of January, 1894, to appoint a Compiler, who shall cause to be prepared and ready for said Convention, at the commencement of its session, a suitable manual, two copies of which shall be furnished to members or officers of said Convention, and also suitable compilations for reference, to be supplied in the same numbers as said manual, as early in the session of the said Convention as possible, and the expense of the said manual and compilations shall be audited by said State officers and paid from the sum now appropriated for the expense of said Convention by the Treasurer upon the warrant of the Comptroller. The Compiler of said manual shall have full charge, direction and authority of the indexing, publication, printing and binding of said manual and compilations for reference."

Under the mandate of this amendment, George A. Glynn was, on the 5th day of April, 1894, appointed by the proper authorities to the office of Compiler, as appears by his certificate dated in the office of the Secretary of State on that day, and at once took upon himself the duties and burdens of his office.

It will be noticed that the original act only provided for the preparation of a manual, while the amended act included as well "suitable compilations for reference," without further limitation or definition.

Under the apparent authority there conferred your committee are informed by the Compiler that he has prepared, printed and published, or is about to publish, under the contract with The Argus Company, the following octave volumes, bound uniformly in half Morocco and of the character and size herein indicated, viz.:

Delegates' Diary	171 pages.
Delegates' pictures and sketches (estimated)	300 pages.
Secretary's Manual	447 pages.
Constitutions of other States of the Union (2 vols.)	2,621 pages.
New York State Constitution, annotated (estimated)	750 pages.
Constitution of South American and Continental States (estimated)	650 pages.
Statistics (estimated)	1,100 pages.

Of these eight volumes, containing in the aggregate some 6,000 pages, four volumes are ready for delivery, three others will be finished within a week, and the remaining volume, that relating to statistics, owing to the difficulty in securing prompt responses to inquiries for information, will be delayed for about three weeks, as your committee is advised by the Compiler. That the number of each series ordered thus far is understood to be seven hundred and nineteen copies.

Your committee further reports that the aggregate approximate cost of these volumes, as estimated by The Argus Company, is seventeen thousand dollars, exclusive of the expenses of compiling the same. That your committee have no satisfactory means of verifying this estimate except by a comparison with the items of a bill heretofore rendered to the Compiler by The Argus Company for the Delegates' Diary and the Secretary's Manual, which volumes are now in the hands of the delegates. The following is a copy of such account:

STATE OF NEW YORK.

To The Argus Company, Dr.:

Delegates' Diary.

To 188,602 ems plain comp., at 39 cts.....	$73 55	
To 98,532 ems R. and F. comp., at 78 cts.....	76 85	
Interlined with linen ruled.		
To writing paper.....	164 50	
To paper, presswork, etc., 22 signatures, at $3.95.....	86 90	
To inserting blank pages.....	12 00	
To changing title pages.....	20 00	
To binding in half Morocco, with title, coat of arms and names separately stamped in gold, full series of extra fine copies for delegates and officials.....	970 65	
		$1,404 45

Secretary's Manual.

To 627,792 ems plain comp., at 39 cts.....	$244 83	
To 133,722 ems R. and F. comp., at 78 cts.....	104 30	
To paper, press-work, etc., 56 signatures, at $3.95.....	221 20	
To frontispiece of Capitol on cut paper.....	45 00	
To inserting blank pages.....	12 00	
To blue leaves inserted by hand.....	31 55	
To interleaving with writing paper.....	15 80	
To inserting two erratas.....	14 00	
To composition, printing and tipping in new title pages and pages 5, 6, 11 and 419.....	68 25	
To binding in half Morocco, with title and coat of arms, and names separately stamped in gold, full series of extra fine copies for delegates and officials.....	970 65	
		1,725 58
		$3,132 03

Taking into consideration the charges in the above account in connection with the cost of engraving contracted for by the Compiler, your committee is of the opinion that the aggregate expense of the eight volumes ordered will be not less than $20,000 and not more than $25,000, not including, however, the cost of compilation.

For the purpose of comparison your committee further reports that the total cost of the printing and binding the manual and volume of tabulated statistics, ordered by the Constitutional Convention of 1867, was $6,638.12. That the manual referred to was an octavo volume of 586 pages containing the Constitutions of the then thirty-seven States of the Union. That the statistical volume contained 462 pages and was largely made up of what is called in The Argus Company's abstract "rule and figure composition," which is of about twice the expense of ordinary printing.

Your committee further reports that by a further clause of the Amendatory Act, before alluded to, it was provided that: "Said Compiler shall further have full charge to direct and to authorize, and at times to be fixed by said Convention and in conformity with the contract heretofore entered into by the Comptroller and Secretary of State on behalf of the State, the indexing, publication, printing and binding of the documents, proceedings, Journal and other printing and publications of said Convention, during and after the close thereof, and the expense thereof shall be certified by him to the Comptroller, and after being audited by the Comptroller shall be paid out of any moneys appropriated for the Convention, said Compiler and the present deputy appointed by him shall hold office until the above-described work is completed."

On the fifth day of April, eighteen hundred and ninety-four, the Compiler, claiming to act under the authority of the statute, entered into a contract with the Albany Evening Journal, and also with The Argus Company, each being corporations, publishing daily newspapers at Albany, N. Y., for the publication daily (excepting Sundays) of a verbatim report of the proceedings of this Convention, that the rates stipulated were in substance the statutory rates for legal printing, that is to say, seventy-five cents per folio of one hundred words. The following is a copy of one of said contracts, the two being similar in terms:

Memorandum of an agreement, made this 5th day of April, 1894, between George A. Glynn, Compiler of the manual of the Constitutional Convention of the State of New York, of the first part, and the Journal Company, a corporation publishing an evening paper in the city of Albany, of the second part.

Whereas, The party of the first part has been by law given full charge, direction and authority, to direct and to authorize, upon conditions to be fixed by said Convention, the publication and printing of the documents, proceedings, journals and other printing and publications of said Convention, during and after the close thereof:

Now, therefore, the said party of the first part, in pursuance of

the power and authority vested in him by law, as aforesaid, does direct and authorize the said party of the second part, to print and publish daily (except Sundays) in its said newspaper, a full report of the proceedings and debates of said Convention, upon conditions to be fixed by said Convention, at the rates now fixed by law for the publication of legal notices in the State paper.

And the said party of the second part, in consideration of the said designation, direction and authority, hereby agrees to print and publish in its said newspaper daily (except Sunday), upon conditions to be fixed by said Convention, a full report of said proceedings and debates, as the same may be furnished to it at the rates above mentioned.

In witness whereof, the parties hereto above mentioned, have hereunto set their hands and seals, the said the Journal Company, its corporate seal, by William Barnes, Jr., its president, the day and year first above written.

GEORGE A. GLYNN,
Compiler of the Manual and Proceedings of the Constitutional Convention of the State of New York.

THE JOURNAL COMPANY,
By WILLIAM BARNES, JR.,
President.

Signed, sealed and delivered in presence of
M. V. DOLAN.

That in accordance with such arrangement the above-mentioned newspapers have, since the beginning of this Convention, been engaged in publishing a report of its proceedings in their respective issues, that the reports are supplied to such newspapers by the private stenographer employed by the Compiler at the rate of twenty cents per folio, that a column of each of said newspapers will contain, on the average, about sixteen folios of printed matter, and the debates and proceedings of a day will average at least twelve columns, assuming that the Convention will sit until September fifteenth, a conclusion may be obtained from this data of the approximate cost of this publication to the State, which, in the opinion of your committee, will exceed twenty thousand dollars for both papers. It may be added that the price at which the like service was rendered in the same newspapers to the Convention of 1867, was $6.50 per column. The only other printing of any considerable amount authorized by the Compiler, so far as the same has come to the knowledge of your committee, is the verbatim report of your proceedings daily placed on the files of the delegates. The cost of

this printing is governed by that provision of the contract with The Argus Company, which stipulates that the price for printing debates or a daily report shall in no case exceed the lowest rates for work of the desired quality in Albany and in New York city at the time the said work may be done. So far as the Convention itself is concerned, it has authorized very little printing, except that directed by its general rules, which provides for printing the Journal, proposed amendments to the Constitution and the reports of the committees on constitutional revision.

In view of the comments that have already been made in the public press as to the extravagant amount of printing ordered for the use of this Convention, your committee have deemed it advisable to fully inform the Convention as to the drafts that have been made and likely to be made upon its appropriation for this single item.

They also deem it of the first importance that the people of the State shall fully understand that no responsibility for the present condition of affairs can be fairly charged to the officers or members of this Convention. Those expenditures have been incurred by authority derived directly from the Legislature and exercised independently of this Convention and without reference to its wishes. This attempt to control the powers of this Convention by the legislative branch of the State government will doubtless receive attention, but is without the province of your committee.

The recommendation of the committee is:

1. That the Compiler be required not to authorize or direct any further expenditures for printing or supplies without the order of this Convention or the President or Secretary thereof.

2. That the publication of the proceedings of this Convention in The Argus and the Albany Evening Journal should be discontinued, in case the Convention deems it has authority in the premises.

3. That the future publication of the Convention should be in less expensive binding.

4. That two special stenographic reports of the proceedings and debates of the Convention are unnecessary, and that the official report should be used for all purposes.

F. H. HAMLIN,
Chairman.

Mr. Hamlin — Mr. President, before calling from the table the report of the Committee on Printing, I desire to call attention to an error of the printer on page 9. The words, ten lines from the bottom, "and at times" should be "upon conditions;" and as these are the two most important words in this report, I trust that every

member will erase the words " and at times " and insert " upon conditions," so that it reads, being a recital of the statute: " Said Compiler shall further have full charge to direct and to authorize, upon conditions to be fixed by said Convention and in conformity with the contract heretofore entered into by the Compiler and the Secretary of State," and so forth.

The President — Will the gentleman kindly state where the correction is to be?

Mr. Hamlin — It is ten lines from the foot of page 9 of document No. 8, which is the report of the Committee on Printing. The words, " and at times to be fixed by said Convention," should read " upon conditions to be fixed by said Convention." It is a very material change.

There are some other minor matters to which I would like to call the attention of the Convention. At the top of page 10 it will appear that " September " should be " April." It should read, " on the sixth day of April, 1894."

At the bottom of page 13, where it says, " They also deem it of the first importance that the people of the State should fully understand that no responsibility for the present condition of affairs can be fully charged," it should be " fairly charged to the officers or members of this Convention," and that, with the fact that on page 11 is a portion of the contract with The Argus Company, which should be on page 5 and next to their contract. But I think that it will be apparent to anyone who looks over it that the schedule of prices on page 11 should be attached to the contract with The Argus Company on page 5. With these corrections, Mr. President, I call for the consideration of the report.

The President — This report having already been received and printed, the question is on the adoption of the report, or such action as the Convention may desire to take.

Mr. Vedder — Mr. President, this is a very able and exhaustive report, but some of its " conditions " are not entirely satisfactory to my mind; that is, I am still left in doubt. The recommendation of the committee is that the publication of the proceedings of this Convention in The Argus and the Albany Evening Journal should be discontinued in case the Convention deems it has authority in the premises.

Now, that is a vital question, whether we have power in the premises to discontinue, if we should so desire, the publication of the proceedings in The Argus and in the Albany Evening Journal,

and upon that the committee gives us no light, I suppose because the majority of the committee are practical printers and are not lawyers. We ought to know, Mr. President, before going much further what our rights and our powers are, and what our duties are as members of this Convention. The law under which these contracts with The Argus and Journal exist is the act of the 30th of March, 1894, I believe, which says: "Said Compiler shall further have full charge to direct and to authorize, upon conditions to be fixed by said Convention, the printing, publication, indexing," etc. In the contract printed in this report at page 10, with the Journal Company, which I understand is substantially the same as with The Argus Company, we find the following: "The party of the first part" that is the Compiler, Mr. Glynn — "has been by law given full charge, direction and authority to direct and to authorize, upon conditions to be fixed by said Convention, the publication and printing of the documents, proceedings, journals and other printing and publications of said Convention during and after the close thereof."

Mr. President, we ought to know the meaning of the word "conditions," which is named here and which are to be fixed by the Convention; for I find in the clause in the contract just below there, "upon conditions to be fixed by said Convention at the rates now fixed by law for the publication of legal notices in the State paper." So that it would seem that the conditions which are to be fixed by the Convention have in this contract been fixed by the Compiler. Question, has the Compiler power to do that? We also ought to know from some authority which is competent to judge the meaning of the word "publication." How broad is that? How extensive; how far-reaching is the word "publication?" We also want to know the meaning of "during the Convention, and printing and publishing the proceedings, journals and documents after the close of the Convention."

These contracts made with The Argus and the Journal Companies were made before the assembling of this Convention, and for those contracts this Convention cannot be held responsible under the law. But this Convention will be and ought to be held responsible for that which it suffers to be done or authorizes to be done which comes within its power to do, to permit or to authorize. I say we should be held responsible for what we now do which we are authorized by the law to do. We ought, in the first place, therefore, to ascertain what power we have in the premises; what the meaning of the words "conditions to be fixed by the Convention," in respect to publication, printing, indexing and all the expenses to which the good people of this State will be put, is. I would like to have someone

who is versed in the law tell us the meaning of the word "publication;" does that mean that every word that is spoken here shall be printed, and if printed, in how many papers? If the word "publication" can include two papers, it can include a score of papers. It can include for publication all the papers in the State. I, therefore, suggest to the Printing Committee — and I do it without any discourtesy whatever to that Committee — that this matter be referred to the Judiciary Committee, to report to us in regard to the power, authority and right that we have as a Convention, under the law of 1893 and under the law of 1894. I have not had time to draw up a resolution to that effect.

Mr. Kellogg — Mr. President, in view of the fact that the Committee on Printing have made an able report on the facts, I move you, sir, that the whole matter be referred to the Committee on Judiciary to ascertain what the law is in the premises. I offer the following resolution:

R. 58.— Resolved, That the report of the Committee on Printing be referred to the Judiciary Committee of this Convention for its opinion as to whether, under the law by which said contract was made and the Compiler so appointed is doing his work, the Convention has any authority to discontinue work under that contract, or control the Compiler in the performance of the duties under the law.

The President — I would like to ask Mr. Vedder whether that is sufficiently broad to meet his views. This resolution calls for a categorical answer to the question, yes or no.

Mr. Vedder — I hardly think it is broad enough.

Mr. Kellogg — I will accept any proper amendment.

Mr. Hamlin — Mr. President, before this motion is put, I would suggest to the Convention that we have before us the facts. I have no pride of opinion, and I suppose that no member of the committee which I represent has, it being a business committee; the majority are laymen and not lawyers, but it seems to me that this Convention would have a much better knowledge of what it wants to do when it thoroughly understands the facts in the case. I should have no objection to the matter going to the Judiciary Committee, and I think it ought to go there upon the question of the general powers of the Convention over the Compiler under this statute, but I think, sir, that the facts should be first considered by the Convention so that we may act intelligently upon the question.

Mr. Hirschberg — Mr. President, I move to amend the resolution

before the Convention by adding the following: That the Judiciary Committee be instructed to report to the Convention on Friday morning, definitely, upon the powers and responsibilities of the Convention in reference to the matters embraced in the report of the Printing Committee.

Mr. Hamlin — Mr. President, I think that this is a matter that deserves attention at the hands of this Convention. But before I begin to say what I shall say on that subject, I would like to exonerate The Argus Company from any imputation, if any has been made of any dereliction on their part, in regard to the misprints in this report. They probably arose either from the defect of the typewriter or from the illegibility of my handwriting, and I am willing to assume the responsibility of it.

Now, sir, upon the question that is before the Convention in regard to this printing. As I say, it is a question of importance. It is not a question of importance, so much in regard to the few thousand dollars, the twenty, or thirty, or thirty-five thousand dollars that will be saved to the people of this State, possibly; but it has its principal signification in the question whether the work of this Convention when it is submitted to the people will be received with favor. More than that, it involves the powers of this Convention. So that if I spend a few moments upon the facts in this case, which it has been my misfortune to have, with others of the committee, to investigate, I think I will be excusable.

Now, let me first refer to the statute of 1893. That statute simply authorized the proper officials of this State to make a manual and furnish supplies. Then there was another provision which provided that a contract should be made in the month of March, 1893. For some reason, which it is not material, perhaps, to go into, the State officers then in power did not follow the direction of this statute. They waited until the last secular day of their administration and then they entered into this contract with The Argus Company. Now I have no fault to find with The Argus Company. It is not an eleemosynary institution, which was formed for the purpose of protecting inefficient State officers. It is a corporation, I assume, for making money. But there are certain considerations in regard to this contract, which should receive the attention of this Convention. In the first place, it is evident that there is what is called unbalanced bidding in it. There is a provision here that for a thousand ems in one place they shall receive nine cents. There is very little printing of that character to be done. There is another provision in it that they shall receive thirty-nine cents for a thousand ems, and when it is understood that six thousand ems is the

ordinary work of a compositor for a day, the discrepancy between these various bids will appear.

But that is only a part of the history of this case. The contract made was signed by the officers, and such as it is, it is for the State officers and for the Judiciary Committee, upon the question of law, to determine. Then there came the Act of 1894, and that is the act which brings into this Convention the question which is here. It was provided by that act that a Compiler should be appointed. That was an office that was heretofore unknown, I think, in any Constitutional Convention. I have made some search and I have been able to find no statute which ever placed the powers of printing in the hands of an officer independent of the Constitutional Convention itself. But in this case they provide that he should have the power to control the expenditure in that branch; that the expenditure of this Convention shall be in the hands of the Compiler. I have not anything to say against the Compiler personally. He has treated the committee fairly. But the thing I object to is the abstract Compiler, the Compiler that marches out of this statute of 1894 to take possession of the powers of this Convention. He is the person; and there is not much politics in this, gentlemen. This abstract entity seems to have been born in the Legislature, which belonged to one party, and he was taken over to the Executive Chamber, apparently, and baptized by an Executive that belonged to another party. (Laughter.) I am glad that this is free from political bias. It is a simple question of business with this committee, in which we are practically, most of us, simply business men. But such as he was created, however he was, he was a most diligent officer. Why, sir, in a few months he has brought us here six thousand pages of printed matter. The cost of the printing, as conceded by The Argus Company, is seventeen thousand dollars, without the cost of the expense of compilation. In my opinion, it will amount to from twenty to twenty-five thousand dollars besides the expense of compilation, which will make it amount to thirty thousand dollars. So that, gentlemen, you have before this Convention opened its doors an expenditure here of thirty thousand dollars for this Convention for the manuals. They amount to six thousand pages of copy. Why, sir, the Convention of 1867, which was a Convention, I think, fairly famous both for its ability and, if I may say so, for its volubility, the whole printed pages, including a thousand pages of indexing, was only about thirteen thousand pages. And here, before your Convention opens, before any of the necessary printing of this Convention is done, you have had about half as many pages of printed matter as that Convention had entire.

Now, then, as to the cost of this matter. You will see upon page 9 of the report, a bill which has already been rendered to the Comptroller of the State for the two small volumes, the manual, and what is known as the Delegates' Diary, which cost $3,132.03, as appears in the record. That is independent of the expense of getting the volumes together, the Compiler's expenses. There is left these additional six volumes, of which the last is altogether the most expensive; and then there is the book with the pictures of delegates, which is an expensive volume. I think, if it keeps within the limits suggested in this report, that it will be the rather remarkable sum of $30,000 for these books.

But, gentlemen, I do not find fault with these volumes. I think they are well gotten up. They are well bound. They contain a valuable amount of information, but the objection is on the question of quantity. Why, sir, there is great discrimination used here. We have something to satisfy everybody. There is something for amusement, there is something for edification. Why, you have picture books for the feeble-minded and you have tables of statistics for the philosophers. (Laughter.) You have South American Constitutions and you have them as far north as Norway. Sir, I do not object to that part of this, but I do object to the mass of printing that has been handed to this Convention by a Compiler over which it has no conceivable power; and what I wish to say, and what I want this Convention to do, is to say to the people of this State that, whether it is good or whether it is bad, this Convention has had nothing to do with it.

Those are things of the past. I only speak of them as bearing upon the present. The practical question is this question of newspaper printing. The Compiler entered into a contract with two newspapers for the printing of this mass of debates on various unimportant subjects. And then what occurred? What right had he? Where does he place himself on anything in this statute? It does not need any Judiciary Committee to find that out. He is to proceed according to the contract with The Argus Company. But here is a contract with the Journal. Here is a contract separately with The Argus Company. Whence does he derive any authority for this? Why, sir, it has not a single characteristic of what this statute requires; it is neither under conditions fixed by this Convention, nor is it done in conformity to the contract, nor is it a publication that is required by the terms of this statute. So that we say that there is no authority whatever for his spreading this thing in these two papers at the rate of twelve dollars a column, as it is estimated by the practical printers and publishers upon your committee. The

expense of that, your committee estimates, will be $20,000 at least. Of course, it depends entirely upon the length of time and the amount of talk that this Convention indulges in, as to the approximate cost of this printing. But, sir, we say that he has no authority whatever to say to any paper printed independently of this Convention: "You shall print." As the gentleman has said who spoke before me, if he can say it to two papers, where is the limit? He may say it to two hundred. He may go to the fourteen hundred and ten which the gentleman from Erie (Mr. Becker) spoke of the other day, as far as any power is limited in this contract, or in this statute.

There are three other items to be considered, and then I have said what I desire to say on this matter. One is the stenographer. It appears by the report of this committee that instead of the official stenographer supplying the reports as placed upon the table, there is a special stenographer, who is employed at the rate of twenty cents a folio, to transcribe these for the benefit of the Compiler. It seems to the committee that if we have one official stenographer we have about all the official stenographers that we need, for the very obvious reason that if there ever should be a question as to which is the official report of this Convention, it would be very difficult to determine, and that is of moment, in addition to the question of expense.

Then, in reference to the binding, there is the item of the binding of this report, $970, charged for these volumes that have already been placed upon the tables of the members. The suggestion is that this is rather an extravagant binding, and that there might be certainly a considerable sum of money saved, the ordinary expense of binding a volume being, as I understand, in the ordinary law or sheep, not to exceed sixty cents, and the price of this being something like one dollar and thirty-five cents. So that these are in brief the recommendations of this committee. I have only to add that I suggested in the beginning that this is a matter of importance. I think it should go to the Judiciary Committee, perhaps, as has been suggested. But the main question in this case is for this Convention to rise up and protest against that statute so that it can never again be considered a precedent for a Legislature of this State. The legal aspects of the question were practically settled when the report of the judiciary was filed and placed upon the desks of the members the other day. The same question was raised in the State of Illinois and in the State of Minnesota, and they both repudiated the power of the State to appoint officers for a Constitutional Convention. If they can appoint a stenographer, if they can appoint a Compiler they certainly can appoint a Secretary and a President of a Convention. I have delayed the Convention longer than I

intended to, and I have said more, perhaps, than I ought, but I think the emergency demands a plain statement of the business part of this printing matter.

The President — Is Mr. Hirschberg's amendment accepted by the mover?

Mr. Kellogg — I accept the amendment.

The President — The question will be on the motion to refer.

Mr. Kerwin — With all due respect to the Committee on Printing, I wish to correct a portion of the report. It is liable to create an erroneous opinion. The committee say that the price of composition for bills is nine cents for each thousand ems, and that the price of composition for documents and reports of committees is thirty-nine cents. " When it is understood that an average day's work for a competent printer is about six thousand ems, the disproportion is apparent." Mr. President, the average day's work for a printer on plain matter, such as this amounts to, is between twenty-five and thirty thousand ems. It used to be six thousand ems when hand composition was used. Instead of six thousand, that ought to be made about twenty-eight thousand.

The President put the question to refer to the Judiciary Committee, and it was decided in the affirmative.

Mr. Hamlin — Mr. President, I desire to present a further report.

The Secretary read the following report:

The Committee on Printing, to whom was referred the subject-matter contained in the following resolution offered by Mr. Becker, viz.: Resolved, That the Committee on Printing ascertain and report on the second legislative day of next week the propriety of furnishing a daily report of the proceedings of this Convention to each of the daily newspapers printed in this State, and the estimated expense thereof. And that the committee also report as to the printing and binding of five hundred copies of the debates of the Convention, to be distributed in the manner and to the persons named in rule 71, do hereby respectfully report:

First. That it is the opinion of the committee that to print and send out the Journal, as provided for by the foregoing resolution, will cost about two thousand dollars, and that, included with other printed matter therein referred to, will cost from six to ten thousand dollars; that in view of that expenditure of money the committee does not feel justified in recommending the adoption of that portion of said resolution.

Second. This committee does further report, that the printing of one thousand copies of the verbatim reports of the proceedings and debates be continued and that five hundred of said one thousand copies be bound in plain, substantial binding, for distribution as provided for in the same manner as provided by rule 71 for the distribution of the Journal and reports of committees.

The President — This report having been received and read, the question is upon its adoption, or what action the Convention will take upon it.

Mr. Becker — Mr. President, in view of the fact that the question of the relations which this Convention sustains to the Compiler and to the newspaper corporations having the contract for the printing has been referred to the Judiciary Committee, I move that this matter be laid on the table for the present until that report comes in and we know where we stand on some other things.

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

Mr. Becker — I assume, Mr. President, it is understood that the report will be printed?

The President — There seems to be no provision that it shall be printed, Mr. Becker. I think that will require a motion on your part.

Mr. Becker — I move that it be printed, Mr. President.

The President put the question on Mr. Becker's motion that the report be printed, and it was decided in the affirmative.

The President — Are there any other reports of standing committees?

Mr. Goodelle — Mr. President, I desire to give notice that there will be a meeting of the Committee on Suffrage immediately after the adjournment of this Convention; and, inasmuch as some of the members of that committee may have other engagements in the meantime, I desire to state that the meeting will not exceed ten minutes in length.

Mr. Holls — Mr. President, I desire to give notice that once more the Committee on Education, Charities, Taxation and Legislative Powers will have a joint public hearing this afternoon in this chamber at half-past two o'clock.

Mr. Root — Mr. President, I desire to make an inquiry as to whether the officers of this Convention will, as of course, print the rules which have now been adopted in document form, so that they may be distributed to the members.

The President — I understand that they not only will do so, but that they are now ready for the insertion of rule 61, so that probably by to-morrow the rules will be printed.

The President designated the following additional reporters, under rule 2: Thomas Wallace, Cohoes Evening Dispatch; Harold W. Cole, Albany Evening Post.

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

The Convention adjourned until to-morrow morning, June seventh, at ten o'clock.

Thursday, June 7, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber at the Capitol, Thursday, June 7, 1894.

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

The Rev. G. H. Heindel offered prayer.

The President — The Secretary will read the Journal of yesterday.

The Secretary read the Journal of Wednesday, June 6, 1894.

The President — The question is upon the adoption of the Journal of yesterday, which will stand approved unless some amendment is offered. Has any delegate any amendment to offer to the Journal? The Journal is approved as read.

Presentation of memorials being in order, the Chair stated that he had received a large number of memorials urging the adoption of amendments in the direction of civil service reform, and preventing political assessments, all of which were referred to the Committee on Powers and Duties of the Legislature.

Mr. Holls presented the petition of the New York Annual Conference of the Methodist Episcopal church, representing 51,538 church members, in behalf of an amendment to protect free schools and prohibit sectarian appropriations.

Referred to the Committees on Education and Charities.

Also, the petition of the New York East Conference of the Methodist Episcopal church, representing 60,000 church members in behalf of an amendment to protect free schools and prohibit sectarian appropriations.

Referred to the Committees on Education and Charities.

Mr. Parker presented the petition of several of the citizens of Orleans county, praying for an amendment to the Constitution prohibiting the appropriation of public funds for sectarian purposes.

Referred to the Committee on Charities.

Mr. Wellington presented a petition of the Hamilton Women's Indian Association, relating to the education of reservation Indians.

Referred to the Committee on Indians.

Mr. Barhite — Mr. President, on behalf of a majority of the citizens of New York who are taxpayers without representation, I desire to present some interesting and valuable statistics to this Convention, statistics which show the amount of property assessed to women in the State of New York outside of New York city. It appears from these records that the total amount of assessed valuation upon which women pay taxes is $320,324,172; that the number of cities and towns heard from is 571; the number of cities and towns not reported is 389; that the total number of taxpaying women is 143,713; the total amount of assessed valuation of the State being $2,253,296,735.

Referred to the Committee on Suffrage.

Mr. Lester presented the petition of several of the citizens of Saratoga county, asking that certain institutions where persons are supposed to be confined illegally and against their will be subject to the inspection of a commission appointed by the Governor.

The President — Mr. Lester, to what committee might that be properly referred?

Mr. Lester — I suppose it might be properly referred to the Committee on Charities.

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

Mr. Kellogg — Mr. President, I rise to a question of privilege. I wish to state to the person who opened my desk and took my manual and Delegates' Diary that if he will call upon me and convince me that he needs the balance of the books which the Compiler has turned over to me, worse than I do, that I will let him have them.

The President — Are there any communications from State officers?

The President has received a communication from the Secretary of State, which the Secretary will read.

The Secretary read the communication as follows (No. 2):

"*Honorable Joseph H. Choate, President of the Constitutional Convention, Albany, N. Y.:*

Sir.— This office is in receipt of the following resolution of your body:

R. 57.— Resolved, That the Secretary of State be requested to furnish to the Convention all printed and written information as to the condition of litigation and business of courts which was laid before the Judiciary Commission of 1890.

In response thereto I have the honor to say that this office contains no printed or written information as to the condition of litigation and business of courts which was laid before the Judiciary Commission of 1890. Through the secretary of that commission, we are informed that all papers and documents were submitted to the Legislature of 1891 and copies of the same were furnished the State Bar Association; also the Bar Association of the city of New York.

Respectfully yours,

ANDREW DAVIDSON,

Deputy."

The President — This communication being in answer to the request of the Judiciary Committee is referred to that committee.

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

Mr. Andrew Frank offered the following resolution:

R. 59.— Resolved, That the chairmen of the several standing committees instead of making verbal announcement of time of meeting of their several committees be and are hereby requested to hand said announcements to the Secretary in writing, the same to be read by him in the regular order of business.

The President — This resolution relating to the business of this day and every day is in order.

The President put the question on the adoption of the resolution, and it was determined in the affirmative.

Mr. A. H. Green — Mr. President, I desire to call up the resolution offered by me some days since respecting the facilitating and cheapening of the transfer of titles to real estate.

The President — The Secretary will read the resolution:

The Secretary read the resolution as follows (No. 19):

" Resolved, That a committee of five be appointed to consider and report to the Convention what action, if any, is desirable for the Convention to take for improving the method of transferring and dealing with titles to and interest in lands of this State."

Mr. Green — This matter, Mr. President, does not require any special remarks at this time. Whatever remarks I have to submit to it will be upon the report of the committee when it is produced. Of course, it is a matter of immense consequence to every part of the State. I think there can be no objection to its adoption. It is a mere matter of information for the Convention.

The President put the question on the adoption of the resolution, and it was determined in the affirmative.

Mr. A. H. Green offered the following resolution:

R. 60.— Resolved, That it be referred to an appropriate committee to report to the Convention what, if any, amendment should be made to the Constitution to restrain the Legislature from granting to, or conferring upon corporations or individuals privileges, rights or licenses to divert the waters of the upper Niagara river or any portion thereof from their natural channel, and that said committee, in their report, inform the Convention of those rights and privileges heretofore granted and the particulars and extent thereof, and the consideration therefor."

The President — Under the rule that will necessarily be referred to the appropriate committee, Mr. Green, what committee do you think that should go to?

Mr. Green — I will leave that to the discretion of the Chair, sir. I have no preference.

The President — Referred to the Committee on Powers and Duties of the Legislature.

Mr. A. H. Green also offered the following resolution:

Whereas, Many of the companies owning and operating street railways in the cities of New York and Brooklyn are deriving therefrom very large profits and advantages, and there is good reason to believe that from want of proper supervision on the part of these companies and of the cities, not only are the accommodations afforded by these railways inadequate and far behind the needs of the people, but that there follows a frequent inexcusable loss of life; and,

Whereas, The rates of fare charged afford in many instances extravagant profit to the companies owning the franchises of these

railways which are believed to be in excess of those of cities of less magnitude, and in the interests of the people ought to be reduced, and can be reduced, and yet leave to these companies largely remunerative returns for their outlay; and,

Whereas, The avails from the franchises to operate railways in said cities and for other objects would, if they were properly disposed of, very greatly reduce the burden of taxation;

Therefore, To enable the Convention to devise just and proper measures to effect a reformation of the abuses and insufficiencies, if any, of the street railway service in the said cities, it is

R. 61.— Resolved, That the mayors of the cities of New York and Brooklyn be requested to communicate to this Convention a statement showing the names of all the companies owning or claiming to own or operating surface or elevated railways in said cities; the amount of the capital stock of said companies respectively; the amount of bonds issued by said companies respectively; the cost of said railways respectively; the line and route operated by these railways respectively; the amount of fees, licenses or percentages paid annually to the said city by each of said companies; the total amount of such percentages, fees or licenses paid to the city of New York by the Metropolitan Traction Company; the names of foreign corporations leasing or operating railways in said cities; the amount of fees, licenses or percentages due to said city by said companies respectively, and the length of time they have remained unpaid; the amount paid or agreed to be paid by any of said companies on a change of its motive power; the present market price of the stock of said companies respectively, and whether the rights, privileges or franchises of said companies, respectively, were obtained from the Legislature or from the city authorities.

Referred to the Committee on Cities.

Mr. Peck — Mr. President, I hold in my hand a telegram from Mr. Parmenter stating that he is detained in the Circuit Court, and asking to be excused from attendance in the Convention for two days.

The President — Unless objection is made, Mr. Parmenter is excused for two days.

Mr. I. S. Johnson offered the following resolution:

R. 62.— Resolved, That on or before Tuesday next the Secretary prepare and have printed an index of the proposed amendments introduced, showing in proper columns:

First. The number of the proposed amendment.

Second. The section of the article of the Constitution amended, if an amendment of any article of the present Constitution, if not, that it be designated "new."

Third. The subject of the proposed amendment.

Fourth. The committee to whom referred.

And that he have authority to require the assistance of any of the clerks of this Convention when not otherwise engaged in official duties.

The President — The gentlemen hear the resolution offered by Mr. I. S. Johnson. The Secretary has informed me that he has all that matter in writing, but that it would not be practicable to get it printed by Tuesday. The resolution is open for consideration.

Mr. I. S. Johnson — I would suggest changing it so that it will read "at his earliest convenience."

The President -- The question is on the adoption of the resolution.

Mr. Abbott — I would like to hear that resolution read again.

The Secretary read the resolution as amended.

The President put the question on the adoption of the resolution, and it was determined in the affirmative.

Mr. Becker — Mr. President, I ask to be excused from attendance to-morrow.

The President — Unless objection is made he is so excused.

Mr. Forbes offered the following resolution:

R. 63.— Resolved, That the announcement of committee meetings made by the Secretary be reduced to writing and posted by him in front of his desk.

The President put the question on the adoption of the resolution, and it was determined in the affirmative.

The President — The next business in order is the presentation of propositions for amendment to the Constitution. The Secretary will call the districts.

The Secretary called the districts.

O. 173.— Mr. Tucker offered a proposed amendment to article 7 of the Constitution, by striking out the present sections 10, 11 and 12 of said article and inserting a new section as section 10, prohibiting the creation of an interest-bearing debt by the State.

Referred to the Committee on State Finances and Taxation.

O. 174.— Mr. Deyo (by request) introduced a proposed amendment to the judiciary article.

Referred to the Committee on Judiciary.

O. 175.— Mr. Wiggins offered a proposed amendment to the Constitution providing against the election of officers of cities by or in the name of any political party or organization of the State or nation.

Referred to the Committee on Cities.

O. 176.— Mr. Maybee offered a proposed amendment to section 1, article 2 of the Constitution, relating to the qualification of voters.

Referred to the Committee on Suffrage.

O. 177.— Mr. Roche offered a proposed article relating to the distribution of the powers of government.

Referred to the Committee on Preamble and Bill of Rights.

O. 178.— Mr. C. B. McLaughlin offered a proposed amendment to section 13, article 5, relative to the compensation of judges of the Court of Appeals and justices of the Supreme Court.

Referred to the Committee on Judiciary.

O. 179.— Mr. McArthur offered a proposed amendment to section 15, article 6, relative to County Courts.

Referred to the Committee on Judiciary.

O. 180.— Also, a proposed constitutional amendment to article 6, section 21 of the Constitution, as to judges practicing law.

Referred to the Committee on Judiciary.

O. 181.—Mr. Moore offered a proposed constitutional amendment relative to the qualification of voters, to be known as section 6 of article 2 of the Constitution.

Referred to the Committee on Suffrage.

Mr. W. H. Steele — Mr. President, as I understand, that is a very important amendment, one that is demanding a good deal of attention on the part of the people of this State, and as I am informed that it is short, I would ask unanimous consent to have it read through.

The President — Unless objection is made, in accordance with Mr. W. H. Steele's request, this amendment will be read in full.

The Secretary read the proposed amendment.

Mr. Kellogg — Mr. President, I move that it now have its third reading.

The President — The motion is out of order under the rule. It goes to the Committee on Suffrage.

O. 182.— Mr. Marshall offered a proposed amendment to the Constitution by substituting for article 6, relating to the judiciary, a new article.

Referred to the Committee on Judiciary.

O. 183.— Mr. Hill offered a proposed constitutional amendment to section 5 of article 2, relating to the manner of elections.

The President — Mr. Hill, to what committee do you desire that to go?

Mr. Hill — To the Judiciary Committee, I think.

The President — Referred to the Judiciary Committee.

The Secretary will read the appointment of the special committee on land transfers under Mr. Green's resolution.

The Secretary read the following:

Mr. A. H. Green, Mr. Riggs, Mr. Wellington, Mr. Arnold and Mr. Tibbetts.

The President — The next business in order is reports of standing committees. Has any standing committee any report to make?

Mr. McClure offered the following resolution, which was read by the Secretary:

R. 64.— Resolved, That it is the sense of this body that attendance by members at its sittings, which a proper performance of duty requires of them, should be considered by the courts of this State as a sufficient reason for the postponement of the trial of a case in which such member is an attorney or counsel.

Mr. McClure — I would ask leave to have that resolution considered. I will add by the suggestion of some of my friends "counsel employed before the meeting of this Convention."

I beg to say, as a reason for offering the resolution, that there seems to be a difference of opinion among the judges of the State as to the importance of attending at the sittings of this Convention by the members thereof who happen to be attorneys. I suppose that all the judges, in the proper performance of their duties as citizens, voted when the question of the membership of this Convention was submitted to the people; yet in the city of New York, at least one of the judges refuses to consider the duty imposed on members here and giving attention to matters affecting even the judiciary, the courts of the State, the general government and all questions that may come before them, as a sufficient reason why he should not attend in person the trial of a cause, no matter how insignificant in its effect. Now, that is even in cases where the member of this Convention is an attorney, responsible to his client for the proper conduct of a cause, in a cause in which that client has the right to have the personal attendance of his attorney in whom he has abso-

lute confidence, and who is supposed to be possessed of all the particular facts of the case.

It seems to me, sir, that members in attendance here, as it is their bounden duty to do, when they are attorneys, certainly sacrifice something of their business to do so, and cases which they are responsible for the disposition of should be adjourned when it appears that the attorney is in actual attendance upon the sittings of the Convention. Of course, sir, we cannot by the passage of this resolution affect the courts, except so far as we may influence them. But I would consider that I would be subject to grave criticism as a member of this body if I attended selfishly, strictly and solely to the performance of my duties as an attorney in causes for which I could receive, I may say with all due modesty, at least ten dollars a day, and neglected the sittings of this Convention which will have the decision as to what shall constitute a Court of Appeals, as to what shall constitute the Supreme Court, whether there shall be such courts and how they shall be made up. I hope, sir, that as an expression, a respectful expression, because we are all possessed of the utmost respect for the courts, that this will be passed. And yet, sir, and as my reason for now offering it, I have to rise in a moment and ask to be excused to-morrow to attend to the trial of a case in which I have been an attorney for at least a year, because the court thinks that the duty of a member of the Constitutional Convention is so insignificant that the member ought to leave that body and attend the court.

Mr. Johnson of Kings — Mr. President, I do not favor that resolution. I do not think that this Convention should pass any resolution relating to that which affects only one class of its delegates. This is not a Convention of lawyers nor should this Convention speak for that which affects only their convenience. There is another class that may like to be heard on the question of postponing cases: That is the litigants, the men who have rights, with but one place where they can vindicate them, and that is in the court. They, sir, may think that the time has come when they can try their cases, and some of them may think there is nothing so sacred about the position of attorney but that it is quite possible that some other counsel can be found who can take the place of the counsel who represents their opponent. If that be not the case, I think the justice, the charity and the magnanimity of the court and their brothers at the bar will entirely cover such a case. We are very apt, Mr. President, to speak as though litigants and litigation were for lawyers. We are the mere convenience of the litigants, to serve them, and not they to serve us.

Mr. Cookinham — Mr. President, I move to lay the resolution upon the table.

Mr. Hirschberg — I second the motion.

The President put the question on the motion to lay on the table, and it was determined in the negative.

Mr. A. H. Green — Mr. President, I would suggest to the mover of the resolution whether it would not be best to qualify it so that it need not apply to criminal cases, to a high class of criminal cases. There might be an exception made in such cases as those.

Mr. McClure — Mr. President, personally I have no interest in it, but I do beg to suggest that a man on trial for his life or for his liberty is as much entitled to the presence of his chosen attorney in a case as a man who has an attorney fighting for a few hundred dollars. I hope Mr. Green will not urge his amendment.

Mr. A. H. Green — That is entirely true. I think he is entitled to his liberty if he is an innocent man and that the relative importance of the attendance of the gentlemen here and of the case of a man who is imprisoned perhaps for his life ought to be determined in favor of the prisoner, but if there is any objection particularly to the amendment, I have no desire to insist upon it. It seems to me to be proper, but as it has been suggested, it is a mere request or intimation to the court, and I withdraw the amendment.

Mr. Lauterbach — Mr. President, are we lawyers the lights of the earth and not its salt? Is it seriously urged that because we have consented to be elected as delegates to this Convention with the assumption that we have left our other business behind us, and with the knowledge that others may exist, perhaps, who are as well qualified to pursue the trial of causes in the court as we may be, is it fair that the machinery of the law should be hampered and embarrassed and that the litigation of causes should be postponed simply for the reason that we have suffered ourselves to be disengaged from our usual avocations to pursue this honorable duty? Is it a fair thing? Is it an honorable thing for the members of this Convention to pursue their own selfishness to the extent of asking the courts of the State of New York to accept as a final reason, at our request, the mere fact of our engagement in this body, performing the duties we have undertaken? Is not this a matter to be left fairly to the legitimate and reasonable discretion of every judge in the State of New York who can weigh the reasons that may be advanced in any special case, without expressing it as our opinion, the opinion of this Convention, that he will not act justly if he refuses an adjournment on the score of our engagement here? There are members of other

professions here. There are those who are engaged in mercantile business. Would the maturity of a promissory note of a merchant who may be here to-day be postponed until September fifteenth if that be the date of the final adjournment of this Convention? Would it be fair on the part of a merchant in this Convention to ask for any such extension as that?

Is it decorous for us to assume to ourselves so high an estate that our absence from our usual avocations shall be considered an absolute reason why the usual avocations in the city of New York and throughout the State of New York shall not be pursued according to their ordinary method? Let some members of the bar less fortunate than ourselves in receiving this very honorable distinction, to which we have not only voluntarily submitted, but for which many of us have yearned, received their compensation by being our substitutes in the trial of causes which we cannot engage in during the period of our attendance here. Let the boon be not to us alone, but to others who may not have been as fortunate as we are. At all events do not let us arrogate to ourselves so much consequence as to think that the ordinary machinery, the ordinary routine of business, shall be checked in our courts because of our attendance here.

Mr. Cookinham — Mr. President, I hope this Convention will not, I will not say arrogate, to itself authority to say the Supreme Court shall not proceed with its business; I would rather say I hope this Convention will not humiliate itself to the extent of arming the gentleman from New York with a resolution asking for the postponement of a case to which the judge will pay not the slightest attention. I should be ashamed to stand up in court, armed with a certified copy of this resolution and ask for the postponement of a case to which the judge would say: "I propose that this case be now tried." I hope, fellow lawyers, upon this floor that you will not humiliate this Convention. I hope you will not pass a resolution that will humiliate the judges who sit upon the benches of our courts of record. I hope you will not assume that those judges have not the ability, that they will not exercise the discretion and say, in any case in which the duties of a delegate require he should be in attendance upon this Convention, that in his discretion the case may be postponed until a time when the member may be excused from sitting here and may try the case. I certainly hope that this resolution will not prevail.

Mr. Dickey — Mr. President, in view of the fact that at the end of two or three weeks the courts of the State will adjourn for the sum-

mer, if for no better reason, I hope the lawyers in the Convention will not advertise their selfishness by voting for this resolution.

The Chair put the question on Mr. McClure's resolution, and it was determined in the negative.

The President — The Sergeant-at-Arms will please to see that order and silence are preserved outside of the seats of members in the rear of the hall. Members complain that there is so much talking there they cannot hear what is said in the body.

Mr. McClure — Mr. President, I ask to be excused from attendance upon the Convention to-morrow. I will state as the reason that the Supreme Court has not considered attendance upon this Convention as an adequate ground for the postponement of a trial.

The President — Mr. McClure asks to be excused from attendance here to-morrow, and unless objection is made, he is so excused.

Mr. Holcomb — Mr. President, I ask leave of absence for to-morrow?

The President — Mr. Holcomb asks to be excused from attendance to-morrow, and unless objection is made he is so excused.

Upon motion of Mr. Root, the Convention adjourned to Friday, June 8, at 10 A. M.

Friday, June 8, 1894.

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

The Convention was called to order by President Choate at ten o'clock.

The Rev. A. Kennedy Duff offered prayer.

The President — The Secretary will read the Journal of yesterday.

The Secretary read the Journal of Thursday, June 7, 1894.

The President — The Journal, as read, will stand approved unless amendments are offered. Has any delegate any amendment to offer? If not, the Journal is approved as read.

Mr. Moore — Mr. President, I desire to call attention to the fact that the proposed amendment relating to the qualification of voters, which appears in the first column of page 156 of the debates, as being introduced by Mr. McArthur, was, in fact, introduced by me. It also refers to article 6, when it should be article 2. I desire to make that correction.

The President — The correction will be made. The next business in order is the presentation of memorials. The Chair has received a very large number of petitions, the same as yesterday, urging the adoption of amendments in the direction of civil service reform, and the prevention of political assessments, all of which are referred to the Committee on Powers and Duties of the Legislature.

Mr. Holls presented the petition of the American Baptist Education Society, in behalf of an amendment to protect free schools and prohibit sectarian appropriations.

Referred to the Committee on Education.

Also, a similar petition from each of the following: The New York Yearly Meeting of the Religious Society of Friends, the Congregational General Association of New York, the East German Annual Conference of the Methodist Episcopal church, the Troy Annual Conference of the Methodist Episcopal church, the Wyoming Annual Conference of the Methodist Episcopal church and the Quill Club of the city of New York.

All of these petitions were referred to the Committees on Education and Charities.

Mr. McIntyre presented the petition of 650 citizens of the Twenty-second Senatorial District, favoring an amendment to the Constitution so as to protect the public school funds and prohibit sectarian appropriations.

Referred to the Committee on Education.

Mr. Fuller presented the petition of 1,100 citizens of the Twenty-fifth Senatorial District on the same subject.

Referred to the Committee on Education.

Mr. Francis presented the petition of R. E. Belding and 1,150 other citizens of the Eighteenth Senatorial District on the same subject.

Referred to the Committee on Education.

Mr. Lauterbach presented the petition of Henry E. Pierrepont, George M. Olcott, Franklin Allen and 1,250 other citizens of Brooklyn and New York on the same subject.

Referred to the Committee on Education.

Also, presented the petition of John D. Rockefeller, Isaac V. Brokaw, Anson W. Hard and 1,125 other citizens of New York city and Brooklyn on the same subject.

Referred to the Committees on Education and Charities.

Also, the petition of Isidor Straus, Robert Collier, Morgan Dix,

Raphael J. Moses, William Rockefeller and 1,400 other citizens of New York city and Brooklyn on the same subject.

Referred to the Committees on Education and Charities.

Also, the petition of Charles L. Tiffany, Sandford Hunt, A. Butler Duncan, George Alexander and 1,600 other citizens of New York city and Brooklyn on the same subject.

Referred to the Committees on Education and Charities.

Also, presented the petition of D. O. Mills, Lyman Abbott, Arthur Brooks and 465 other citizens of New York city and Brooklyn on the same subject.

Referred to the Committees on Education and Charities.

Also, presented the petition of E. Francis Hyde, George Sherman and 1,100 other citizens of New York city and Brooklyn on the same subject.

Referred to the Committees on Education and Charities.

Mr. Jacobs presented the petition of John L. Griffin, Joseph A. Bogardus, John Cox, Jr., and 650 other citizens of New York city and Brooklyn on the same subject.

Referred to the Committees on Education and Charities.

Mr. McLaughlin presented the petition of 500 citizens of the Twenty-first Senatorial District on the same subject.

Referred to the Committees on Education and Charities.

Mr. Maybee presented the petition of 525 citizens of the Seventeenth Senatorial District on the same subject.

Referred to the Committees on Education and Charities.

Mr. Foote presented the petition of 400 citizens of the Twenty-eighth Senatorial District on the same subject.

Referred to the Committees on Education and Charities.

Mr. Wellington presented the petition of President James R. Day and faculty of Syracuse University and 1,250 other citizens of the Twenty-fourth Senatorial District on the same subject.

Referred to the Committees on Education and Charities.

Mr. Parker presented the petition of 275 citizens of the Twenty-ninth Senatorial District on the same subject.

Referred to the Committees on Education and Charities.

Mr. E. A. Brown presented the petition of Judson A. Lewis, William Durrant and 950 other citizens of the Twentieth Senatorial District on the same subject.

Referred to the Committees on Education and Charities.

Mr. Cookinham presented the petition of Charles W. Darling and

804 other citizens of the Twenty-third Senatorial District on the same subject.

Referred to the Committees on Education and Charities.

Mr. O'Brien presented the petition of the citizens of Cayuga county on the same subject.

Referred to the Committees on Education and Charities.

Mr. Countryman presented the petition of 720 citizens of the Nineteenth Senatorial District on the same subject.

Referred to the Committees on Education and Charities.

Mr. Dean presented the petition of 524 citizens of the Twenty-seventh and Twenty-eighth Senatorial Districts on the same subject.

Referred to the Committees on Education and Charities.

Mr. Hill presented the petition of Albert E. Jones and 650 other citizens of the Thirtieth and Thirty-first Senatorial Districts on the same subject.

Referred to the Committees on Education and Charities.

Mr. Tibbetts presented the petition of President G. S. Shurman and the faculty of Cornell University and 2,000 other citizens of the Twenty-sixth Senatorial District on the same subject.

Referred to the Committees on Education and Charities.

Mr. Gibney presented the petition of 900 citizens of the Fifteenth Senatorial District on the same subject.

Referred to the Committees on Education and Charities.

Mr. President Choate presented the petition of several citizens of Brooklyn on the same subject.

Referred to the Committees on Education and Charities.

Mr. Durfee presented the petition of F. F. Lewis and others of Walworth on the same subject.

Referred to the Committees on Education and Charities.

Also, presented the petition of D. W. Culver and others of Walworth on the same subject.

Referred to the Committees on Education and Charities.

Mr. Platzek presented the petition of several citizens urging the adoption of amendments in the direction of civil service reform and prevention of political assessments.

Referred to the Committees on Governor and State Officers and Legislature, its Powers and Duties.

Mr. Hedges presented the petition of 1,375 citizens of the Sixteenth Senatorial District, in behalf of an amendment to protect the free schools and prohibit sectarian appropriations.

Referred to the Committees on Education and Charities.

Also, there was presented the petition of 470 citizens of the First and Sixth Senatorial Districts, in behalf of an amendment to protect free schools and prohibit sectarian appropriations.

Referred to the Committees on Education and Charities.

The President — Motions, notices and resolutions are in order, and the Secretary will call the districts.

Mr. Cochran — Mr. President, I find on the files this morning document No. 9, which purports to be the rules as adopted by this Convention, and I find in rule 44 a very serious error, and I also find on page 100 of the debates an error applicable to this rule, and which, it seems to me, should be straightened out immediately. It will be recalled, and it will also be seen on page 100 of the debates, that I moved to amend rule 44 as reported by the committee so as to except motions to postpone indefinitely from those on which debate is precluded on the main question. Mr. Hirschberg moved to amend my motion by adding after the words in brackets the words "but not debatable." As it appears in the debates, Mr. Hirschberg's amendment was "not debatable." In printing the rules the committee, or whoever has had charge of it, has taken it that debate was precluded on the main question. The error on page 100 of the debates, I think, will explain how the rules came to be printed as they are. About two-thirds down the last column of page 100 it appears that Mr. Hirschberg moved to amend by inserting the words "not debatable" after the words "not amendable." His motion was "but debatable." That motion appears later on, when the Chair stated what he understood the amendment to be, "to exclude from the list which precludes debate on main questions, the sixth motion, so that it will stand alone and read, "postpone indefinitely (not amendable but debatable)." As the rule now reads, the motion to postpone indefinitely is not amendable or debatable.

The President — The Secretary says that the original copy was probably correct, and that it is probably an error of the printer. The gentlemen will please correct their copy by adding to the words "postpone indefinitely" the words "not amendable but debatable."

Mr. Cochran — And then to take it out of the brackets, of course.

Mr. Root — Mr. President, it seems to me that we should not leave upon our files as an authoritative statement of the rules this document, No. 9, which contains the errors to which Mr. Cochran has referred. I move that the Sergeant-at-Arms be directed to return to the printer all such copies of document No. 9 as he can obtain; to remove from the files of the members the present copies and to cause to be returned to the files the document with page 11

correctly printed. It will only require, I suppose, the printing of one leaf, pages 11 and 12. I apprehend that otherwise we would get into great confusion before the Convention was over and that we would leave behind us for future reference of our proceedings a printed document which would be very misleading.

Mr. W. H. Steele — Mr. President, I ask the attention of the Convention for just a moment. I was unavoidably detained from the Convention at the time these amendments were made. I wish to say in reference to this question that, if the gentlemen will turn to the manual they will find the words "postpone indefinitely (not amendable)" included in the brackets where it says "preclude debate on the main question." I wish to say in reference to that matter that it was a study with me for a long time whether to include that motion. I find the authorities Croswell, Cushing, Warrington, Roberts and Mell say that the motion to postpone indefinitely opens up the whole subject to debate because it is a motion virtually to determine the whole question, and that the subject should not be killed without debate. I find in the Blue Book that from time immemorial as far back as I could go and up to 1886, that rule 47 reads as follows: "Motions to postpone or commit preclude debate on the main question;" so for at least twenty-five years I find in the State library that the Legislature has had that rule in force from 1865 as far down as 1886. My parliamentary education was obtained under the provisions of that rule. Mr. Vedder's also. I believe almost every gentleman who has been in the Assembly is in the habit of considering the motion to postpone indefinitely as a short form of the previous question.

It was used in the Assembly for years for the purpose of cutting off any frivolous matter without any debate. I found that the rules of parliamentary precedents were in contravention of both the action of the Senate and Assembly for a great many years. Therefore, if the gentlemen will turn to their manuals, they will see that I left the bracket in such shape that it would be a very easy matter to scratch or erase it. It is a matter which ought to be decided by the Convention, and if I had been here that day I should have explained it to the delegates. I have consulted with a good many parliamentarians, and they said leave the rule as it is.

I also observe that the printer has not followed the instructions of the chairman of the Committee on Rules, as I understand it. When Mr. Alvord made the motion in reference to the fourth subdivision of chapter 2, I think it was, to insert the word "constitutional" wherever the word "amendment" occurs, Mr. Root rose in his place, accepted the amendment, and said that the word should be

inserted all the way through. I find that in a number of instances that has been entirely ignored by the printer. In rules 39, 40 and 42 the word "constitutional" should be inserted before the word "amendment." As I understand it, it is the wish of the chairman of the committee that that word should be inserted.

The President — The Chair is informed that those amendments are all inserted in the copy of the rules that went to the printer.

Mr. Root — Mr. President, I will extend my motion to include that correction.

Mr. Hirschberg — Mr. President, I move as a substitute to Mr. Root's motion that this document, No. 9, be referred to the Committee on Rules, to correct it in all particulars where corrections are necessary, in order to make it conform to the rules as adopted. Then when finally corrected it can be printed.

Mr. Riggs — Mr. President, I wish to call attention to an error in rule 63. The Convention voted to strike out all after the word "contempt." I moved to amend by striking out that portion of the rule, and the Convention accepted it.

Mr. Hirschberg — Mr. President, my substitute is designed to cover all those errors, to have the corrections made by the Committee on Rules and then have it reprinted.

Mr. Root — Mr. President, I accept Mr. Hirschberg's amendment.

The President put the question on the motion to refer document 9 to the Rules Committee, so that it can be made to conform to the rules as adopted by the Convention, and then reprinted, and it was determined in the affirmative.

Mr. E. A. Brown offered the following resolution:

R. 65.— Resolved, That the patriotic and beautiful decorations of this chamber, consisting of a painting of the seal of the Empire State, surrounded by flags of the United States of America, be allowed to remain, as now, during the entire session of this Convention, and that the Superintendent of Public Buildings be requested by the Secretary to carry this resolution into effect.

Mr. E. A. Brown — Mr. President, I desire to say just one word on this resolution. I was informed yesterday by the Sergeant-at-Arms that it was proposed to remove these decorations, and I therefore ask that this resolution be adopted.

Mr. Cochran — Mr. President, I do not think the Convention should go on record as recognizing that design as the arms of the State, because they are not. I do not object to their remaining,

but I do not think we should recognize them as the arms of the State of New York.

The President put the question on the adoption of the resolution, and it was determined in the affirmative.

Mr. E. A. Brown also offered the following resolution:

R. 66.— Resolved, That the Comptroller of this State, or other State officer having the custody thereof, furnish to this Convention, for its use and information, a certified copy or certified copies of any contract or contracts, if any, entered into by or on behalf of the State with the Compiler of this Convention for services rendered by him under an act of the Legislature, entitled "An act to amend chapter 398 of the Laws of 1892."

The President — This resolution will be referred, under rule 50, to the Committee on Printing.

Mr. Kellogg offered the following resolution:

R. 67.— Resolved, That the Superintendent of Banking be respectfully requested to furnish this Convention, if possible, with the number and location of savings banks or savings institutions in this State, and also the amount of unclaimed deposits in such institutions, together with a detailed statement as to how long any such amount or amounts have remained unclaimed.

Mr. Kellogg — Mr. President, owing to the fact that I expect to be absent next week with the Committee on Charities, I wish to make a brief statement in regard to this resolution. I have been reliably informed that there are several hundred millions of dollars of unclaimed deposits in the savings banks or savings institutions which have been organized under and in pursuance of the laws of the State; that, during several sessions of the Legislature attempts have been made to make some disposition regarding such uncalled-for deposits, but eminent lawyers have thought that such action would be unconstitutional. Hence, Mr. President, I offer this resolution for information, and I think there is nothing which has been compiled with reference to this subject.

The President — Referred to the Committee on Banking, and the Chair calls the attention of the chairmen of all committees to the rule which requires these resolutions which are referred to them under rule 50 to be reported on within three days.

Mr. Durfee — Mr. President, on Wednesday morning I had the honor to present to the Convention the petition of the Hon. Theron G. Yeomans and other residents of the towns of Walworth and Marion, of Wayne county, relative to prohibiting appropriations for

sectarian purposes. I find that paper appears in print as the petition of Sarah G. Yeomans and others. I can account for the transformation of Theron into Sarah only upon the theory that the witchery of the ladies who of late have been so numerous and so eloquent in this chamber has cast a spell over our scriveners and printers and over the very type. I ask unanimous consent that the correction be made.

Mr. Vedder — Mr. President, the Committee on Legislative Powers have unanimously instructed me to offer the following resolution:

The President — Is this a report?

Mr. Vedder — It is a resolution.

The President — From the Committee on Legislative Powers and Duties. The Secretary will read the resolution.

The Secretary read the resolution as follows:

R. 68. Resolved, That all proposed amendments to the Constitution not consisting of additions thereto shall recite the sections or parts thereof as proposed to be amended in full and all new matter or amendments shall be underscored and all omissions shall be inclosed in brackets by the delegate offering a proposed amendment before the same is sent to the Secretary's desk, and that each such proposed amendment shall be proposed in writing and in duplicate.

Mr. Vedder — Mr. President, I presume that part of this resolution is already covered by resolutions which have been adopted heretofore, and especially in respect to underscoring what is new and including in brackets the parts which are stricken out in all proposed amendments. This is intended to correct another defect and that is this: We found in our committee yesterday a number of proposed amendments which would read something like this: In section—— of article ——, after the word "but" on the fifth line from the top, insert the words as follows: ——. In the fifth line from the bottom in paragraph ——, insert "so much of section —— of article —— as is germane to said subject-matter." The introducer of such a proposed amendment may know what he means, but no other person has yet been discovered who knows what he means. The proposed amendments framed upon the principle I have described are impossible to put in proper shape without great trouble and extreme vexation by the committee. Every proposed amendment to the Convention should be in form something like this, so that anyone who should read it would know what it meant, to wit: Section —— of article ——, is hereby amended so as to read as follows:

If put in this shape, then the simplest as well as the greatest mind

could read and understand it, and, if the proposed amendment were printed in "italics," would know exactly without reading the whole Constitution or numerous decisions of the courts to ascertain what the proposed amendment was or what it meant. I have also provided that the proposed amendments shall be in duplicate. I understand from the Secretary's list that many gentlemen connected with the press desire them and do receive the proposed amendments, and it is sometimes difficult to get them back in time to go to the printer, and, therefore, I have provided that they shall be presented in duplicate, so that the Secretary will have one and the press, that is the people, shall have the other.

The President put the question on the adoption of the resolution and it was determined in the affirmative.

The President — The Chair has received formal notice from the counsel of Messrs. Putnam and Sullivan, announcing the dismissal by the Supreme Court in Erie county of the application for a writ of prohibition against the Convention and its officers. This matter will be placed on file.

June 5, 1894.

Hon. Joseph H. Choate, President of the Constitutional Convention, State Capitol, Albany, N. Y.:

Dear Sir.— I have the honor to inform you that Justice Manley C. Green of the Supreme Court, after hearing a full argument in the matter of the People, ex. rel. Herman F. Trapper against the Convention to Revise and Amend the Constitution, Harvey W. Putnam and Thomas A. Sullivan, and also having received the proceedings and report of your judicial committee, has this day made an order denying the application for the writ of prohibition, vacating the proceedings already taken and authorizing the Convention to proceed to the consideration of the matters enjoined by the alternative writ.

While I appreciate the position of the Convention in that it has in no respect recognized the right of the court in any way to make an order affecting it, I deem it proper to notify you of this action, in that it may appear in your minutes as an established precedent and recognition of the rights of similar bodies forever; that at no future time may subsequent Conventions be embarrassed in its deliberations by the consideration of a similar proceeding.

I am, with great respect,

SEWARD A. SIMONS,

Attorney for Harvey W. Putnam and Thomas A. Sullivan.

Mr. Root — Mr. President, I ask that the Secretary report to the Convention his action under the direction of the Convention in transmitting to the Supreme Court the remonstrance which was directed by the Convention against the court entertaining jurisdiction of the writ of prohibition, to the end that that action may be spread upon the records of the Convention, together with the action of the Supreme Court.

The President — The Secretary can probably state now his action under the previous order of the Convention in transmitting the protest of the Convention to the judge of the Supreme Court, at Hudson, before whom the writ of prohibition was returnable.

The Secretary — The Secretary sent the Assistant Sergeant-at-Arms with the action of the Convention. Judge Edwards was out of town. He left it with the county clerk of Columbia county, and the county clerk of that county telegraphed the Secretary that he had placed it in Judge Edwards's hands.

The President put the question on Mr. Root's motion.

Mr. Root — Mr. President, my motion was intended to go a little further than is stated by the Chair. I will restate it: I move that the communication of the Secretary to the Supreme Court, under the orders of the Convention, and the Secretary's report, and a duly authenticated copy of the action of the Supreme Court, be spread upon the Journal of this Convention.

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

The President — Propositions for amendment to the Constitution are now in order.

O. 184.— Mr. E. A. Brown offered a proposed amendment to article 1, section 2 of the Constitution, relating to trials by jury.

Referred to the Judiciary Committee.

O. 185.— Mr. E. R. Brown offered a proposed amendment to section 14, article 1 of the Constitution, to prohibit leases of non-agricultural land for more than twelve years.

Referred to the Committee on Preamble and Bill of Rights.

O. 186.— Mr. Roche offered a proposed amendment to section 4 of article 2, to designate courts in which persons may be naturalized, and providing for holding such courts at stated times.

Referred to the Committee on Suffrage.

O. 187.— Mr. Kellogg offered a proposed amendment to article 4, section 9 of the Constitution, relating to how and in what manner

bills may become laws, and defining the powers of the Legislature in relation thereto.

Referred to the Committee on Powers and Duties of the Legislature.

O. 188.— Also, proposed amendment to article 8, section 4 of the Constitution, relating to unclaimed deposits in savings banks or institutions of savings, and defining the powers of the Legislature in relation thereto.

Referred to the Committee on Banking.

The President — Reports of standing committees are in order. Has any standing committee any report to make? There is some unfinished business on the desk, the report of the Committee on Printing and the report of the Judiciary Committee, to which committee that report was referred for its opinion. Mr. Root, from the Judiciary Committee, I believe, has a report to make from that committee as to the powers of the Convention over the printing. The Judiciary Committee was ordered to report this morning on that subject.

Mr. Root — Mr. President, I make the following report:

The President — The Secretary will read the report of the Judiciary Committee on the subject of printing, which was referred to them, and that will bring before the house for consideration this report of the Judiciary Committee and the report of the Printing Committee which was referred to them.

The Secretary read the report of the Judiciary Committee, as follows:

To the Convention:

The Committee on Judiciary, in obedience to your resolution of June 6, 1894, calling for an opinion upon the power of the Convention over the Compiler appointed under chapter 228 of the Laws of 1894, and over the printing and publication of its own journals, documents and proceedings, and in respect of the matters contained in the recommendations of the Committee on Printing, reports as follows:

I. That the Legislature has undertaken to authorize the printing of a manual and compilation and of such journals as the Convention may keep, and has authorized a contract for such printing, which was made before the Convention met. In the opinion of the committee, the Convention has no concern with these matters, and it cannot prevent such printing from being a public charge, under the contract of 1893, or make it such a charge.

II. That as to all other printing and publications in the opinion of the committee, the Convention has sole authority to determine what documents and proceedings shall be printed, published, indexed and bound, and when and how and under what conditions they shall be printed, published, indexed and bound.

III. That the Compiler has no authority to order or contract for any such printing, publication, indexing or binding, except under the orders of the Convention.

IV. That the Compiler had no authority to contract for the daily publication of the proceedings and debates of the Convention in The Argus and Albany Evening Journal.

V. That the Convention has authority to give effect to all recommendations contained in the report of the Committee on Printing.

ELIHU ROOT,
Chairman.

June 6, 1894.

The President — The report having been received, the question is, what action shall be taken.

Mr. McDonough — I move that it lie on the table for the present, Mr. President, and be printed so that we may have an opportunity to examine it. No doubt we will have to adjourn early to-day, and it will do no harm to let it lie over and be made a special order for next Tuesday.

The President — The question is on Mr. McDonough's motion to lay the report on the table.

Mr. Root — Mr. President, I rise to a point of order. Mr. McDonough's motion was not to lay upon the table, but to postpone consideration, and I ask Mr. McDonough to yield to permit me to offer some resolutions designed to give effect to the recommendations of the Committee on Printing, in pursuance of the report of the Committee on Printing in order that they may be before the Convention during recess.

Mr. McDonough — Mr. President, I yield for that purpose.

Mr. Root — Mr. President, I offer a series of resolutions designed to follow strictly the four recommendations of the Committee on Printing. These resolutions have been carefully drafted, using the language of the statute and the language of the contract, in order that if litigation should arise hereafter with the State of New York, because of the action of the Convention, there may be no

doubt as to the legal effect of that action or as to what the Convention intends to do.

The President — The Secretary will read the resolutions.

The Secretary read the resolutions as follows:

R. 69.— Resolved, That the Convention to revise the Constitution and amend the same, hereby orders and directs:

First. That the Compiler appointed pursuant to chapter 228 of the Laws of 1894, shall not authorize or direct any indexing, publication, printing or binding, of any documents, proceedings, or other printing or publications, as documents, proceedings, journals, or other printing or publications of this Convention, except such as are required by the rules and orders of the Convention, and such as the President or Secretary shall direct to be printed, with the authority of the Convention or of the Committee on Printing.

Second. That the contracts which the Compiler assumed to make with The Argus Company and with the Albany Evening Journal on the 5th day of April, 1894, for the daily publication of a report of the proceedings of the Convention in The Albany Argus and Albany Evening Journal is disapproved and disaffirmed; and the Compiler is required to forthwith discontinue such publications.

Third. That all future bindings of publications of the Convention be less expensive than those heretofore used; and be first submitted to the Committee on Printing and approved by them before they are authorized by the Compiler.

Fourth. That the reports of the official stenographer of the Convention and the assistants employed by him be henceforth the only reports of the proceedings printed under the authority af the Convention or of the Compiler.

Mr. Root — Mr. President, I offer the following resolutions, which go one step beyond those recommended by the Committee on Printing:

R. 70.— Resolved, That the Convention to revise the Constitution and amend the same, hereby fixes the following conditions under which the printing of its documents, proceedings, journals and other printing and publications shall be directed and authorized by the Compiler and shall be done; and hereby directs the time, manner and place of the delivery thereof; that is to say: All such documents, proceedings and journals and other printing or publications, copy of which shall be delivered to the printer before four o'clock in the afternoon of any day, shall be delivered duly printed, folded, stitched and trimmed, to the Sergeant-at-Arms or his assistant at the document room of the Convention between eight and nine o'clock in the

forenoon of the next legislative day; all such documents, proceedings and journals or other printing or publications, copy of which shall be delivered to the printer after four o'clock in the afternoon on any day, shall be delivered duly printed, folded, stitched and trimmed in the same manner and within twenty-four hours after the delivery of such copy to the printer; extra copies, when called for, shall be delivered in the same manner and at the same place within such further time as shall be designated therefor by the President or Secretary of the Convention or by the chairman of the Committee on Printing.

Work required to be done in extra haste shall be delivered as specifically directed by the President or Secretary of the Convention or by the chairman of the Committee on Printing.

Mr. Root — Mr. President, the object of this last set of resolutions is this: I find by examining the contract reported by the Committee on Printing that while the Comptroller and Secretary of State are authorized to abrogate the contract for a breach on the part of the printer, there never can be a breach on the part of the printer in respect to the time and manner of the delivery of documents printed until the Convention itself has fixed the time and manner of delivery, so that while to-day we stand in great need of printed copies of the proposed constitutional amendments which have been referred to the various committees, while there are scores of such proposed amendments which have been referred to my own committee, the Judiciary Committee, and we are proceeding with our work largely in the dark as to what matters are before us, giving hearings to the judges of the courts of the State without being able to tell them what the proposals for amendments are, while the last proposed amendment that has come in printed form in the hands of the Judiciary Committee was offered here two weeks ago, there has still been no breach of the contract because this Convention has not fixed in accordance with the terms of the contract, the time of the delivery, and the object of this last resolution is that the Convention shall fix the time of delivery so that if the present delay continues we can call upon the Secretary of State to abrogate this contract. I move that these two sets of resolutions be printed together with the report of the Judiciary Committee and be referred to the Committee on Printing with instructions to report on Tuesday morning next.

Mr. McDonough — I would suggest Wednesday morning, Mr. Root.

Mr. Root — Very well, Wednesday morning.

Mr. McDonough — I would like to inquire from Mr. Root if his resolutions contemplate the discontinuance of the publication of the debates?

Mr. Root — They say nothing about that. They are carefully drawn so they shall relate to the documents, journals and proceedings which the Convention shall direct to have published. They do not endeavor to determine as to what shall be printed or published.

The President — As the Chair heard them read, they did refer to the subject of printing and the publication of the debates.

Mr. Root — The first set of resolutions follows the recommendations of the Printing Committee, and is designed solely to give effect to those recommendations, and it does provide for discontinuing the publication of the debates in The Argus and in the Evening Journal.

Mr. McDonough — I wanted the members to understand that.

Mr. Root — The second set of resolutions is merely designed to fix the time and manner of delivery of documents so that we may have them in time or know the reason why.

The President — The Chair would call the attention of the members to the fact that if these resolutions shall go alone to the Printing Committee something should be done with the report of the Judiciary Committee.

Mr. Hirschberg — That was embraced in the resolution.

Mr. Vedder — Mr. President, I would suggest that those last resolutions have reference to the publication of our documents and proceedings for daily use. I do not think we should delay about it and that they should be made a special order for next Tuesday or considered now.

Mr. Goodelle — I think this resolution should be passed at this time by unanimous consent. The committees are suffering for these proposed amendments. I fully concur with what Mr. Root has said. The committees are working in the dark. I hope the resolutions will be adopted.

Mr. Root — If there is a disposition on the part of the Convention to consider the matter now, I will accept any substitute looking toward that.

The President — Mr. Root withdraws his motion, and the question will be on Mr. Goodelle's motion for the adoption of the resolution which has just been read.

Mr. Hamlin — Mr. President, I suspect the resolution was made out of courtesy to the Committee on Printing, and we certainly waive any question of that kind, and consent to the immediate adoption of the resolution.

Mr. Kerwin — Mr. President, I would like to ask the Judiciary Committee, through Mr. Root, if they have consulted with the contractor in order to find out whether it is possible to get out that work within such a short time. I know there is a good deal of work connected with it. I know the contract allows the Convention to fix the time of delivery, but if we can give the contractor an hour's leeway, I think we should do it.

Mr. Root — Mr. President, that hour was put in the resolution because it left very much more time than the printer said would be necessary. It sometimes happens that a good deal of copying has to be done by the clerical force here in order to get the copy ready for the printers.

Mr. Bowers — Mr. President, I do not understand that the question of Mr. Kerwin has been answered by Mr. Root. There is no use of our adopting a hasty resolution, and make the matter worse than ever. The question is, has inquiry been made by the Judiciary Committee of the contractor as to whether the work can be done within the time prescribed. If such inquiry has been made I do not know it, and I do not understand the chairman of the Judiciary Committee to answer that the contractor has been consulted. It seems to me that the question ought to be determined whether the work can be performed in the time named, before we adopt this resolution and it will do no harm if it stands over until Tuesday. Of course, if the Convention see fit to proceed here, I shall not stand in the way. The only question is, if we do adopt it, can we carry it into effect.

Mr. Kerwin — Mr. President, my reason for asking this question was that I understand from the people interested in the contract that the work cannot be done in that space of time. At the same time, I take into consideration the fact that the work can be done if the contractor puts on enough help. I think it should be understood that if that rule is adopted, it should be lived up to.

Mr. Root — Mr. President, it is quite evident that the spirit of the rule relating to debate upon a resolution would call for this resolution lying over. I do not wish to have pressed through the Convention, and I am sure Mr. Goodelle does not, any rule relating to the contractor which would be deemed harsh, and I think the best solution would be what I originally proposed, and that is a refer-

ence to the Committee on Printing. They can consult the contractor and find out if it is possible to do the work within the hours named. I think Mr. Goodelle will consent to that.

Mr. Goodelle — Mr. President, I did not understand the suggestion.

Mr. Root — My suggestion was that some of the members of the Convention doubt the fairness of the rule that is contained in the resolution, and that in view of that it would seem to be a better course to let the Committee on Printing take it and consult the contractor and the contractor can remonstrate with them if this rule is deemed too harsh.

Mr. Goodelle — Mr. President, my only desire in making the motion was to relieve the several committees from the great embarrassment they are laboring under in reference to their work, but if there is serious objection to considering the resolution at this time I will withdraw the motion.

Mr. Root — Then I renew my motion that this last set of resolutions be referred to the Printing Committee with instructions to report on Wednesday morning.

The President — With the report of the Printing Committee?

Mr. Root — With the first set of resolutions which I offered and the report of the Judiciary Committee.

Mr. Osborn — Mr. President, in hearing the reading of the first resolution offered by the gentleman from New York, there seemed to be no reference to the question of supplies. I should like to ask whether that is intended to be included or whether it is unintentionally omitted.

Mr. Root — Mr. President, it is very likely that that should be included because it is in the recommendations of the committee. The resolution was drawn following the language of the statute and the statute says nothing about the control of the Convention over the supplies. I will move to insert the word "supplies."

Mr. Hamlin — Mr. President, I would suggest that that resolution should go to the Committee on Contingent Expenses and not to the Committee on Printing.

The President — The question is on Mr. Root's motion to refer this report to the Judiciary Committee, together with two sets of resolutions offered by him to the Committee on Printing, with instructions to put the same in print and make all necessary inquiries and report to this Convention on Wednesday morning next.

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

Mr. Hill — Mr. President, I move that we do now adjourn.

The President put the question and it was determined in the affirmative. Whereupon the Convention adjourned until Tuesday morning next at ten o'clock.

Tuesday, June 12, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber, at the Capitol, Albany, N. Y., June 12, 1894.

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

The Rev. A. Kennedy Duff offered prayer.

President Choate — The Secretary will read the Journal of last Friday.

The Secretary read the Journal of Friday, June 8, 1894.

President Choate — The Journal, as read, will stand approved unless amendments are offered. Has any delegate any amendment? The Journal is approved as read, and memorials are in order. The Chair has a very large number of petitions upon the subject of civil service, which will be referred for the present to the Committee on Legislative Powers and Duties.

Mr. Speer — Mr. President, I rise to a question of privilege. On going over carefully the debates and documents of this House for the past two weeks, I find that from time to time and frequently, there occurs a statement like this — that the printer has erred in following the copy in the documents furnished to him by this House, and that these errors have been so material and important that the documents, by resolution of the House, were returned to the printer to be reprinted. I do not in any way stand here in defense of any contract or any proceedings between The Argus Company and this State. To me such an act would seem to be improper, that I, in any way, by my word or vote, should participate in any matter affecting the printing of this House. But it so happens, that in regard to these statements, I am in a position to bring the proof to this House in order that the responsibility for any mistakes or errors which have occurred may be placed by the House where they belong.

On page 147 of the Record, in the first column of that page, Mr. Hamlin, chairman of the Commttee on Printing, called up the document furnished by the printer, and said: " I desire to call attention to an error of the printer on page 9 " — that is on page 9 of document 8, about two-thirds way down the page. This was a most important change, in that it wholly altered the conditions of the law in regard to the contract of The Argus Company. It changed the words " upon conditions " to " and at times," a very material change, and one which could not have been made by the most careless printer. Further down he recites that the word " September " should be " April," and that there are a number of other important alterations in this document made by the printer, as appears from a statement on page 147 of the Record. At the time I thought Mr. Hamlin might be making this charge through inadvertence, and I personally called his attention to the statement which he had made. You will find his further remarks in reply to that in the second column of page 148, where he says that it probably occurred from a defect of the typewriter or " from the illegibility of my handwriting." I have here, sir, the original copy of the report of the Committee on Printing, funished to The Argus Company by the chairman of the committee. This report is not illegible in any respect. It is not handwriting, it is a typewritten report, plain and unmistakable, which no printer could mistake. I turn to page 8 of this report and I find there the word " times " typewritten on the fourth line of the second paragraph. This paragraph was revised by Mr. Hamlin, and other changes appear on it in his own writing, but the word " times " appears here just as it was printed in the official document. Turning over the page, we find at the top of page 9, in the first line of the second paragraph, the word " September," as it appears in the official document.

President Choate — Would not this appear to be a question of printing, and the subject of a motion, rather than a matter of privilege?

Mr. Speer — Mr. President, the reason I am stating these facts, sir, is that, as anyone in the printing business knows, these alterations could not have been made through any printer's error, or through any mistake of the printer. The only way in which they could have been made in a printing office was by someone in authority directing the change. It is for that reason, because these errors could not have been made through the mistake of a printer, that I call attention to them here and now. I am most sensitive about any suggestion or implication on the part of any member

of this Convention, or elsewhere, that I, in any way, am taking part in any of these documents or the facts in regard to them. I can say the same thing about the rules, which I also hold in my hand, the copy of which was ordered to be returned to the printer, and here is the original copy, word for word as it is printed here, mistakes and all. The printer followed it exactly. I could go over all these instances through the Record. They are strewn through it. I have spent three days accumulating these original copies and comparing them with the Record in order that I might present the matter to the Convention, and that it might know these facts. About the contract, I have nothing whatsoever to say. About any rules or regulations of the Convention, I have nothing to say. It is purely a matter of the business reputation of The Argus, and to refute any personal implication which may have been made on any one connected with The Argus, as to any alteration of the documents. We have the original copy throughout. It is plain. There can be no dispute about it, and I should like to know how these mistakes were made. That is the question of privilege to which I rise. I should like to know who made these mistakes, and why the chairman of the Committee on Printing and the Secretary attributed these mistakes to The Argus Company; how these important errors crept into this document; how these matters of change and error occurred which, if made by The Argus Company, this contract should be revoked and cancelled. It would mean that The Argus Company had falsified these documents. I want to know who it was that changed them, who made these mistakes, and why was this copy sent down to The Argus Company in this shape, filled with these errors which would be sure to attract the attention of the Convention and to bring about resolutions of condemnation, as they have here. That is the point, Mr. President, and that is the question to which I rise, to find out why this was done. I hold here all these copies, and I take pleasure in sending them up to you, sir.

Mr. Hamlin — Mr. President ——

President Choate — There does not seem to be any motion before the House, Mr. Hamlin.

Mr. Hamlin — I would like to rise to a question of privilege, simply to supply the information asked for. I will not detain the Convention but a moment.

Mr. President, I assumed at the time I said what I did in regard to the printing, I had exonerated The Argus Company and the gentleman who has just spoken from any imputation in regard to the change that was made in the printing. I refer you, Mr.

President, to what I said upon the subject at the time, and if any broader statement could be made to exonerate The Argus Company and the distinguished gentleman who represents The Argus Company in this assemblage, I am perfectly willing to do it. I have no idea that The Argus Company intentionally committed this error, but I think it did rise in this way: The report in this case was made in my own handwriting, which, I must concede, is somewhat illegible. It was turned over to the typewriter just as I was leaving this city to go to my home, because there was great haste to get the report before the Convention. For that reason I had not the opportunity for looking it over before it was sent to The Argus Company, and I have no doubt it arose from the fact that my handwriting was not sufficiently plain for the typewriter to properly set forth in the typewritten copy that was sent to The Argus office, the precise wording as it should have been. I am willing to go to any extent to exonerate The Argus Company and the gentleman who represents it.

Mr. Barhite — Mr. President, it becomes my painful duty to announce that since our last adjournment, Mr. Merton E. Lewis, my colleague and one of the delegates from the Twenty-eighth District, has been so unfortunate as to lose his wife. It seems to me, sir, but proper that this Convention should, in some simple manner, express its sympathy with Mr. Lewis in his hour of affliction. I, therefore, desire to offer a resolution, and respectfully suggest that the sentiments of the Convention upon this resolution be expressed by a rising vote.

The President — The Secretary will read the resolution offered by Mr. Barhite.

The Secretary read the resolution of Mr. Barhite as follows:

R. 71.— "Whereas, This Convention has learned of the death, after a long and painful illness, of Mrs. Lewis, wife of the Hon. Merton E. Lewis, delegate from the Twenty-eighth Senatorial District; now, therefore,

"Resolved, That we tender to Mr. Lewis, in this hour of sorrow, our heartfelt sympathy.

"Further Resolved, That the Secretary be directed to send to Mr. Lewis a copy of this resolution."

The President put the question on the adoption of the resolution of Mr. Barhite. A standing vote was taken, by which the resolution was determined to have been carried.

The President presented a number of memorials, asking that officers and employes of the State shall be selected upon merit.

Referred to Committee on Legislature, its Powers and Duties.

Mr. Carter presented the petition of the Women's Christian Temperance Union of Erie county, asking for the extension of suffrage to females.

Referred to the Committee on Suffrage.

Mr. Barhite presented the petition of Dr. E. H. Makk and others, of Rochester, asking for an amendment to the Constitution, providing that appointive officers of the State be selected upon ground of merit.

Referred to the Committee on Legislative Powers and Duties.

Mr. Francis presented four petitions of citizens of Rensselaer county for an amendment to the Constitution, providing for an annual inspection of reformatories, asylums, etc.

Referred to the Committee on Charities.

Mr. Goodelle presented the petition of several citizens of Syracuse, relative to civil service reform in the selection of city and State officers.

Referred to the Committee on Cities.

Mr. W. H. Steele presented the petition of the Oswego Baptist Association of New York State to amend article 8 of the Constitution in regard to the use of State moneys for sectarian institutions, etc.

Referred to the Committee on Charities.

Mr. Hedges presented the petition of several citizens of Nyack in favor of an amendment for the inspection of reformatories, asylums, etc.

Referred to the Committee on Charities.

Mr. Hill presented the petition of the Hon. C. C. Sprague and several other citizens of Buffalo and Erie county, asking for equal suffrage for women.

Referred to the Committee on Suffrage.

Mr. Goodelle — Mr. President, I ask that the petition sent up by me be referred to the Committee on Cities, if it can be done.

President Choate — Mr. Goodelle's memorial is sent to the Committee on Cities.

Mr. Tucker presented the petition of Mrs. E. B. Grannis, Frank B. Carpenter, Mrs. M. Louise Thomas and ninety-four others, of New York city, upon the same subject.

Referred to the Committee on Suffrage.

Mr. Tucker also presented the petition of the National Christian League for the Promotion of Social Purity, adopted at a special meeting of the league, asking for equal suffrage.

Referred to the Committee on Suffrage.

Mr. McMillan (by request) presented two petitions of citizens of Buffalo, in reference to civil service reform.

Referred to the Committee on Legislative Powers and Duties.

Mr. Countryman — Mr. President, I have a protest to present to the Convention from several thousand ladies of Albany, against woman suffrage. It represents all classes of people, women of wealth, nearly all taxpayers, as well as working women, against the extension of suffrage.

Referred to the Committee on Suffrage.

President Choate — Are there any other memorials to be presented? The next business in order is notices, motions and resolutions, to be called for by districts. The Secretary will call the roll.

The Secretary called the roll of districts.

Mr. Blake offered the following resolution:

R. 72.— "Resolved, That the Secretary of State be and he hereby is directed to report to this Convention, on or before the 25th day of June, 1894, the number of indictments for murder in the first and second degrees found by grand juries of the various counties in this State from January 1, 1889, to January 1, 1894, and the number of convictions of each degree had upon such indictments, including pleas of murder in the second degree."

President Choate — I suppose that should be referred to the Committee on Judiciary, to be reported upon within three days, under the rules. Are there any other motions or resolutions to be offered? The presentation of proposed amendments to the Constitution is in order. The Secretary will call the roll.

The Secretary called the roll of districts.

O. 189.— Mr. Herzberg offered a proposed amendment to amend section 2 of article 13 of the Constitution, relative to future Conventions to revise or amend the Constitution.

Referred to the Committee on Constitutional Amendments.

O. 190.— Mr. Tucker presented a proposed amendment to amend articles 1 and 4 of the Constitution by adding a new section thereto for abolishing capital punishment, and relating to the pardoning power, etc., with re-trial in the event of newly discovered evidence.

Referred to the Committee on Preamble and Bill of Rights.

O. 191.— Mr. Tucker also offered a proposed amendment to article 1 of the Constitution as to damages for the loss of human life.

Referred to the Committee on Preamble and Bill of Rights.

O. 192.— Mr. Tucker also offered a proposed amendment to article 1 of the Constitution as to imprisonment for debt.

Referred to the Committee on Preamble and Bill of Rights.

O. 193.— Mr. Tucker also offered a proposed amendment, providing against property qualification for voting or holding office.

Referred to the Committee on Suffrage.

O. 194.— Mr. Tucker also offered a proposed amendment to article 11 of the Constitution, so as to separately submit to the electors of this State, the question of woman suffrage.

Referred to the Committee on Suffrage.

O. 195.— Mr. Blake offered a proposed amendment to section 10, article 1 of the Constitution, providing that divorce proceedings be had in open court before a judge thereof.

Referred to the Committee on Judiciary.

O. 196.— Mr. J. I. Green offered a proposed amendment to article 15, section 3 of the Constitution in regard to bribery.

Referred to the Committee on Judiciary.

O. 197.— Mr. Emmet offered a proposed amendment to article 8 of the Constitution, relating to the use of public moneys for sectarian purposes.

Referred to the Committee on Charities.

O. 198.— Mr. Roche offered a proposition for the repeal of section 3, article 5, and sections 1 to 6 of article 7, providing for the election of a superintendent of public works, and the submission to the people of the question of enlarging the State canals, and the bonding of the State for that purpose.

Referred to the Committee on Canals.

Mr. Roche — Mr. President, I should like to have it referred also to the Committee on Governor and State Officers.

President Choate — It will be so referred.

O. 199.— Mr. Alvord offered a proposed amendment to section 6, article 7 of the Constitution, in relation to canals.

Referred to the Committee on Canals.

O. 200.— Mr. C. A. Fuller presented a proposed amendment to section 16, article 3, relating to restriction as to private and local bills.

Referred to the Committee on Powers and Duties of the Legislature.

President Choate — Reports of standing committees are now in order. Has any standing committee any report to make?

Mr. Vedder — Mr. President, I have not what might be termed a report to make, from the Committee on Legislative Powers, but I have a matter that I would like to call to the attention of the Convention. The Chair has very properly and also very kindly sent to the Committee on Legislative Powers and Duties a great many proposed amendments to the Constitution, and in addition thereto petitions, memorials, etc., from parties desiring amendments in regard to the civil service of the State. The committee is willing to do all the work that it is capable of doing, but it feels that this is an additional burden and is a subject not perhaps coming within the proper domain of the committee. The Committee on Legislative Powers would, therefore, respectfully request that they be relieved from the further consideration, or any consideration in fact, of the civil service matters, and also that a special committee be appointed by the President of the Convention, to which shall be referred all these matters, relating to the civil service of the State.

Mr. Gilbert offered the following resolution:

R. 73.— "Resolved, That the Committee on Legislative Powers and Duties be relieved from the consideration of matters relating to the civil service of the State and that a special committee of eleven be appointed, to which shall be referred all matters relating thereto."

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

President Choate — The Chair will appoint that committee to-morrow.

President Choate — Is there any other standing committee to be heard from, or any select committee?

There are no special orders, if the Chair remembers correctly, for to-day. There is one subject upon which, if the Convention desire it, they can go into Committee of the Whole: An amendment offered by Mr. Vedder from his committee the other day in respect to the final passage of bills in the Legislature. This comes under general orders, which are now called. The Secretary will read the proposed amendment.

The Secretary read the proposed constitutional amendment, offered by Mr. Vedder, to amend section 15, article 3 of the Constitution, in relation to the passage of bills.

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

The President put the question and it was determined in the affirmative. Whereupon the Convention adjourned until to-morrow morning at ten o'clock.

Wednesday, June 13, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber, at the Capitol, Albany, N. Y., June 13, 1894.

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

The Rev. A. T. Johnson offered prayer.

The Journal of Tuesday, June 12, 1894, was read and approved.

The President — The Secretary will read the appointments of the select committee on civil service.

The Secretary read the committee as follows:

Mr. Gilbert, chairman; Mr. Francis, Mr. Hedges, Mr. Hill, Mr. Foote, Mr. R. M. Johnston, Mr. Lincoln, Mr. McCurdy, Mr. Countryman, Mr. Bigelow and Mr. Osborn.

The President — Presentation of memorials is in order.

The Chair has received a large additional number of petitions in regard to the civil service. They will be referred to the Select Committee.

Mr. Crosby presented the petition of the Franklin Baptist Association, of New York State, against the appropriation of public money for sectarian purposes.

Referred to the Committee on Charities, and also to the Committee on State Finances and Taxation.

Mr. Crosby also presented the petition of several citizens of Walton asking for an amendment to the Constitution, providing for a commission of visitation to reformatories, etc.

Referred to the Committee on Charities.

The President — The Chair has received another communication from the Buffalo Civil Service Association, which will be referred to the Select Committee.

Also, a petition from citizens of New York city, in reference to civil service reform, which will also be referred to the same Select Committee.

Also, a communication from the Abraham Lincoln War Veteran

Association, with respect to the designation of veterans for public office, which will be referred to the same Select Committee.

Mr. Carter presented the petition of the New York State Grange, adopted at their State grange, asking for equal suffrage for women.

Referred to the Committee on Suffrage.

The President — Communications from State officers are now in order. Two communications have been received. One from the Secretary of State and one from the Comptroller, which will be read by the Secretary, in response to resolution No. 22.

The Secretary read the communication from the State Comptroller, as follows (No. 3, Document No. 14):

STATE OF NEW YORK, COMPTROLLER'S OFFICE.

ALBANY, *June* 12, 1894.

To the Constitutional Convention:

In conformity with the resolution of your honorable body, passed on the twenty-third ult., requesting a detailed statement of all moneys paid by the State during the past three years by way of direct or indirect appropriations, as salary or otherwise, to institutions not owned by the State, or a political division thereof, whether sectarian or not, I beg leave to submit the following:

We have no record in this office that will show whether the 375 educational institutions participating in the distribution of the literature fund are public or private, or what their denomination may be. That information is probably in the possession of the State Board of Regents. The only other private or corporate institutions which have received money from the State are the following, and the amounts received by each during the past three years are set opposite:

Institution for the Blind, New York city, 1891.....	$45,135 00
Institution for the Blind, New York city, 1892.....	43,054 57
Institution for the Blind, New York city, 1893.....	43,054 27
	$131,243 84
Institution for the Improved Instruction of Deaf Mutes, New York city, 1891.....	$25,295 60
Institution for the Improved Instruction of Deaf Mutes, New York city, 1892.....	25,499 08
Institution for the Improved Instruction of Deaf Mutes, New York city, 1893.....	27,424 57
	$78,219 25

Institution for the Deaf and Dumb, New York city, 1891	$54,312 00
Institution for the Deaf and Dumb, New York city, 1892	53,163 57
Institution for the Deaf and Dumb, New York city, 1893	47,070 01
	$154,545 88
Le Couteulx St. Mary's Institution for Deaf Mutes, 1891	$15,912 50
Le Couteulx St. Mary's Institution for Deaf Mutes, 1892	14,476 90
Le Couteulx St. Mary's Institution for Deaf Mutes, 1893	14,396 20
	$44,785 60
St. Joseph's Institution for Deaf Mutes, 1891	$31,958 47
St. Joseph's Institution for Deaf Mutes, 1892	33,238 39
St. Joseph's Institution for Deaf Mutes, 1893	35,551 68
	$100,748 54
Western New York Institution for Deaf Mutes, 1891	$24,629 89
Western New York Institution for Deaf Mutes, 1892	23,771 31
Western New York Institution for Deaf Mutes, 1893	24,737 68
	$73,138 88

It will be noted that these institutions are all for the care and instruction of the deaf and dumb or the blind, and they are paid at the rate of $250 per annum for each person sent to them by the State.

I find that the per capita cost of maintenance in the Northern New York Institution for the Deaf and Dumb, for the year 1893, was $356.73; the average for five years in the Central New York Institution for Deaf Mutes was $397.79, and for the year 1893 in the Institution for the Blind at Batavia, $311.61.

It may be fair to state that the Central New York Institution for Deaf Mutes; the Northern New York Institution for Deaf Mutes, and the Society for the Reformation of Juvenile Delinquents

contend that they are not State institutions; but the State has expended for buildings, furnishings and things other than maintenance the amounts following:

Society for the Reformation of Juvenile Delinquents..	$510,735 11
Central New York Institution for Deaf Mutes.....	65,299 40
Northern New York Institution for Deaf Mutes.....	68,000 00

For each of the three years last past, these institutions have received the following amounts for maintenance at the rate of $250 per capita per annum:

Central New York Institution for Deaf Mutes, 1891..	$27,314 47
Central New York Institution for Deaf Mutes, 1892..	24,285 12
Central New York Institution for Deaf Mutes, 1893..	23,893 59
	$75,493 18
Northern New York Institution for Deaf Mutes, 1891.	$13,446 98
Northern New York Institution for Deaf Mutes, 1892.	13,950 59
Northern New York Institution for Deaf Mutes, 1893.	14,527 75
	$41,925 32
Society for the Reformation of Juvenile Delinquents, 1891.....	$103,000 00
Society for the Reformation of Juvenile Delinquents, 1892.....	102,499 96
Society for the Reformation of Juvenile Delinquents, 1893.....	111,274 04
	$316,774 00

I am informed that the Le Couteulx St. Mary's Institution for Deaf Mutes and the St. Joseph's Institution for Deaf Mutes are under the auspices of the Catholic church. All the other institutions to the best of my knowledge are not controlled by any sect.

Very respectfully yours,

JAMES A. ROBERTS,

Comptroller.

The President — The communication from the Comptroller will be placed on file for the information of the members. There seems to be no provision in the rule for its printing, unless the Convention

so orders. The Secretary will read the communication from the Secretary of State, in response to Resolution No. 45.

The Secretary read the communication as follows (No. 4, Document No. 13):

OFFICE OF THE SECRETARY OF STATE,
ALBANY, *June* 12, 1894.

Hon. Charles E. Fitch, Secretary of the Constitutional Convention, Albany, N. Y.:

Dear Sir.— This office is in receipt of the resolution passed by the Convention, in which we are requested to furnish the number of manufacturing and business corporations organized under the laws of other States and conducting business within the State of New York, together with such information as may be in possession of the Secretary of State as to the causes which have led to the organization of such corporations without the State; and further to report such information as may be possible as to the organization by citizens of this State or corporations under the laws of other States to do business therein, and the reasons which have actuated such organizations to do business in other States rather than under the laws of this State.

In compliance with said resolution I have caused an examination to be made of all the papers filed in this office pursuant to sections 15 and 16 of the General Corporation Law, as amended in 1892, and find that 1,045 manufacturing corporations and 1,157 business corporations, organized under the laws of other States, have received from the Secretary of the State of New York licenses to transact business within this State.

I would further respectfully state that this office is not in possession of any information which will disclose the causes which have led to the organization of such corporations in other States; and I would also respectfully report that this office is not possessed of any information, and that the Secretary of State has no official knowledge, as to the organization by citizens of this State, of corporations under the laws of other States to do business therein.

Very respectfully yours,
JOHN PALMER,
Secretary of State.

The President — This also will be placed on file. It would seem that both of these communications contain important information called for by the Convention, and it is for the Convention to say whether they will be printed or not.

Mr. Cady — Mr. President, I move that both of these communications from the State officers be printed for the use of the Convention, and filed among the documents.

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

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

The Secretary called the districts.

Mr. J. I. Green — Mr. President, I would like to ask if the Chairman of the Judiciary Committee is ready to report upon the resolution which was referred to him the other day under the rules in reference to some information desired from the district attorneys of the respective counties of this State? I have been asked to appear before the committee this afternoon, and I am unable to do so because of my inability to obtain this information. I would like to know. I do not care to move to discharge the committee.

Mr. Root — Mr. President, the Clerk of the Judiciary Committee informs me that no resolution is in his hands in respect to information to be called for from any public officer.

Mr. J. I. Green — Mr. President, if the chairman will remember, when I made the motion the other day it was adopted by the Convention. The gentleman from New York thereupon raised a point of order that under the rules it should be referred to the committee. I made no objection, and I believe it was so referred.

The President — I think the chairmen of the several standing committees do not quite appreciate the force of the standing rule which requires them to report within three days upon every resolution.

Mr. Root — Mr. President, it is impossible for the chairmen of standing committees to keep track from their places in the house of all the resolutions which are referred to those committees. It must necessarily be that if the resolutions are to receive attention they shall be transmitted either to the chairmen or the clerks of the standing committees by the Secretary of the Convention. I called upon the Clerk of the Judiciary Committee yesterday for information as to whether there were any resolutions, or matters referred to the Judiciary Committee awaiting its action, and found that nothing had been transmitted to him. Gentlemen who introduce such resolutions can readily see that the Secretary does transmit them to the standing committees, but it is impossible for the chairmen of standing committees to keep account from their places in the house of matters which are referred to them.

Mr. J. I. Green — Mr. President, without casting any imputation or reflection upon the Judiciary Committee, I would move that that committee be discharged from the further consideration of the resolution, and that it be now considered.

The President — I think before the motion is put we should hear from the Secretary what the routine is in regard to transmitting these communications.

The Secretary informs me that the fixed rule at his desk is to have copies of the resolutions made and sent immediately to the chairmen of the different committees, but this has probably been overlooked.

On investigation, it has been found that this resolution was referred to the Committee on State Prisons and Criminal Procedure, Mr. Green, so that your motion would be misdirected.

Mr. J. I. Green — Mr. President, I withdraw my motion and apologize to the Judiciary Committee.

The President — Propositions for amendment to the Constitution are in order. The Secretary will call the districts.

The Secretary called the districts.

O. 201.— Mr. Blake offered a proposed amendment to section 5 of article 1 of the Constitution, providing for the abolition of the death penalty.

Referred to the Committee on State Prisons and Punishment of Crime.

O. 202.— Mr. Blake also offered a proposed amendment to section 5 of article 4 of the Constitution, depriving the Governor of the power to grant pardon after conviction for murder in the first degree.

Referred to the Committee on Governor and State Officers.

O. 203.— Mr. Abbott offered a proposed amendment to section 9 of article 4 of the Constitution, in regard to the presentation of bills to the Governor, his action thereon, etc.

Referred to the Committee on Governor and State Officers.

O. 204.— Mr. Mereness offered a proposed amendment to section 2, article 13 of the Constitution, relating to Constitutional Conventions.

Referred to the Committee on Constitution.

O. 205.— Mr. C. H. Lewis (by request) offered a proposed amendment to amend the Constitution, relative to home rule in cities.

Referred to the Committee on Cities.

O. 206.— Mr. H. A. Clark (by request) offered a proposed amendment to amend the Constitution, relative to civil service of the State and cities.

Referred to the Select Committee on Civil Service.

O. 207.— Mr. Hawley offered a proposed amendment to article 8, section 6 of the Constitution, in respect to banks.

Referred to the Committee on Banks.

O. 208.— Mr. Hawley also offered a proposed amendment to article 6, section 18 and section 21 of the Constitution, as to justices of the peace.

Referred to the Committee on Judiciary.

O. 209.— Mr. Parker (by request) offered a proposed constitutional amendment to article 15, in relation to bribery and corruption.

The President — Mr. Parker, what committee should that be referred to?

Mr. Parker — I will leave that to the President to say. Mr. Johnson handed it to me to present, and I did so at his request.

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

O. 210.— Mr. Banks offered a proposed amendment to the Constitution, relative to franchises in cities, streets and places.

Referred to the Committee on Cities.

The President — Reports of standing committees are in order.

Mr. Vedder, from the Committee on Powers and Duties of the Legislature, to which was referred the overture introduced by Mr. Roche, introductory No. 99, entitled "A proposed constitutional amendment to amend article 3, by the addition of a new section prohibiting the Legislature or any division of the State from granting pensions to any civil officer or employe, not, however, including existing police and fire department funds," reports in favor of the passage of the same with some amendments.

Referred to the Committee of the Whole.

Mr. Vedder — Mr. President, the Committee on Legislative Powers also directed me to report a proposition adversely, and it is a unanimous report. I discovered this morning that the introducer of the proposition is not present. I do not, therefore, consider it proper to report adversely when the friend of the measure is not present, and will, therefore, withhold the report until he is present.

Mr. Hamlin — Mr. President, I have three reports here from the Committee on Printing.

The President — The Secretary will read the reports of the Committee on Printing.

The Secretary read the reports of the Committee on Printing, as follows:

The Committee on Printing, to whom was referred the following resolution offered by Mr. Root, to wit (No. 70):

"Resolved, That the Convention to revise the Constitution and amend the same, hereby fixes the following conditions under which the printing of its documents, proceedings, journals and other printing and publications shall be directed and authorized by the Compiler and shall be done; and hereby directs the time, manner and place of the delivery thereof; that is to say: All such documents, proceedings and journals and other printing or publications, copy of which shall be delivered to the printer before four o'clock in the afternoon of any day, shall be delivered duly printed, folded, stitched and trimmed, to the sergeant-at-arms or his assistant at the document room of the Convention between eight and nine o'clock in the forenoon of the next legislative day; all such documents, proceedings and journals or other printing or publications, copy of which shall be delivered to the printer after four o'clock in the afternoon on any day, shall be delivered, duly printed, folded, stitched and trimmed in the same manner and within twenty-four hours after the delivery of such copy to the printer; extra copies when called for, shall be delivered in the same manner and at the same place within such further time as shall be designated therefor by the President or Secretary of the Convention or by the Chairman of the Committee on Printing. Work required to be done in extra haste shall be delivered as specifically directed by the President or Secretary of the Convention or by the Chairman of the Committee on Printing," would respectfully report that the same be accepted and adopted.

F. H. HAMLIN,
Chairman.

The President — As these reports all refer to the same matter, they may as well all be read.

The Secretary read the second report, as follows:

The Committee on Printing, to whom was referred the report of the Judiciary Committee, as follows:

To the Convention:

The Committee on Judiciary, in obedience to your resolution of June 6, 1894, calling for an opinion upon the power of the Conven-

tion over the Compiler appointed under chapter 228 of the Laws of 1894, and over the printing and publication of its own journals, documents and proceedings, and in respect of the matters contained in the recommendations of the Committee on Printing, reports as follows:

I. That the Legislature has undertaken to authorize the printing of a manual and compilation and of such journals as the Convention may keep, and has authorized a contract for such printing, which was made before the Convention met. In the opinion of the committee, the Convention has no concern with these matters, and it cannot prevent such printing from being a public charge, under the contract of 1893, or make it such a charge.

II. That as to all other printing and publications in the opinion of the committee, the Convention has sole authority to determine what documents and proceedings shall be printed, published, indexed and bound, and when and how and under what conditions they shall be printed, published, indexed and bound.

III. That the Compiler has no authority to order or contract for any such printing, publication, indexing or binding, except under the orders of the Convention.

IV. That the Compiler had no authority to contract for the daily publication of the proceedings and debates of the Convention in The Argus and Albany Evening Journal.

V. That the Convention has authority to give effect to all recommendations contained in the report of the Committee on Printing.

ELIHU ROOT,

June 6, 1894. *Chairman.*

Do hereby return the same and recommend its acceptance, and also return herewith for the consideration of the Convention the report of this committee in regard to the printing of this Convention, as heretofore reported and contained in Document 8.

F. H. HAMLIN,

Chairman.

The Secretary read the third report as follows:

The Committee on Printing, to whom was referred the following resolution offered by Mr. Root:

Resolved, That the Convention to revise the Constitution and amend the same, hereby orders and directs:

First. That the Compiler appointed pursuant to chapter 228 of the Laws of 1894, shall not authorize or direct any indexing, publication, printing or binding, of any documents, proceedings, journals

or other printing or publications, as documents, proceedings, journals or other printing or publications of this Convention, except such as are required by the rules and orders of the Convention, and such as the President or Secretary shall direct to be printed, with the authority of the Convention or of the Committee on Printing.

Second. That the contracts which the Compiler assumed to make with The Argus Company and with the Albany Evening Journal on the fifth day of April, 1894, for the daily publication of a report of the proceedings of the Convention in The Albany Argus and Albany Evening Journal, is disapproved and disaffirmed; and the Compiler is required to forthwith discontinue such publications.

Third. That all further bindings or publications of the Convention be less expensive than those heretofore used; and be first submitted to the Committee on Printing and approved by them, and by the Compiler, before they are authorized by the Compiler.

Fourth. That the reports of the official stenographer of the Convention and the assistants employed by him be henceforth the only reports of the proceedings printed under the authority of the Convention or of the Compiler.

Would respectfully report that the above resolution be accepted and adopted.

F. H. HAMLIN,
Chairman.

The President — These reports which have been received and read, from the Committee on Printing, bring before the Convention the whole subject of printing as it has heretofore been considered. The Convention will recall the course of this business. Questions were raised in the Convention and were referred to the Committee on Printing. The Committee on Printing presented their report, making certain recommendations dependent upon the question of legal power in the Convention. Thereupon the report of the Committee on Printing, with its recommendations, was referred to the Judiciary Committee with instructions to report upon the questions of power and law involved. That committee reported giving their opinion upon the legal questions involved, and recommending, in pursuance of the original report of the Committee on Printing, several resolutions for the consideration of the Convention. When those resolutions were presented some question was raised as to the practicability of the scheme of printing and delivery of this matter, and it was again referred to the Committee on Printing for their report on that subject, and they were instructed to report at this time. They have now reported, and as the Chair understands, they recommend the adoption of the resolutions which were offered by the Judi-

ciary Committee, and the question before the Convention will be upon the adoption of those several resolutions, and as they are distinct in their subject matter, they should be considered separately, and the question will be on the adoption of the first resolution offered by the Judiciary Committee, which the Secretary will now read by itself.

The Secretary read the resolution as follows (No. 70):

Resolved, That the Convention to revise the Constitution and amend the same, hereby fixes the following conditions under which the printing of its documents, proceedings, journals and other printing and publications shall be directed and authorized by the Compiler and shall be done; and hereby directs the time, manner and place of the delivery thereof; that is to say: All such documents, proceedings, and journals and other printing or publications, copy of which shall be delivered to the printer before four o'clock in the afternoon of any day, shall be delivered duly printed, folded, stitched and trimmed to the sergeant-at-arms or his assistant at the document room of the Convention between eight and nine o'clock in the forenoon of the next legislative day; all such documents, proceedings and journals or other printing or publications, copy of which shall be delivered to the printer after four o'clock in the afternoon of any day, shall be delivered duly printed, folded, stitched and trimmed in the same manner and within twenty-four hours after the delivery of such copy to the printer; extra copies, when called for, shall be delivered in the same manner and at the same place within such further time as shall be designated therefor by the President or Secretary of the Convention or by the Chairman of the Committee on Printing.

Work required to be done in extra haste shall be delivered as specifically directed by the President or Secretary of the Convention or by the Chairman of the Committee on Printing.

The President — The question is on the adoption of this resolution, which originated with the Judiciary Committee.

Mr. Bowers — Mr. President, I understand this resolution to be a resolution offered by Mr. Root last week requiring all printing to be delivered the next day.

The President — Will Mr. Bowers please state on what printed page he finds that?

Mr. Bowers — Page 165. There have been two or three resolutions read, and I do not want to get them mixed.

The President — This requires the matter delivered to the contractor before four o'clock in the afternoon, to be delivered to

the Convention the next morning before nine o'clock, and extra matter in the same manner as shall be designated by the President or Secretary of the Convention, or by the Chairman of the Committee on Printing.

Mr. Bowers — Now, Mr. President, I am opposed to the adoption of this resolution in the form in which it now stands, and I am confident that upon consideration of the surroundings that bear upon this matter the Convention will agree with me that the resolution is too stringent and not calculated to carry into convenient operation the contract which has been heretofore made and under which the printing of this Convention is to be done, and I shall offer as a substitute for all that part of the resolution, after the words, "that is to say," the following: "All the documents, proceedings, journals and other printing, or other publications of the Convention shall be delivered in The Argus office of the city of Albany with a written order signed by the President, Secretary or Compiler, which order shall, in every instance, specify the time when the printing so ordered shall be delivered to the Convention, and at the time of the delivery of the documents to be printed, there shall be obtained from The Argus Company a receipt showing the hour of such delivery. The time in each case within which the work shall be required shall be as directed by the Convention, or if not so directed, as the interests of the Convention require."

And speaking to that substitute I wish to bring to the attention of the Convention some matters which were before the Judiciary Committee, and to enable us to understand the exact situation in which the Convention stands, and in which The Argus Company stand. The act of 1893 provided that the Comptroller and Secretary of State should, in the month of March, 1893, receive proposals and make a contract for all the printing, binding and other supplies necessary for the Convention. Such contract was thereafter made with The Argus Company, and that contract is, as shown in the report of the Printing Committee, among other matters, that The Argus Company shall execute and perform and do with accuracy and dispatch all the printing and furnish all the supplies provided for in said chapter 8 of the Laws of 1893 and furnish all the paper and supplies, do all the folding, binding, collating, stitching and trimming provided for in the said act, and which may be ordered by the Constitutional Convention to be done under the provisions of said act and deliver the same at the time and in the manner and at such place or places as the said Convention may direct. In the act of 1894 a Compiler was appointed, and he was authorized, so far as his duties bore upon this particular contract, as follows: "Said

Compiler shall further have full charge to direct and to authorize upon conditions to be fixed by said Convention and in conformity with the contract heretofore entered into by the Comptroller and Secretary of State on behalf of the State, the indexing, publication, printing and binding of the documents, proceedings, journal and other printing and publications of said Convention." It was the opinion of the Judiciary Committee as I understand, not alone from being a member of it, but from their report, that this was a good contract, and we, therefore, start with a contract made for the doing of all the printing of this Convention by The Argus Company. We start, also, with the proposition which is reported by the Judiciary Committee, that all such printing and publication is under the sole authority of the Convention, which shall determine what documents and proceedings shall be printed, published, indexed and bound, and when, and how, and under what conditions they shall be printed, indexed and bound. In other words, this Convention has its contract and this Convention undoubtedly has the right to say what shall be printed and when and how the printing shall be done, and the sole question for us to determine is whether we shall adopt a report under which 500 pages of printing might be sent to The Argus Company on any given afternoon and that company required to return the same printed the next morning by nine o'clock. That would be an impossibility, and it would not be necessary for the interests of the Convention, and it seems to me what we need is to establish some uniform system under which we may trace where delays or errors occur, and be able to hold not alone the printer, but the employes of this Convention to the proper performance of their duty. Several matters already have occurred which require the adoption of some such a rule. We have several times had it stated upon this floor that there were great delays in the printing. In one case there had been an error of the printer of very serious moment. I have taken some pains to inform myself as to the condition of affairs at The Argus office, and among other information that I have obtained is this: The Argus Company have given to the officers of this Convention blank forms of orders under which the work that is to be required shall be sent. These orders have, in some instances, been sent with the work, and in other instances have not. These orders in some instances specify the time of delivery, and in others do not. They do not specify when the work is to be returned. I hold in my hand a copy of such an order, dated on the sixth of June, which directs that there shall be furnished 1,000 copies of Document No. 9, and 1,000 copies of Document No. 10, and there is a memorandum on the paper that this order was delivered at 12.30 P. M.

on June sixth. I hold in my hand another receipt which is initialed by an employe of this Convention, that Document No. 9 was delivered the next morning at nine o'clock, and the other document was not required to be, and the uses of the Convention did not require its delivery until Tuesday morning of this week. I am also informed that the force of The Argus Company is such that they can print with the sixty or seventy men in their employ, fifty to sixty pages over night and 100 pages in twenty-four hours. Now the requirements of our contract which was made with The Argus Company are not alone that it should do all this printing, but that The Argus Company should do any extra work required and in extra haste, so that we might require The Argus Company to print any number of extra pages over night, but the adoption of a general resolution which should send to them a quantity of matter which was not needed for several days, and which under the rules thus adopted, might require it to be delivered the next morning, might entirely break down the contract, and absolutely forbid the contractor from carrying it out. It is true that the contract says, that should the Convention at any time require the work to be performed in extra haste, such work thus required should be so done without extra charge therefor. Very naturally that company, which I understand to be one of the best job printers in the State, keeps continually in its employment a certain force. That force working six days in the week can get up all the matter for this Convention just as fast as this Convention reasonably requires it, and it seems to me that instead of the adoption of a general rule of this kind, perhaps, the amendment that I have suggested is fair to the Convention and fair to the contractor. It enables us, whenever we want work done over night, to so require it and when we do not, it leaves it to the President or the Secretary or the Compiler in case the work cannot be done over night, to order it at such times as he thinks the Convention may require.

There is still another matter as regards delay. I am informed that a great part of the delay comes from the fact of the documents not being sent to the printer from this Convention, and that upon one occasion at least the journals of three days were sent at one time. It is for that reason that I propose that we have a distinct system which will show when a document is sent to The Argus Company and when it is directed to be returned. If that is carried out we can at any time find out where the fault is, and the Convention can remedy that fault. I assume that the members of the Convention recognizing the legality of this contract, recognizing the fact that the printing has to be done by some good office, and The Argus

office is a good office to do the work, will be desirous of giving a fair construction to the contract and will be desirous of assisting the printer to do the work properly so long as he obeys the construction that we give, and meets the necessities the case may from time to time present. I assume that there is no desire to destroy the contract or to adopt a resolution of such a character as to compel its destruction. I assume that all we want is to get the printing in such shape that we can regulate it in such form as we need it, and if that is accomplished we will go on to the end of the Convention with the work satisfactorily done and every one satisfied. An amendment of any other kind than this would still leave us at sixes and sevens as to where the fault is, and I see no escape from the proposition, if we intend to carry out this contract, but to compel the printer to do his duty and at the same time to enable him to do it; but the resolution which has been offered by the gentleman from New York must fall, and he must accept therefor some substitute which shall be of the character that I have indicated. For this reason, Mr. President, I offer this substitute, and I hope that the good sense of the Convention will see that the substitute in the form which I have suggested or in some similar form, will be passed, that we shall not put ourselves in a position to enable some employe of the Convention to send down a hundred pages of printed matter to be returned at once, and put us in a position in which we must recognize that the work cannot be done and compel us to retrace our action. Under the resolution, as I have offered it, we can require the work to be done over night if we wish, or in twenty-four hours or in the three days after the adjournment. If we do not order it the officers of the Convention can do it. I respectfully submit to the Convention that the substitute that I offer for the resolution offered by the gentleman from New York is one in all fairness to the company and the Convention and should be adopted.

Mr. Becker — Mr. President, I would like to have the substitute read again.

The Secretary read the substitute again.

Mr. Becker — Mr. President, I move to amend that substitute by striking out the words "or the Compiler." Mr. President, the intent of the resolution, as I read it, offered by the Judiciary Committee, was to place this matter of the delivery of these documents in the hands of the President or Secretary of the Convention, or the Chairman of the Committee on Printing. Such is the language of the resolution which appears on page 165 of the Convention proceedings. The language is, "the Convention to revise the Consti-

tution and amend the same hereby fixes the following conditions under which the printing of its documents, proceedings, journals and other printing and publications shall be directed and authorized by the Compiler, and shall be done." It then fixes definite time. At the bottom of it, it says, "extra copies shall be delivered and the times and places of delivery shall be designated by the President or Secretary of the Convention, or by the Chairman of the Committee on Printing." The evident intention of that resolution was to place this matter of ordering extra copies in the hands of the President or Secretary of this Convention, or the Chairman of the Committee on Printing, and not to leave it in the hands of the Compiler, of whose extra work, perhaps, the Convention has had quite enough for the present. For that reason I offer this substitute, which, as I understand it, will leave the matter of extra work to be done in the hands of the proper officers of the Convention.

The President — The question is on the adoption of Mr. Becker's amendment to Mr. Bowers' substitute.

Mr. Root — Mr. President, I have submitted to the Chairman of the Committee on Printing, and also to Mr. Bowers, an addition to the resolution upon this subject reported by the Committee on Printing this morning, and to which they both assent, and which seems to me to cover the difficulty at which Mr. Bowers's remarks are pointed, and I hope Mr. Becker will consider the original resolution with this addition and make that the subject of any amendment which he may choose to offer.

Mr. Becker — Mr. President, for the purpose of getting this matter fairly before the House, I withdraw my amendment until such a time as the resolution as it is proposed to amend it is before the House.

Mr. Root — Mr. President, my proposal to amend is as follows: "If the total copy delivered to the printer in any one day exceeds fifty printed 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 Secretary or Compiler may enlarge the time herein fixed by specific directions given in writing at the time any copy is delivered to the printer."

Let me say, Mr. President, that I consider the essential difference between the substitute offered by Mr. Bowers and the resolution as thus amended to be this: Under the contract there is a provision, or in the contract there is a provision, that the printing shall be delivered at the time and in the manner, and at such place or places

as this Convention may direct. Unless there is some direction by the Convention there seems to be no obligation under the contract to deliver the printed matter at any time or at any place. My wish is, and I know the wish of the Printing Committee is, that a perfectly fair direction shall be made by the Convention, but that there shall be some direction so that some obligation shall rest upon the printer. That direction, if the resolution which the Printing Committee has reported this morning be adopted, will be that all printed matter shall be delivered at a specified time on the day following that on which the copy is given to the printer, but if more than fifty pages of printed matter is delivered, then only fifty pages shall be required within that time, but that shall be specifically designated, and that the Secretary of the Convention or the Compiler may enlarge the time, each in his discretion. We then have a rule and abundant opportunity to adapt that rule to the particular circumstances of the case. I hope the Convention will adopt this resolution with the amendment.

Mr. Cookinham — Mr. President, may I ask the gentleman a question? How can The Argus Company be put to default unless a place for delivery is named in the resolution?

Mr. Root — A place is named in the resolution. The place named in the resolution is the document room, "shall be delivered at the document room of the Convention between eight and nine o'clock of the forenoon of the next legislative day."

The President — The question is on the adoption of the amendment of Mr. Root.

Mr. Bowers — Mr. President, I will accept Mr. Root's amendment in place of my substitute. That will leave the matter to stand on the original resolution of Mr. Root as he has amended it, but I desire to call the attention of the Convention to the fact that, sooner or later, we will have to fix some definite system.

Mr. Hamlin — Mr. President, I am quite sure that this amendment will be entirely satisfactory to the Committee on Printing. When the matter was before them the company was represented by its agent, and he informed the committee (and they desired to act entirely fair), that there could be no possible objection to this rule. Under that state of facts this proposed resolution was approved by the Committee on Printing, it being understood by that committee that if there was any such extraordinary amount of printing turned over to this company this Convention would not be unreasonable in its demands. I think this amendment

should be placed in the resolution for the benefit of the printing company.

The President — The question is on the adoption of Mr. Root's resolution as amended.

Mr. Becker — Mr. President, I desire to have that resolution read, as it will stand if this amendment is adopted.

The President — Mr. Becker will understand that Mr. Bowers has withdrawn his substitute, being satisfied with the amendment offered by Mr. Root. The Secretary will now read the resolution as amended.

The Secretary read the resolution as amended.

Mr. Becker — Mr. President, I desire to renew my amendment in the following form: After the word "Compiler," insert the words "In respect to such printing as is to be done under his supervision, as defined by the report of the Judiciary Committee, submitted on June 8, 1894."

The object of that amendment, Mr. President, is to put the matter into such a position that the Compiler shall have control only over such matters as the Judiciary Committee says he has control over.

The President — The question is on the adoption of the amendment offered by Mr. Becker to the amendment offered by Mr. Root.

Mr. Bowers — Mr. President, I approve of the amendment of Mr. Becker, for the reason that the act under which the Compiler was appointed says: "Said Compiler shall further have full charge to direct and to authorize, upon conditions to be fixed by said Convention, and in conformity with the contract heretofore entered into by the Comptroller and Secretary of State, on behalf of the State, the indexing, publication, printing and binding of the documents." I do not understand that the Judiciary Committee has said that the act did not give the Compiler the supervision of these matters. I understand that it does say that the Convention is superior to the Compiler. The amendment, as proposed, is exceedingly indefinite, and the resolution, as it stands amended by the gentleman from New York (Mr. Root), authorizes the President and Secretary of the Convention and the Compiler, each in his appropriate place, to authorize to the extent of his power.

Mr. Root — I would like to ask Mr. Becker where the words are to be added. The word "Compiler" occurs several times.

Mr. Becker — I was going to ask the Secretary to read the last clause of the substitute offered by Mr. Root.

The President — The Secretary will read that part of the resolution as amended by Mr. Becker.

The Secretary read the amendment as follows:

"If the total copy delivered to the printer in any one day exceeds fifty printed 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 in respect to such printing as is to be done under his supervision, as is defined by the report of the Judiciary Committee submitted on June 8, 1894."

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

The President — The question is on the adoption of Mr. Root's amendment to the original resolution.

Mr. Cookinham — Mr. President, I fail to see in this resolution where The Argus Company can be put in default, for the reason that I cannot find in the resolution any place for the delivery of the copy of that which is desired to be printed, to The Argus Company. It says "delivered to the company." Now, unless a place is fixed, The Argus Company can meet the Convention at any time with a statement that the copy has not been delivered to it. No place is fixed. If the Chairman of the Judiciary Committee would add the place where the copy was to be delivered, it would seem to me that the resolution is correct.

The President — Does Mr. Cookinham offer a resolution to that effect?

Mr. Root — I suppose, Mr. President, that the printing of this Convention cannot be done at all unless there is some agent or messenger of the printer to take the copy, and I do not think it is necessary for us to make orders about that.

Mr. Mereness — Mr. President, if there is any printing to be done, I think there will be no difficulty in finding The Argus Company.

The President put the question on the adoption of Mr. Root's amendment, and it was determined in the affirmative.

The President — Mr. Bowers's substitute having been withdrawn, the question is on the adoption of the original resolution as it stands amended.

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

The President — The next question is on the adoption of the resolution offered by the Judiciary Committee, which is in the form of a single resolution with four separate propositions. The Chair is of the opinion that unless the Convention orders otherwise, the question should be put on these four propositions separately. The Secretary will read the first paragraph.

The Secretary read the first paragraph of the resolution, as follows:

"First. That the Compiler appointed pursuant to chapter 228 of the Laws of 1894 shall not authorize or direct the indexing, publication, printing or binding of any document, proceedings, journals or other printing or publications, as documents, proceedings, journals or other printing or publications of this Convention, except such as are required by the rules and orders of the Convention, and such as the President or Secretary shall direct to be printed, with the authority of the Convention, or the Committee on Printing."

Mr. Hirschberg — Mr. President, I would like to ask the Chairman of the Judiciary Committee whether or not his amendment, offered last Friday, to insert the word "supplies," in order to make that resolution correspond with the act, should be inserted in that paragraph as read by the Secretary, and if so, where?

Mr. Root — Mr. President, I explained to the gentleman who proposed that amendment, or suggested it, last Friday, that on examining this resolution it seemed to be impracticable to include the subject of supplies without seriously impairing the clearness and effect of the resolution. The subject of supplies seems to be treated separately in the contract and in the statute, and, I suppose, would properly come under the cognizance of the Committee on Contingent Expenses. I supposed that the Convention would consider and act upon this resolution by itself, and if they desire that there shall be a provision for supplies to treat and consider that by itself.

Mr. Roche — Mr. President, I move to strike out the words "or the Committee on Printing" and insert those words after the word "Secretary," on page 212 of the Journal, so that the resolution will read: "Except such as are required by the rules and orders of the Convention, and such as the President or Secretary or the Committee on Printing shall direct to be printed, with the authority of the Convention." It seems to me that the resolution in its present form is somewhat ambiguous, and might be said to be inconsistent with the statute. The statute says that "said Compiler shall have full authority to direct and authorize, upon conditions to be fixed by said Convention." That is a power to be exercised by the Con-

vention itself. It is not a power to be exercised by the Committee on Printing. The purpose of my resolution is that the President, Secretary or Committee on Printing shall give these orders for printing, indexing and publishing by the authority of the Convention, and when the Convention has in proper form authorized the work to be done.

The President put the question on the adoption of the amendment offered by Mr. Roche and it was determined in the affirmative.

The President then put the question on the adoption of the first paragraph of the resolution, as amended, and it was determined in the affirmative.

The President — The question is now on the adoption of the second direction, referring to a little different subject, which the Secretary will read.

The Secretary read the second paragraph, as follows:

"Second. That the contracts which the Compiler assumed to make with The Argus Company and with the Albany Evening Journal, on the first day of April, 1894, for the publication of a daily report of the proceedings of the Convention in The Albany Argus and the Albany Evening Journal, is disapproved, disaffirmed, and the Compiler is required to forthwith discontinue such publication."

The President — I suppose the word "is" should read "are." It should be "are disapproved." The gentlemen will please make that correction.

Mr. Davies — Mr. President, I would like to inquire if the parties who are to be affected by the adoption of this resolution have been heard, either in person or by counsel, before either of the committees from which this resolution practically emanates?

The President — The Chair is unable to state. Perhaps the Chairman of the Committee on Printing, or the Chairman of the Committee on Judiciary, will furnish the information.

Mr. Hamlin — Mr. President, I think neither of these gentlemen has officially appeared before the Committee on Printing. The Chairman of the Committee on Printing, however, has had a talk with each one of them, not especially for the abrogation of the contract, for the reason that it was reported conditionally by the Committee on Printing for the consideration of the Convention. It was then referred to the Judiciary Committee, and then again referred back to the Printing Committee, and thus it comes here to-day on the report of that committee. The report substantially says, how-

ever, that there was no power on the part of the Compiler to enter into the contract with either of these companies. That question having been settled by the Judiciary Committee, the only question was a recommendation on the part of the Printing Committee whether this enormous sum to be disposed of should be abrogated.

Mr. Root — Mr. President, so far as the Judiciary Committee is concerned, I will answer the question that no one applied for a hearing before that committee. The committee considered that it had referred to it a simple question of law, considered that question and answered in pursuance of the orders of the Convention on Friday morning last. I have this morning received a letter from a firm of attorneys in Albany, asking for a hearing before the Judiciary Committee, but as the matter passed out of our hands last Friday, it seems to me that there is nothing for the committee to do.

Mr. McClure — Mr. President, I would like to inquire of the Judiciary Committee whether this resolution, if adopted, proposes to express the disapprobation of the Convention of having the proceedings published, or whether it simply voices the opinion of the Judiciary Committee that the contract made by the Compiler was unwarranted in law? It is hardly direct and clear as to which they propose to have the Convention understand. Are we voting in favor of this resolution simply to decide that, as a matter of law, the Compiler had no authority to enter into any contract for the publication of the proceedings of this Convention without first having had the authority of the Convention, or in voting upon this resolution are we expected to voice our disapproval of any such publication whatever? Now, I would like to have the Chairman of the Judiciary Committee, if he will, explain for my information, whether it is intended only to say that as a matter of law the Compiler was without authority to enter into any contract, or whether it is intended to go further and say that whether or not he was entitled in law, or authorized to make this contract, we do not think as a Convention that there should be any daily report in the newspapers. Upon these two questions there might be a difference of opinion among the members of the Convention.

Mr. Davies — Mr. President, as I understand this matter, when this contract was entered into between the Compiler and the representatives of the two papers, the Journal and The Argus, that contract was drawn by a no less eminent legal gentleman than the Hon. Matthew Hale. I am informed by people interested, or some of them at least, that they have been advised by their legal representatives that that contract is a good and sufficient contract; that the

Compiler had a right to enter into that contract, and that in case this Convention shall repudiate it that then they will have a good claim to present to the Board of Claims of this State. I am informed further, or at least they claim, that they have had no opportunity to be heard, or, perhaps, they may have had an opportunity had they sought it, but not being familiar with legislative proceedings they were not heard by the Committee on Printing. I mean exactly what I say, the person having it in charge, the Compiler, and parties to the contract, not being familiar with legislative proceedings before committees, did not have an opportunity, or, perhaps, did not seek an opportunity, as they should have done, to be heard by the Committee on Printing either through themselves or counsel.

Now, it seems to me, Mr. President, that it is only fair, if these people have entered into a contract which involves thousands of dollars — I do not know how many, but my friend from Ontario county, the Chairman of the Committee on Printing, has said a great many thousand dollars — if they have entered into any such contract in good faith, upon the advice of eminent counsel, they have made preparations, involving expense and liability to themselves, in order to carry out that contract. Now, is it anything more than fair to these gentlemen, even though it be late; cannot the Convention afford to give these parties an opportunity to be heard and to present their side of the case by themselves, or by counsel upon whom they have relied, before the Committee on Printing? And while I hesitate to ask this Convention to prolong this subject, to postpone it for a single day, it does seem to me that, in all fairness, if these parties desire a hearing before the Committee on Printing, if they have got a side to present, they should, in all justice to themselves and in justice to the State, be allowed to go before that committee and present their side of the case. I know that is the rule, and that is the method and procedure in legislative bodies; and while I do not pretend to give an opinion myself, one way or the other upon this question, I am willing to take in the end whatever the Judiciary Committee has to say upon the subject. So far, it seems to me, it has been but an *ex parte* examination, and if these people have any grounds to stand upon, if they have claims, which they say they have, it seems to me that it is only fair to give them an official hearing upon the subject before the Committee on Printing, and the Judiciary Committee also, if the gentlemen would care to hear them; and I move that this resolution be recommitted to the Committee on Printing and the Judiciary Committee; that the parties interested may have a chance to be heard if they so desire, which I understand they do. I understand

there is a letter from the firm of which Mr. Hale is a member, asking for such hearing.

President Choate — The question is on the motion of Mr. Davies to recommit this second recommendation to the Committee on Printing and the Judiciary Committee, with directions to give a joint hearing to the parties interested represented by Mr. Hale.

Mr. Hamlin — Mr. President, I have no objection personally whatever to this resolution, but the idea that has been advanced here that the Compiler did not know what the Committee on Printing was engaged at, is certainly a mistaken one. He was before the committee in regard to this printing matter at various times, and no suggestion was ever made by him in reference to this matter or in reference to any objection or any relation of the facts to this case as was reported by the Committee on Printing. The facts, sir, are fully set forth. The law in the case has been determined by the Judiciary Committee; and if that be the law, it does not seem to me that there is any question of fact here that requires further deliberation on the part of the Committee on Printing. But, sir, I have personally no objection to hearing the matter, if it is the opinion of the Convention that it should be heard and I have no doubt the Committee on Printing will be willing to hear it if it is the opinion of the Convention that it is desirable they should go over the ground again. But it seems to me that the question has been considered sufficiently for this Convention to act intelligently in the matter.

Mr. Root — Mr. President, let me answer the question asked by Mr. McClure. This resolution purports merely to give effect, and its intention is to give effect to the recommendation of the Committee on Printing, which was made one week ago to-day to this Convention, to wit: That the contract for daily publication in these two newspapers be discontinued, if the Convention has power; and to the report of the Judiciary Committee, which was made on Friday last that in its opinion the Convention had the power. As I understand the Judiciary Committee had nothing before it but the question of power as a question of law, and that question they have answered.

I see no occasion, Mr. President, for any joint hearing of these two committees, because the subjects which are committed to them are entirely distinct. If any gentleman wishes to say anything to the Judiciary Committee on the question of law, that is another thing. The question of fact or expediency, should be laid before the Committee on Printing. With that the Judiciary Committee,

as a committee, has nothing to do, and the Judiciary Committee is already pretty heavily burdened with matters committed to it by this Convention. I hope that they will not be called upon to act as a committee upon the question of fact. It seems to me, sir, that after all the parties had full notice, full notice that the question of fact was being considered by the Printing Committee, and that the question of law was being considered by the Judiciary Committee, it is rather late to come in now and propose that the whole matter shall be sent back for hearings, and in the meantime the printing goes on.

Mr. McClure — Mr. President, Mr. Root has answered the question I asked as I expected that he would; that is, that the Judiciary Committee simply reports that, in its opinion, there was no authority in law for the Compiler to enter into the contract, and that would seem perhaps to be the opinion of nearly all the members of the Convention; that is, without some provision as to what he should do. But the resolution which the Judiciary Committee submits for adoption by this Convention goes beyond a mere expression of its opinion as the law of the case, and distinctly disapproves of the contract. Now, the query I put was simply whether, in voting upon this resolution, we would go beyond adopting the view of the law which the Judiciary Committee submits and say that, as matter of wise practice in giving the members full information as to what transpired, we would denounce also the daily publication; because that would seem to be the effect of the reading of the resolution.

Mr. Root — Mr. President, let me say further —

President Choate — This question, Mr. Root, is one that precludes debate.

Mr. Root — I ask, Mr. President, to be permitted to make a further answer to the question of Mr. McClure. This resolution is not a resolution adopted by the Judiciary Committee. It is merely a resolution submitted upon my personal responsibility, to be referred to the Committee on Printing, for the purpose of giving effect in one resolution to the recommendation of the Printing Committee on the question of fact and the opinion of the Judiciary Committee on the question of law. The Judiciary Committee has passed only upon the question of law.

Mr. Crosby — Mr. President, I move as an amendment to the resolution offered by Mr. Davies the following: That the Committee on Printing be and is directed to ascertain and report upon what terms a report of the proceedings of this Convention can be procured to be published in The Albany Argus and the Albany Even-

ing Journal, and also the gross amount that the representatives of said papers will agree that the aggregate expense of such publication shall not exceed.

With your permission, Mr. President, I will state why I offer this amendment. I was absent from the Convention when the question was up in regard to this printing. I am informed by one of the gentlemen interested in this matter, representing one of the papers that entered into the contract, that no opportunity was given him, or no information obtained accurately, as to this expense. Also, that he is advised by eminent counsel that he has a valid contract; and I am also assured that a proposition might be entertained for this publication upon fixed terms and at a fixed amount, not exceeding a fixed amount in the aggregate. My object, sir, in offering this amendment is that we may have squarely presented to us the question whether or not this information shall be given through the two political papers printed daily at the capital to the people of the State, or whether our acts and our doings shall be buried in the stenographer's minutes, not to be reached by anyone. I find that papers published by my constituents having among their exchanges both the Journal and The Argus, are many of them anxious that these proceedings shall be published daily, that they may condense and give their readers the information as to the work of this Convention, and prepare the people of the State to act upon that work when it is completed and presented to them; and I desire that we may fairly know what it would cost in the aggregate, not to exceed a certain amount, and if the rate fixed, which to my mind is large in this contract, the legal rate of publication, is too much, and this contract was not authorized, that we may enter into a new contract with these papers for the printing of this matter upon fixed and definite terms, which may be satisfactory to the Convention, following the action of the last Constitutional Convention, and give this information to the people.

President Choate — The question is upon the amendment.

Mr. Vedder — Mr. President, as I understand the matter now before us, it arose in this way: It was discovered soon after this Convention assembled, that The Argus and the Journal were printing the debates of the Convention. By what authority no one seemed to know. The matter was, therefore, referred very properly to the Committee on Printing to ascertain by what authority that printing was being done by these two papers. They reported that on the fifth of April, a contract was made by the Compiler with the Journal and The Argus for the printing, and they recommended in their report that the printing be discontinued, provided the Con-

vention had the power to discontinue it. I made a suggestion upon the coming in of that report, upon the floor of this Convention, that a legal question being involved and raised by the Committee on Printing it ought to be referred to the Judiciary Committee to report to this Convention upon the one point suggested by the gentleman from New York, Mr. McClure; that is, as to the authority of the Compiler to make the contract. And upon that I suppose the Judiciary Committee made its report, and, speaking through its chairman this morning, that was the understanding of the committee, that they reported simply upon the legal proposition whether or not the Compiler had the power to make this contract, and they decide that he had not that power. The matter whether we should have printing or not, by The Argus or the Journal or any other paper, was not referred to the Judiciary Committee, and anything in that direction in their report, I think, would be without authority.

Now, I understand that this is the situation of affairs; that a very eminent man in the councils of the State and at the bar, drew the contract made by Mr. Glynn, the Compiler, with these two papers, and he claims that under the law of 1893 and 1894 these papers have the right to make the contract with the Compiler as they have done, and he asks the right to come before the Judiciary Committee, or some other proper committee of this Convention, and state why he believes the contract to be legal and just. Speaking for myself, I believe there was no authority whatever for the Compiler to make this contract, but that is neither here nor there. If the counsel asks, and if the parties who have been in some sort of way accused of forestalling the action of the Convention ask to be heard before the people of this State, through a committee of this Convention, they ought to have the right to have their day in court and to be heard. Certainly, for the purpose of doing an act of justice of that kind, this Convention ought to be willing to give them one day. "For justice all places a temple, and all seasons summer."

Mr. Root — Mr. President, my objection was to having a joint hearing. I do not want questions of fact and discretion relating to printing loaded upon the shoulders of the Judiciary Committee, which has enough to do now.

President Choate — The question is first upon Mr. Davies's resolution and then upon Mr. Crosby's amendment, if they are in writing.

Mr. Davies — Mr. President, I shall be pleased to withdraw that part of my resolution which refers to the Committee on Printing. I would like to have it go solely to the Judiciary Committee.

Mr. Alvord — Mr. President, I believe that it is entirely proper,

sir, in a case like this, to improve, as far as possible, upon the original proposition before it shall be sent to a committee. If I am right in this position, I desire, sir, that language which is rather offensive in this portion of the resolution shall be somewhat modified, and I, therefore, move to amend it by inserting after the word "Journal," in the fifth line of the second recommendation, "are, in the opinion of the Convention, without sanction of law, and should be discontinued," instead of the words, as it now reads, "is disapproved, disaffirmed and the Compiler is required," etc.

President Choate — I suppose that is entirely in order, and while Mr. Crosby is perfecting his amendment the question may be put upon Mr. Alvord's motion to amend this second recommendation, before it is made the subject of commitment to either committee. Mr. Alvord moves to amend by striking out all after the word "is," in the last line but one, and substituting therefore "should be discontinued." Is that right, Mr. Alvord?

The Secretary — "Are, in the opinion of the Convention, without sanction of law, and should be discontinued."

President Choate — The question is upon the amendment.

Mr. Root — Mr. President, permit me to call the attention of the Convention to the fact that this altogether changes the legal effect of the resolution. The resolution, as it is now drawn, is the disaffirmance by the Convention of the contract, and so far as the Convention has power, if it has the power, it makes no contract. The proposed amendment would rob the resolution of its operative effect and change it into a mere expression of opinion, which would have no legal effect upon the contract whatever. Let us either do it, Mr. President, or not do it. Do not let us express an opinion in favor of doing it and still leave it undone.

Mr. Alvord — Mr. President, I do not understand the criticism of the gentleman from New York. It is an affirmative proposition in my amendment that we, as a Convention, can only give our opinion. We are not judicial men here sitting, having the right as judges to pronounce an opinion like the verdict of a jury. We are simply here to give our opinion, and in no other way can anything that we do be received, either by ourselves or by the people. My proposition is that we declare that, in our opinion, and that is as far as we can go, this contract on the part of the Compiler with these two journals is wrong and illegal, and that, therefore, we advise its discontinuance. It strikes me, sir, that that is as far as we, by any possibility, can go in the direction indicated by the proposition before us.

President Choate — The question is on the amendment offered by Mr. Alvord, so that it shall be determined what shall be made the subject of the motion to commit.

The Chair put the question on Mr. Alvord's amendment, and it was determined in the negative.

President Choate — The question is now on Mr. Crosby's resolution, which the Secretary will read.

The Secretary read the resolution, as follows:

R. 74.—"Resolved, That the Committee on Printing be and is directed to ascertain and report upon what terms a report of the proceedings of this Convention can be procured to be published in The Albany Argus and the Albany Evening Journal, and also the gross amount that the representatives of said papers will agree that the aggregate expense of such publication shall not exceed."

President Choate — The position taken by Mr. Davies changes his motion so as to commit to the Judiciary Committee alone, and Mr. Crosby's proposition is for an instruction to the Committee on printing. The Chair is of the opinion that it is not germane as an amendment, and must be put as a separate and subsequent proposition, and the question will be on Mr. Davies's proposition to commit the second recommendation to the Judiciary Committee. The Secretary will read it.

The Secretary read Mr. Davies's resolution, as follows:

"Resolved, That the second resolution submitted by the Judiciary Committee be recommitted to that committee, and that public notice be given of the time and place when and where interested parties may be heard in favor of or against such resolution, and that such committee report at its earliest convenience."

Mr. McClure — Mr. President, I only desire to call attention to the fact that Mr. Root disclaimed this resolution as being a resolution of the Judiciary Committee, and said that it was an individual one with him.

President Choate — It should be made to read, the second resolution offered by Mr. Root is in connection with the report of the Judiciary Committee. The question is on the question of recommitment to the Judiciary Committee.

Mr. Mereness — Mr. President, I would like to inquire of the mover of the resolution what he understands "public notice" means in the proposed recommittal.

Mr. Davies — I suppose notice means public notice: either notice given in this chamber that the Judiciary Committee will meet at such

a time, or else to the parties personally by letter. I supposed that everybody understood what the term "public notice" meant. Let the Secretary read it from the desk, that the Judiciary Committee will meet at such and such a time. The parties have that notice, and they can go before the committee and be heard. I will consent to strike out the word "public" and substitute therefor the word "due."

Mr. Maybee — Mr. President, I hope that the proposition of the gentleman from Oneida will not be adopted. This matter has been fully canvassed, and I have no doubt the members of this Convention are becoming somewhat tired of delay, debates and wrangles over this question. It ought to be settled, and I hope that the recommendation of the Judiciary Committee will be adopted, and that this contract will be disaffirmed.

Mr. Mereness — Mr. President, I would like to add to the suggestion of the gentleman from Sullivan county, that if after this contract is disaffirmed, this Convention should desire to have its debates published in these two papers, it can authorize the making of a contract itself after this matter has been acted upon.

Mr. Dean — I move, Mr.. President, to lay the pending motion of Mr. Davies on the table.

The Chair put the motion of Mr. Dean to lay the resolution of Mr. Davies upon the table, and the Chair declared itself in doubt as to the result. The Chair directed that a rising vote be taken.

Mr. Mereness — Mr. President, I would like to inquire if the laying of the motion of Mr. Davies upon the table does not carry the whole subject to the table? I think many of the delegates are in doubt upon that proposition.

President Choate — I think Mr. Mereness is right, that it does lay the whole subject upon the table.

Upon a rising vote being taken, Mr. Dean's motion to lay the resolution of Mr. Davies upon the table was determined in the negative.

President Choate — The question is now upon the motion of Mr. Davies to recommit. Is the Convention ready for the question?

Mr. Hamlin — Mr. President, I would like to say a word to the Convention before this motion is put. It seems to me entirely unnecessary to refer this motion back to the Judiciary Committee. We have here, as I understand, the unanimous opinion of these gentlemen upon the question of law, and there seems to be no

doubt in the mind of any lawyer in this Convention, I assume, as to the powers of this Convention over the Compiler. We have here then the report of the Judiciary Committee upon this question. And it seems to me that we are just as able to decide it as we shall be when they have returned another report similar in character to the former one. It would hardly seem to be appropriate when a Judiciary Committee of the ability of these gentlemen has passed upon this subject, after due consideration, to refer it back to them a second time to inquire again upon a question of law. It seems to me rather a matter of contempt to the Judiciary Committee, and I trust the matter will be disposed of here and now, and not again referred to the Judiciary Committee.

Mr. McKinstry — Mr. President, I would like to say in behalf of the Printing Committee that the committee was not unanimous in saying that these publications should not be made at all. They were simply unanimous that it should not be continued at the rate of seventy-five cents per hundred words in each paper. Now, I have already had a proposition from one publisher here for continuing this publication on far more favorable terms, a great deal more favorable. The first thing is to get rid of this old contract and do away with that, and if you refer the resolution of Mr. Crosby to the Printing Committee, it will report a contract which I trust will be acceptable to the Convention, and also to the public.

The Chair put the question on the adoption of the resolution offered by Mr. Davies to recommit the second recommendation to the Judiciary Committee, with instructions to give a hearing to parties interested, and it was determined by a rising vote in the negative.

President Choate — The question now is upon the adoption of the second resolution.

Mr. Hirschberg — Mr. President, I think it should be divided, as it contains two distinct propositions.

President Choate — Mr. Hirschberg asks that the questions be considered separately. Mr. Hirschberg has that right. I think the motion contains a separate subject-matter, directing the Committee on Printing to make inquiries and report and should be put as a subsequent and independent motion.

Mr. Crosby — I was about to reach the same result as suggested by Mr. Hirschberg, by asking to strike out from the resolution all after the word "disapproved."

President Choate — That comes to the same thing. The question will be on Mr. Hirschberg's motion. The first question will be on

the proposition contained in this second recommendation, that the contract that the Compiler has made with The Argus Company and the Journal for the daily publication of the proceedings of this Convention, is disapproved and disaffirmed. Are the gentlemen ready for the question?

The Chair put the question as just stated, and it was determined in the affirmative.

President Choate — The question is now on the rest of that second recommendation, that the Compiler is required to forthwith discontinue such publication.

Mr. Crosby — Mr. President, I now move, as a substitute, the resolution I offered, that it be referred to the Committee on Printing to ascertain, etc.

President Choate — As your resolution reads, it is a simple instruction to the Committee on Printing to make inquiries and report.

Mr. Crosby — I offer that as a substitute for this resolution.

President Choate — The Secretary will read Mr. Crosby's resolution, which he offers as a substitute for the second part of the second recommendation.

The Secretary read the resolution as follows:

R. 74.— Resolved, That the Committee on Printing be, and is, directed to ascertain and report upon what terms a report of the proceedings of this Convention can be procured to be published in The Albany Argus and the Albany Evening Journal, and also the gross amount that the representatives of said papers will agree that the aggregate expense of such publication shall not exceed.

President Choate — The Chair is still of the opinion that that is a separate subject-matter, and not a proper amendment to this second half of the second recommendation; and the question is on the adoption of the second half of this second recommendation, which contains a direction to the Compiler requiring that he shall forthwith discontinue the publications under the contracts which have been disapproved.

Mr. Mereness — Mr. President, I would like to inquire what the effect would be, the Convention having disaffirmed and disapproved the contract, if, upon the heel of that, the Convention consents to the continued publication of these proceedings and debates in these two papers; whether it would not be considered a waiver of its disapproval?

President Choate — Mr. Crosby's resolution is in respect to making a new contract.

Mr. Hirschberg — I do not understand that there is any question of consent involved at all. Having disaffirmed the contract, the Convention may very well stop there, and not attempt to exercise any control over the printer.

President Choate — This is a direction to the Compiler.

Mr. Hirschberg — Yes, sir; now they may fail to give that direction by not passing that part of the resolution, and still not at all assent to the printing, or assume any liability or responsibility in respect to it.

Mr. Hamlin — Mr. President, it seems to me that while we are about this, we should adopt this resolution as it stands, and then, if it is the desire of the Convention, and it may be a very proper desire, that we should have a new contract with these gentlemen who are publishing this in these two papers, let us report to the Convention a new contract, and make a fresh start under a contract controlled by the Convention. But first let us wipe out of existence this contract, and let us notify the Compiler that it has ceased.

President Choate — The question of the possibility of a new contract will come up under Mr. Crosby's subsequent motion. The question is now on the adoption of the second half of the second recommendation, instructing the Compiler to forthwith discontinue publication under the contracts which have been disapproved.

The Chair put the question as last stated and it was determined in the affirmative.

President Choate — The question is now upon Mr. Crosby's resolution, which the Secretary will read.

The Secretary read Mr. Crosby's resolution, as follows:

Resolved, That the Committee on Printing be, and is, directed to ascertain and report upon what terms a report of the proceedings of this Convention can be procured to be published in The Albany Argus and the Albany Evening Journal, and also the gross amount that the representatives of said papers will agree that the aggregate expense of such publication shall not exceed.

Mr. Galinger — Mr. President, I move that the resolution of Mr. Crosby be laid upon the table.

The Chair put the question on the motion of Mr. Galinger, to lay the resolution of Mr. Crosby upon the table, and it was determined by a rising vote in the negative.

President Choate — The question is on the adoption of Mr. Crosby's resolution.

Mr. Acker offered the following amendment to Mr. Crosby's resolution: To insert after the words "Albany Evening Journal" "or with the publishers of any other daily newspaper published in the State."

Mr. Crosby accepted the amendment offered by Mr. Acker.

President Choate — The question is on the adoption of Mr. Crosby's resolution as amended.

Mr. Becker called for the reading of the resolution as amended.

The Secretary read the resolution as amended, as follows:

Resolved, That the Committee on Printing be, and is, directed to ascertain and report upon what terms a report of the proceedings of this Convention can be procured to be published in The Albany Argus and the Albany Evening Journal, or with the publishers of any other daily newspaper published in this State, and also the gross amount that the representatives of said papers will agree that the aggregate expense of such publication shall not exceed.

The Chair put the question on Mr. Crosby's resolution, as amended, and it was determined, on a rising vote of 32 to 36, in the negative.

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

President Choate — Before the motion to adjourn is put, the Chair would state that there are announcements to be made by the Secretary. And the Chair would also announce that there are two more resolutions which are still unconsidered.

Mr. Galinger — Mr. President, I withdraw my motion to adjourn.

President Choate — The question is on the adoption of the third recommendation offered by Mr. Root under his resolution in connection with the report of the Judiciary Committee, which the Secretary will read from page 165.

The Secretary read the third recommendation, as follows:

That all future bindings of publications of the Convention be less expensive than those heretofore used, and be first submitted to the Committee on Printing and approved by them and by the Compiler before they are authorized by the Compiler.

The Chair put the question on the adoption of the third recom-

mendation as read by the Secretary, and it was decided in the affirmative.

President Choate — The next question is on the adoption of the fourth recommendation offered by Mr. Root under his resolution in connection with the report of the Judiciary Committee, which is also recommended by the Committee on Printing. The Secretary will read it from page 165.

The Secretary read the fourth recommendation, as follows:

That the reports of the official stenographer of the Convention and the assistants employed by him be henceforth the only reports of the proceedings printed under the authority of the Convention or of the Compiler.

The Chair put the question on the adoption of the fourth recommendation, as read by the secretary, and it was determined in the affirmative.

Mr. Veeder — Mr. President, I ask unanimous consent at this time to present a memorial, that it may be referred before the adjournment.

President Choate — Will Mr. Veeder suspend his request until one more resolution is read and acted upon?

The Secretary read as follows:

The Committee on Printing, to whom was referred by the Judiciary Committee the following report, namely:

" The Committee on Judiciary, in obedience to your resolution of June 6, 1894, calling for an opinion upon the power of the Convention over the Compiler, appointed under chapter 228 of the Laws of 1894, and over the printing and publication of its own journals, documents and proceedings, and in respect of the matters contained in the recommendations of the Committee on Printing, report as follows:

1. That the Legislature has undertaken to authorize the printing of a manual and compilation and of such journals as the Convention may keep, and has authorized a contract for such printing, which was made before the Convention met. In the opinion of the committee, the Convention has no concern with these matters, and it cannot prevent such printing from being a public charge under the contract of 1893, or make it such a charge.

2. That as to all other printing and publications, in the opinion of the committee, the Convention has sole authority to determine what documents and proceedings shall be printed, published,

indexed and bound, and when and how and under what conditions they shall be printed, published, indexed and bound.

3. That the Compiler has no authority to order or contract for any such printing, publication, indexing or binding, except under the orders of the Convention.

4. That the Compiler had no authority to contract for the daily publication of the proceedings and debates of the Convention in The Argus and Albany Evening Journal.

5. That the Convention has authority to give effect to all recommendations contained in the report of the Committee on Printing.

ELIHU ROOT,
Chairman."

Do hereby return the same and recommend its acceptance and adoption; and also return herewith for the consideration of the Convention the report of this committee in regard to the printing for the Convention as heretofore reported by Document No. 8.

President Choate — The question is upon the adoption of this report of the Judiciary Committee, expressing their unanimous views as to the legal powers of the Convention.

Mr. Cochran — Mr. President, in connection with the report of the Judiciary Committee, as approved by the Committee on Printing, I desire to say just a few words and those as applying to their first recommendation; and that is that this Convention has no control over the printing of the Manual. If there is one thing that has been more discussed than another by the members outside of this Convention, it is in regard to the publication of what is known as volume 2 of part 1, which is to contain the pictures and personal sketches of the members, and from conversations I have had with many members of the Convention, I do not hesitate to say that the issuance of this volume does not meet with the approval of the members. They do not think the Legislature ever intended that the Compiler should hand down our faces or our biographies to those who are to come after us, unless it might be that we desire to do it, as it is done in the Legislature, at our personal expense. In connection with the resolution which is now offered by the Committee on Printing, I desire to offer ——

President Choate — Mr. Cochran, it is not a resolution. The question is on the adoption of the general report offered by the Judiciary Committee as to the legal rights and powers of the Convention.

Mr. Cochran — I call the Chair's attention to the fact that they say we have no concern with it, and it is to that that I object, and

for this reason: The Judiciary Committee say that we have no control over this Compiler, that he was appointed by the proper officers to prepare the Manual, and that we have nothing whatever to say to him. But I desire to call the attention of the Chair and of this Convention to the act of 1894, which amends the original act of 1893, in which it is provided that there shall be appointed a Compiler who shall cause to be prepared and ready for said Convention at the commencement of its sessions, a manual, etc.

Now, we are informed by the Committee on Printing that the Manual is not ready. We know we have not received it, and we also know from the Printing Committee that we will not receive it for two or three weeks to come, and I hope that we, as a Convention, in view of the fact that I suppose many of us do not approve of the issuance of this volume, should place ourselves on record as opposed to its issuance; and then if we see fit to buy it at our personal expense, we may do so. For these reasons, I desire to offer as an amendment the following; and I will take the liberty of reading it myself:

R. 74½.— Whereas, The Convention having been informed by the report of the Committee on Printing, or through other sources, that there is in course of preparation by the Compiler, an additional volume to the Manual, to consist of the photographs and personal sketches of the members; and whereas, it is the sense of the members of this Convention that such publication was never intended by the Legislature to be included within the Manual, authorized to be issued for the Convention's use; and,

Whereas, In any event, it is provided by the Laws of 1894 that such Manual should be prepared and ready for the Convention at the commencement of its session.

Resolved, That the Convention do disapprove of the issue of the volume referred to, and that the Sergeant-at-Arms be directed to decline to accept of the same if offered; and further, that the Compiler, Secretary of State, Comptroller and Attorney-General be notified of this action.

President Choate — The Chair is of the opinion that Mr. Cochran's motion is an independent subject-matter, and should be put as a subsequent and separate motion. The question before the House is on the adoption of the report of the Judiciary Committee, which is strictly confined to a statement of the legal powers of the Convention in reference to the Compiler. The question of Mr. Cochran's motion is the disapproval of the plan of the second volume. The question before us now is on the adoption of the report of the Judiciary Commitee as it has been read.

The Chair put the question as stated and it was determined in the affirmative.

President Choate — The report is adopted, and the question is now on Mr. Cochran's resolution.

Mr. Moore — Mr. President, I desire to debate Mr. Cochran's resolution, and, therefore, request that it lie over.

President Choate — Under rule 50?

Mr. Moore — Under rule 50, Mr. President.

Mr. Davies — Mr. President, may we have the resolution read?

President Choate — The Secretary will read the resolution while the Chair is reading the rule.

The Secretary read the resolution offered by Mr. Cochran.

President Choate — As this resolution is one giving rise to debate, it will stand over.

Mr. Veeder — Mr. President, I now ask unanimous consent to present a memorial.

President Choate — Unless objection is made it will be received.

Mr. Veeder presented a petition for an amendment to the Constitution, relative to appointive officers.

Referred to the Select Committee on Civil Service.

O. 211.— Mr. Francis offered a proposed amendment to the Constitution to amend section 3, article 1 of the Preamble and Bill of Rights in regard to religious liberty, and asked that it be referred to the Committee on Preamble and Bill of Rights.

Referred to the Committee on Preamble and Bill of Rights.

Mr. Johnson — Mr. President, on behalf of the Committee on Cities, I ask unanimous consent to report a resolution as to inquiry as to civil service, and ask that it be sent to the Special Committee on Civil Service.

President Choate — The matter is received and referred to the Select Committee on Civil Service.

Mr. Johnson — Mr. President, I would further ask unanimous consent to present a protest on behalf of lady citizens, over twenty-one years of age, against the granting of the elective franchise to females.

President Choate — Unless objection is made this memorial is received and referred to the Committee on Suffrage.

Mr. Becker — Mr. President, I understand that we are under the order of reports from standing committees?

President Choate — That is so.

Mr. Becker — I desire to move, Mr. President, to take from the table the report from the Committee on Printing, which will be found on page 195 of the Convention Journal, reporting upon my resolution, as follows:

R. 30.— Resolved, That the Committee on Printing ascertain and report on the second legislative day of next week the propriety of furnishing a daily report of the proceedings of this Convention to each of the daily newspapers printed in this State, and the estimated expense thereof; and that the committee also report as to the printing and binding of 500 copies of the debates of the Convention, to be distributed in the manner and to the persons named in rule 71.

My reason for doing this is as follows: The Convention has now, as I understand it, by virtue of the adoption of the resolution offered by Mr. Root, absolutely discontinued all printing of its proceedings, except its Journal. Therefore, it seems to me entirely desirable at this time to refer to the Committee on Printing my resolution again which was offered before and which was laid on the table at my request at that time, upon the report of the Committee on Printing, as to the expense. If I read the law correctly, and the judiciary report is correct, we have this day, by the action of this Convention, according to the report of the Printing Committee, cut off an expense of upwards of $20,000, and the question will now be presented, and I think would properly be presented here and now to the Convention, whether it desires to go upon the record as absolutely refusing to publish its proceedings and debates at all, or to say that some portions at least of its official action shall be placed upon the files of the great journals, the moulders of public opinion, of this State. I, therefore, desire to make this motion, and if it is carried, I shall offer a resolution which I think will cover the ground in part at least, which is referred to by Mr. Crosby's resolution, and without some of the objectionable features which were added to it by his acceptance of the amendment offered by Mr. Acker.

President Choate — The question is upon Mr. Becker's motion to take from the table the report of the Printing Committee, which was laid on the table, as recorded at page 195 of the Journal, on the sixth of June.

Mr. Moore — Mr. President, I rise to a point of order, and that is that the motion to adjourn before the House takes precedence of everything else.

President Choate — Do you make such a motion, Mr. Moore?

Mr. Moore — No, sir; but Mr. Galinger did.

President Choate — Mr. Galinger's motion to adjourn was withdrawn.

The Chair put the question upon the motion of Mr. Becker, to take from the table the report of the Printing Committee, and it was determined in the affirmative.

Mr. Becker — Mr. President, I offer the following resolution, and for the same reasons stated by Mr. Crosby, that the Secretary might find it difficult to read his writing, I will read this:

Resolved, That the Committee on Printing ascertain and report on next Tuesday what contract can be entered into with the proprietors of The Albany Argus or the Albany Evening Journal for publishing the journals, proposed amendments and reported amendments of the Convention, and sending copies thereof at least twice in each week to all the papers in this State, except monthly papers and trade journals, and also for printing 1,000 copies of the verbatim reports of the proceedings and debates, and binding them in a plain and substantial binding for distribution, as provided for by rule 71, for the distribution of the journal and reports of the committees, or as ordered by the Convention.

President Choate — You offer that as a substitute for the resolution reported by the committee?

Mr. Becker — As a substitute for that, Mr. President.

Mr. Dickey — Mr. President, if, as Mr. Becker says, we have saved the taxpayers of the State $20,000 to-day by our action, I think we had better adjourn and not spend any part of that $20,000.

President Choate — Do you make that as a motion, Mr. Dickey?

Mr. Dickey — I do, sir.

President Choate — The question is on the motion to adjourn; but before that is put, the Secretary will read some announcements; and the Chair desires the members to observe the rule which requires them to remain in their seats until the motion to adjourn is put and acted upon.

The Secretary read the announcements for committee meetings.

Mr. Becker — Mr. President, may I make an inquiry? In case the motion to adjourn is adopted, under what order of business will my resolution, which has just been offered, come up?

President Choate — As the Chair understands, under the order of reports of standing committees.

The Chair put the motion to adjourn, and it was determined in the affirmative; whereupon the Convention adjourned to June 14, at ten o'clock in the morning.

Thursday, June 14, 1894.

The Constitutional Convention of the State of New York met at the Assembly Chamber at the Capitol, Albany, N. Y., June 14, 1894.

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

The Rev. Father Walworth offered prayer.

The Journal of Wednesday, June thirteenth, was read and approved.

The President — Memorials are in order. The Chair has received a considerable number of memorials. One from James Carter and others of New York city, against the appropriation of public moneys for sectarian purposes.

Referred to the Committee on Charities.

Also, a memorial from Rufus H. McHarg and others in defense of our free school system.

Referred to the Committee on Education.

Also, a very large number of petitions in the cause of civil service reform.

Referred to the Select Committee on Civil Service.

Also, a memorial from the secretary of the New York Juvenile Guardian Society for the supervision of reformatories, etc.

Referred to the Committee on Charities.

Mr. Barhite presented the petition of citizens of Rochester in reference to the visitation of certain religious institutions.

Referred to the Committee on Charities.

Mr. Osborn presented the petition of citizens of Putnam county in reference to civil service reform.

Referred to the Select Committee on Civil Service.

Mr. Hill presented two petitions of the citizens of Buffalo in reference to civil service reform.

Referred to the Select Committee on Civil Service.

Mr. Goodelle presented the petition of Chancellor Day and others of Syracuse in reference to civil service reform.

Referred to the Select Committee on Civil Service.

Mr. Foote presented a petition in reference to civil service reform.

Referred to the Select Committee on Civil Service.

Mr. Barnum presented the petition of Levantia W. Cox, Mrs. W. Campbell and others of Otsego county against the granting of equal suffrage to women.

Referred to the Committee on Suffrage.

Mr. Cookinham presented the petition of the Methodist Episcopal church for the Utica and Herkimer district, representing 10,000 members, against the appropriation of public moneys for sectarian purposes.

Referred to the Committee on Charities.

Mr. Francis presented two petitions of the citizens of Lansingburgh, Rensselaer county, for an amendment to the Constitution, providing for a commission of visitation for reformatories, asylums, etc.

Referred to the Committee on Charities.

The President — Has the Secretary any communications from State officers or any other public officers?

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

The Secretary called the districts.

Mr. Cochran — Mr. President, I call up my resolution which was laid on the table yesterday.

The Secretary read the resolution, as follows (No. 74½):

"Whereas, This Convention having been informed by the Committee on Printing and other sources that there is in course of preparation by the Compiler, an additional volume of the Manual, to consist of the photographs and personal sketches of the members, and

Whereas, It is the sense of this Convention that such a publication was never intended by the Legislature to be included within the Manual authorized to be issued for the Convention's use, and

Whereas, In any event, it is provided by chapter — of the Laws of 1894, that such Manual should be prepared and ready for the Convention at the commencement of its sessions,

Resolved, That this Convention do disapprove of the issue of the volume referred to, and that the Sergeant-at-Arms be directed to decline to accept of the same, if offered, and, further, that the Compiler, Secretary of State, Comptroller and Attorney-General be notified of this action."

Mr. Maybee — Mr. President, I move to lay the resolution upon the table.

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

Mr. Titus offered the following resolution:

R. 75.— "Resolved, That the district attorneys of the various

counties in this State be requested to furnish forthwith to this Convention a statement showing the number of appeals in criminal cases taken in their respective counties, for each of the five years last past."

The President — This resolution will be referred to the Judiciary Committee.

Propositions for amendments to the Constitution are in order. The Secretary will call the districts.

The Secretary called the districts.

O. 212.— Mr. Jesse Johnson offered a proposed amendment to amend section 16 of article 3 of the Constitution in relation to the title of bills.

Referred to the Committee on the Powers and Duties of the Legislature.

O. 213.— Mr. Titus offered a proposed amendment to article 6 of the Constitution, being the judiciary article, by adding a new section thereto.

Referred to the Judiciary Committee.

O. 214.— Mr. Tucker offered a proposed amendment to article 6 of the Constitution, by inserting therein a new section, providing for selecting referees.

Referred to the Judiciary Committee.

O. 215.— Mr. Becker offered a proposed amendment to article 3, section 19, in relation to grants of land under water.

The President — What committee should it go to, Mr. Becker?

Mr. Becker — To the Committee on the Powers and Duties of the Legislature.

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

O. 216.— Mr. Vedder offered a proposed amendment to section 10 of article 3 of the Constitution.

Referred to the Committee on the Powers and Duties of the Legislature.

The President — Reports of standing committees are next in order, and the first business in order is the consideration of Mr. Becker's substitute for the report of the Committee on Printing, which was under consideration yesterday when the House adjourned.

Mr. Becker — Mr. President, I now renew my motion of yesterday.

Mr. Cookinham — I offer as a substitute the following resolution:

The President — Will Mr. Becker refer the Chair to the page of the Journal on which the report appears?

Mr. Becker — Page 195 of the Journal.

The President — The gentlemen will find the proposition before the House on page 195 of the Journal. It is a resolution reported by the Committee on Printing for which Mr. Becker offered a substitute yesterday. Mr. Cookinham now offers a substitute for the substitute, and the Secretary will read it.

The Secretary read Mr. Cookinham's substitute as follows:

R. 76.— Resolved, That the subject of printing and publishing for the Convention, which is not covered by the rules, or the direction of the Convention heretofore given, be referred to the Committee on Printing with instructions to examine and report thereon at the earliest practical date as to what should be printed and published and also the best method of doing the same, and as to whom shall be furnished copies thereof.

Mr. Becker — I accept Mr. Cookinham's substitute, as I think it is more carefully worded than mine.

The President — The question will be on the substitute offered by Mr. Cookinham.

Mr. Roche — I call for a division of the question on the report of the committee, as published on page 195, and move, as an amendment to the motion now before the Convention, the adoption of the second part of that report.

If the Convention will remember, when rule 71 was under consideration, I moved that it be amended so as to provide, in addition to the direction for printing and binding 500 copies of the Journal and 500 copies of the reports made to the Convention, that there should be also printed and bound 500 copies of the debates of the Convention. At the suggestion of Mr. Root, I withdrew the amendment at that time and consented to present the matter at a later date in the form of an independent resolution. That was done, and it was referred to the Committee on Printing to make a report upon it. That committee on June sixth did make a report in which they recommended that 1,000 copies of the proceedings and debates of the Convention should be published and that 500 of them should be bound in plain substantial binding to be distributed among the members and the libraries and institutions named in rule 71. Now that matter is before the Convention, and, it seems to me, that it is entirely unnecessary to refer that branch of the subject back again to the Committee on Printing. They can give us no further light upon it. Their report is short and to the point. We have this

further fact, that under the contract, as made with the printer, the debates are being published and are being placed daily upon the files of the members, and all that we are called upon now to do is to direct as to the binding in plain substantial form of those debates, and the distribution among the members and libraries and institutions named. It seems to me, therefore, that it is entirely unnecessary to refer back this matter to the Committee on Printing and it is entirely unnecessary to connect it with the proposition for distributing the verbatim reports of the debates among the newspapers of the State. I, therefore, move as an amendment, that the second part of the report of the Committee on Printing be taken up and adopted.

The President — The Chair is of the opinion that Mr. Roche's motion is not in order and can only be put as a separate proposition. The situation is this: What he refers to is the second proposition on page 195, and it is a resolution which was before the House. Mr. Cookinham offers a substitute for it and the question must be put to the Convention upon the substitute. The substitute is for a reference of the whole subject-matter to the Committee on Printing for a report.

Mr. Becker — Mr. President, while I fully sympathize, and shall undoubtedly vote for Mr. Roche's proposition to bind and distribute these copies, it seems to me that this matter should now all go back to the Committee on Printing, for this reason: The Convention has decided that some portion, or a considerable portion of the acts of the Compiler in ordering certain things to be done, was unauthorized. It has disapproved and refused to ratify these acts. Now the question comes up as to the Printing Committee making a new arrangement with the printer which it seems to me can be more economically made and made in such form as to be for the convenience of the members of the Convention, if the whole subject is treated together. As you know, printing is a question of bulk largely. A large amount of matter can be printed and attended to better than a small amount of matter, cheaper. In this connection I wish to call the attention of the members to another matter which was called to my attention last evening through the courtesy of Mr. Speer, who is connected with The Argus Company. It has been the practice of the members to go to The Argus Company and get copies of the debates and Convention proceedings for circulation, and in some instances it has become so common that a large number of copies were required. The Argus Company found that it was becoming burdensome, and they said to the mem-

bers politely, but kindly enough, "go to the officers of the Convention and get an order, if you wish anything of the kind, as we must have a written order for what we furnish in order to receive our pay therefor." This I state upon the authority of Mr. Speer, without knowledge on my part, that a particular number of copies of the debates and proceedings of this Convention, that under the method which has heretofore prevailed, have been delivered to certain officers, there to be preserved and kept on file for future binding and distribution have been broken up and distributed among the members for their individual use, thus breaking up the files. This is a question that bears directly on Mr. Roche's matter and should be inquired into by the Printing Committee under Mr. Roche's resolution, in order that when they have discovered all the facts they can show us just what the work will cost, and when they make their report we will know how much it will cost and how they shall be distributed. For this reason and while I am in favor of the spirit of Mr. Roche's amendment, I hope it will not be voted against because it contains the matter to which he refers and upon any theory that this matter should now be disposed of, but rather that the whole motion as substituted by Mr. Cookinham should prevail, and that the whole matter should be investigated by the Printing Committee, which can report at an early date.

Mr. Cookinham — Mr. President, it is not my wish to detain the Convention to talk upon this subject, but I hope the gentleman from Rensselaer (Mr. Roche), will not press his motion. I agree with Mr. Becker that the spirit of his motion is right, but I think it far wiser that this matter go to the Committee on Printing, that they may present to us a statement clear and distinct as to what should be printed and the expense of it. It has been my experience in the Legislature of this State, and have no doubt it will be the experience of the members of this Convention, that the printing in this city is well done, and if the officers of the State are wise and make a fair contract, the work will be satisfactorily done. I have confidence in the Committee on Printing and I believe they will make such a report to this body that the gentleman from Rensselaer will be satisfied, that the Convention will be well served, and that the public will be reasonably informed as to what transpires within these walls. I hope, Mr. President, that the resolution will be adopted.

The President put the question on the substitute offered by Mr. Cookinham and it was determined in the affirmative.

Mr. Root — Mr. President, I beg leave to present a report from the Judiciary Committee.

The President — The Judiciary Committee presents a report which will be read by the Secretary.

The Secretary read the report, as follows:

Mr. Root, from the Committee on Judiciary, to which was referred the resolution introduced by Mr. Blake, calling upon the Secretary of State for the number of indictments for murder in the various counties of the State, reported in favor of the same, amended so as to read as follows (No. 72):

"Resolved, That the Secretary of State be requested to furnish to the Convention whatever information may be in his possession respecting the number of indictments for murder in the first and second degree, found by grand juries of the various counties of this State from January 1, 1889, to January 1, 1894, and the number of convictions of each degree had upon such indictments, including pleas of murder in the second degree."

The President — The question will be on the adoption of Mr. Blake's resolution offered yesterday and now reported favorably by the Judiciary Committee.

The President put the question on the adoption of the resolution, and it was determined in the affirmative.

Mr. Davies, from the Committee on Banking, to whom was referred a resolution offered by Mr. Kellogg on the eighth instant, respectfully reported, that having taken the same under consideration said resolution is reported favorably without amendment in words following (R. 67):

"Resolved, That the Superintendent of Banking be respectfully requested to furnish this Convention, if possible, with the number and location of savings institutions in this State and also the amount of unclaimed deposits in such institutions, together with a detailed statement as to how long such amounts have remained unclaimed."

The President put the question on the adoption of the resolution, and it was determined in the affirmative.

Mr. Hirschberg — Mr. President, I am instructed by the Committee on Privileges and Elections to present a unanimous report on the application of Harvey W. Putnam and Thomas A. Sullivan for the seats occupied by Herman F. Trapper and Charles Beckwith, as delegates in this Convention from the Thirtieth District.

The Secretary read the report of the committee, as follows (Document No. 16):

REPORT OF THE COMMITTEE ON PRIVILEGES AND ELECTIONS.

In the Matter of the Contest of Harvey W. Putnam and Thomas A. Sullivan for Seats in the Convention now occupied by Herman F. Trapper and Charles Beckwith, from the Thirtieth Senatorial District.

To the Constitutional Convention:

The Committee on Privileges and Elections having investigated the matter of the contest of Harvey W. Putnam and Thomas A. Sullivan for the seats now occupied by Herman F. Trapper and Charles Beckwith from the Thirtieth Senatorial District, do report as follows:

That they have taken a large amount of proof and have examined a large number of witnesses and have been addressed by counsel for contestants and also for the sitting members, and that they find and report as follows:

That the Thirtieth Senatorial District is composed of wards 1 to 14, inclusive, and the Nineteenth and Twentieth Wards of the city of Buffalo; that on the face of the returns in that senatorial district said Beckwith received 14,099 votes and said Trapper 14,093; that on the face of the returns said contestant Putnam received 14,070 and said contestant Sullivan received 13,899 votes. Thus upon the face of the returns it appeared that said Beckwith received twenty-nine votes more than said Putnam, and 200 votes more than said Sullivan; that the contestants sought to establish that the fourth election district of the First Ward should not be counted, but that the entire vote should be omitted from the returns, on the ground that it was irregular and fraudulent and that the polls were taken possession of by conspirators for the express purpose of controlling the election in the interest of one Sheehan, a candidate for alderman in the First Ward of said city; and they claimed that said conspirators did control the election in said district. Fraud was also claimed in other election districts in said First Ward, but it is not necessary to report upon that question as contestants substantially confine their case to said fourth district.

It appeared that the registration in said fourth district for the year 1893, was 889; that the population of said district from 1891 to 1893 had decreased; that the total vote of said district for the year 1892, that being the year of a presidential election, was 342; while the vote at the election November 7, 1893, was 641, as returned.

It appears that the vote of said district was divided between the principal parties for the three years last past, as follows:

	1891.	1892.	1893.
Republican, as returned.....	140	101	126
Democrat, as returned.....	169	212	505

It also appeared that the large increase in registration and in votes in 1893, was caused by persons registering and voting from certain localities in said district and particularly from a saloon known as 19 Main street, kept by one James Kennedy; also a saloon known as 85 Main street, and a saloon known as 133 Main street, and 165 Washington street and 33 Exchange street.

On the evening before the election, the sheriff of Erie county appointed 112 special deputies, all of whom were sworn in by the undersheriff without a knowledge upon his part or upon the part of the sheriff as to who those deputies were; and the act of swearing them in. Many of said deputies were men of bad character, notably, William Baker, Charles Marks, Samuel Strauss and a man called Farrell, all of whom were prize fighters, and O'Shea, who is described as a dog-catcher. These deputy sheriffs were all appointed at the request of Charles McDonald, John J. Lynch and John O'Connell and other supporters of Sheehan, for the office of alderman of said ward; said O'Connell being the chairman of the board of inspectors of election in said fourth district.

The booth in which the voting was placed in said fourth district, was located on Illinois street, was circular in form and constructed of sheet iron. It was placed on the side of the street, partially upon the sidewalk, so that the door at which voters would enter would be approached from the sidewalk leading to Perry street. About three o'clock in the morning, on election day, about fifty-four voters, mostly Italians, supporters of White, the candidate opposed to Sheehan for the office of alderman, arrived at said election booth and took their places upon the sidewalk in single file, the line extending from the door of the booth toward Perry street, which was the proper way for voters to form in line to approach said booth, that said line was orderly and law abiding; and that said line had remained in the said position until about 6.40 o'clock in the morning, that being about the time for opening the polls. That shortly before the time for opening the polls arrived, the said James Kennedy approached and rapped upon the door of the booth and asked admission. The election officers were within the booth, and Kennedy was asked who it was that desired admission. Upon giving his name, he was immediately admitted, but very shortly came out

of the booth and gave instructions to the election officers that the door was not to be opened until he gave the order. He was not an election officer and had no right to assume any control over the door, or to give any directions as to who should or should not enter the booth. Just before the time arrived for opening the polls, said Kennedy again returned, but he approached the door of the booth from the rear, coming between the booth and the building on the east side and there being an intervening space of some two or three feet. He, at this time, had with him the prize fighters and the dog-catcher and a large number of the special deputy sheriffs who had been appointed the night before. At the same time, Police Captain Regan, who had previously been a Republican, but who was a supporter of Sheehan for alderman, and some ten or more policemen in uniform, appeared with Kennedy and the deputy sheriffs. When they approached the door of the booth they immediately took possession of it. William Miller, one of the prize fighters, stood in the door, with his arm across it and the other officers were within the booth or outside, as they saw fit to be, and for several hours no one was permitted to enter the booth, except those to whom said Kennedy and one Kilcourse and the prize fighters saw fit to allow the privilege. The line of Italian voters who had staid in front of the booth from three o'clock in the morning, was forcibly broken up by these prize fighters, deputy sheriffs and policemen, and the men were told that they must go to the rear of the booth and form in the rear of the line which had approached in that direction and which consisted largely of special deputy sheriffs. Said Kennedy, after he entered the booth at the time of opening the polls, took a position in the rear of the inspectors of election and near to the private compartments, and with Kilcourse, assumed and retained control of the election machinery of that district. Kennedy gave directions as to who should be allowed to enter the booth, and who should be put out and his directions were followed; and, in pursuance of his directions, law abiding citizens were ejected by the prize fighters and notably several of the watchers, who were entitled to be present and observe the manner of conducting the election were either ejected or forcibly prevented from entering. One of the inspectors of election, Mr. Aeschbach, almost continuously protested against the unlawful proceedings, but no heed was given his protest.

Men other than voters were placed in or were allowed to remain in two of the private compartments during substantially the whole day, and most of the voting was done from these compartments.

Some of the compartments, at times, contained as many as two, three or four men. Said Kennedy gave directions to voters when they approached the private compartments to go into the first, second or third compartment in which were the men placed there by him to take charge of the folding of the tickets. Mr. Aeschbach, one of the Republican inspectors of election, almost continuously protested against the proceeding and called the attention of the election board and of the officers to it and requested that it be discontinued, but no heed was given to his protest. The chairman of the board of inspectors, one John O'Connell, had organized the board in the morning, but almost immediately left the booth, claiming to have appointed James Bowe to take his place upon said board, who proceeded to fill the position of chairman of said board without being sworn and without the right whatever to hold the position. A brother of said Bowe also assumed to act as inspector, without legal appointment and without being sworn. Said O'Connell did not again appear at the booth until the voting was mostly done. The voting from the time the polls opened until about half past ten or eleven o'clock proceeded very rapidly, and was largely done by the supporters of said Sheehan for alderman, and the voters came largely from what was known as the colonized districts, namely, 19, 85 and 133 Main street, 165 Washington street and 33 Exchange street. Mr. Thayer, a highly respected citizen of Buffalo and a man belonging to the Independent Democratic Club of the city of Buffalo, and a lawyer by profession, was a duly appointed watcher of such election, and entitled to a position in said booth, where he could observe what took place therein.

He, with difficulty, obtained entrance to the booth, and proceeded to make minutes of what there took place, when the said Kennedy without cause, ordered him to be put out, and he was thereupon summarily ejected by the dog-catcher; whereupon Mr. Thayer went to one of the judges of the Superior Court of said city, and made application, upon affidavit, for a warrant for the arrest of Kennedy. Sheriff Beck of Erie county, was sent for by the judge and the warrant was placed in his hands in the forenoon of said election day, and said sheriff was told where Kennedy could be found. The sheriff promised Thayer to meet him presently, at the booth, but went off in some other direction. Mr. Thayer, however, went immediately to the booth and there remained for several hours, but the sheriff did not appear until about four o'clock in the afternoon. Just before his appearance, said Kennedy, who had been within the booth all day, left the booth, whereupon the sheriff entered, remained for a few minutes and departed, and almost immediately on his

departure the said Kennedy re-entered the booth and was not arrested under said warrant. On the day before election, 129 warrants were issued for the arrest of all persons who had registered from 133 Main street. All these warrants were placed in the hands of one police officer, one O'Donnell. This officer went at nine o'clock in the evening before election to said 133 Main street for the ostensible purpose of arresting the persons against whom the warrants were issued for fraudulent registration, but found none of said persons there. He returned again about eleven o'clock at night, and found none of said persons there. He again went on the morning of election day at nine o'clock A. M., and found none of said persons, but it appears that sixty-three of the persons who registered from 133 Main street, voted at said election in the said fourth district. It also appears that shortly prior to election day, Kilcourse, who was one of the prime movers in the fraudulent scheme to prevent an honest election in said fourth district, took a lease of said No. 133 Main street, and paid the rent for October and November, and immediately after the election vacated the premises. In regard to No. 33 Exchange street, the committee reports that prior to election the landlord had taken proceedings to recover possession of said premises, and that the tenant had been put out of possession, and that the premises were vacant several days before election, and that there were no voters nor occupants of said building upon election day, and yet it appeared from the poll list of voters, that thirty-five persons were registered and many of them voted from said 33 Exchange street on election day.

During the progress of the voting, persons who were supporters of Sheehan and who intended to vote for him, were taken by the deputy sheriffs and prize fighters to the head of the line, out of turn, and were passed into the booth to vote and did vote, while respectable citizens, who were not supporters of Sheehan and who had stood in line until they came to the door were not allowed to enter until Kennedy, Kilcourse and the deputy sheriffs saw fit to permit them. Many voters who were not the supporters of Sheehan, were without cause, pushed out of the line, struck and thrown into the street, while the roughest element held full sway and entire control of the approach to the booth and of the election machinery. The deputy sheriffs, prize fighters and the election officers, who were the supporters of Sheehan for alderman, were all acting in concert to prevent a fair election and to allow illegal votes to be cast for said Sheehan. These persons did succeed in their corrupt conspiracy in taking entire charge of said election district and in preventing a

fair and honest election. Moreover, their acts are illegal, corrupt and fraudulent to such an extent that there was, in reality, no legal election in such district.

The returns show precisely the same number of votes cast for every candidate voted for at the election of 1893 in said fourth district.

It follows then that the return does not state the number of legal votes cast at such election, and that there is included in the returns a large number of illegal votes which were counted for said Herman F. Trapper and Charles Beckwith, and that said election was not a fair and honest expression of the opinion of the legal voters of said district, and the acts of the election board and the other officers were so fraudulent as to render the proceedings in the said fourth district on November 7, 1893, no election at all. It is but just, however, to say that neither Mr. Beckwith nor Mr. Trapper is chargeable with any act which, in the slightest degree, reflects upon their character or that indicates that they were, in any way, cognizant of or responsible for the fraudulent acts or proceedings.

The committee, therefore, have concluded that the return made by the board of inspectors of election for said fourth district in the First Ward of Buffalo, in said Thirtieth Senatorial District, should be disregarded and treated as null and void, and that the vote in said senatorial district should be counted as follows: Harvey W. Putnam, 13,944; Thomas A. Sullivan, 13,773; Charles Beckwith, 13,594; Herman F. Trapper, 13,588. The committee further report that said Harvey W. Putnam received a majority of the legal votes cast in said senatorial district over said Charles Beckwith of 350 votes, and over said Herman Trapper of 356 votes, and said Thomas A. Sullivan received a majority of the legal votes cast in said senatorial district over said Charles Beckwith of 179 votes, and over said Herman F. Trapper of 185 votes, and that said Harvey W. Putnam and Thomas A. Sullivan are duly elected delegates for said Thirtieth Senatorial District to this Convention, and are entitled to seats therein.

The committee, therefore, recommends the passage of the following resolution:

First. Resolved, That Herman F. Trapper and Charles Beckwith are not entitled, as delegates from the Thirtieth District, to the seats now occupied by them in this Convention.

Second. Resolved, That Harvey W. Putnam and Thomas A. Sullivan are duly elected delegates from the Thirtieth Senatorial

District and are entitled to the seats in this Convention now occupied by Herman F. Trapper and Charles Beckwith.

Dated *June* 14, 1894.

M. H. HIRSCHBERG,
Chairman.

The President — This report from the Committee on Privileges and Elections, having been received and read, it is now open for the consideration of the Convention.

Mr. Springweiler — Mr. President, I trust and hope that the members of this Convention will not take any immediate action upon this report as I believe the sitting delegates ought to have two or else three days in order to be heard by this Convention. I do not see them here to-day, and I therefore believe the consideration of the report should be deferred for several days. I, therefore, move that it be laid upon the table until next week and also printed.

The President — Does Mr. Springweiler name any day next week?

Mr. Springweiler — Make it a special order for next Thursday.

The President — Mr. Springweiler moves that this report be laid upon the table and made a special order for Thursday of next week.

Mr. Bowers — Mr. President, may I inquire through the Chair of the Chairman of the Committee on Privileges and Elections how many pages of evidence were taken by the committee and whether it has been printed?

Mr. Hirschberg — Mr. President; in answer to the inquiry of the gentleman from New York, I will state that the testimony is about 2,000 pages of typewritten matter, that it has not been printed, but that I understand there is in the possession of the Secretary for the use of the Convention four complete copies of the evidence. The evidence is comprised in four volumes and I understand there are four copies of that evidence in the possession of the Convention. I would say in respect to the disposition of the report, that it would be more satisfactory to me, personally, if it would be in accordance with the wishes of the Convention that the report be made a special order for a week from next Tuesday. That will give an entire week for such members as wish to examine the evidence, and I am inclined to think that less than that time would not be fair.

The President — Does Mr. Springweiler accept the amendment putting it a week from next Tuesday instead of the date stated by him?

Mr. Springweiler — That will suit, Mr. President.

Mr. Kerwin — Mr. President, I would suggest that we make it a day later, Wednesday, as on Tuesday we have a light attendance.

Mr. Hirschberg — I have no objection to that.

The President — Would that be satisfactory to Mr. Springweiler?

Mr. Springweiler — Yes.

The President — Wednesday, the twenty-seventh.

Mr. Bowers — Now, Mr. President, I want to offer this amendment to this resolution, that the entire evidence be printed. I do not see how we can be expected to vote upon such an important matter as the unseating of two delegates, holding certificates for their seats, and say that they are not entitled to their seats until we can have an opportunity to examine all the evidence. While I appreciate that the presumption naturally attaches of a unanimous report being sustained by the evidence; still, for my own part, I cannot see my way clear to vote upon such a question until I have had an opportunity to examine the evidence. I, therefore, offer an amendment that the entire evidence be printed and presented to the Convention on the Tuesday before the day set for the hearing.

The President — If the Chair recollects right, that question was passed upon several days ago, and it was concluded not to print the evidence, but to print in lieu thereof the arguments of counsel, which were made and distributed. I would like the Secretary to refer to that.

Mr. Maybee — Mr. President, I would like to ask if the copy of the arguments of the counsel for the contestees has been printed and furnished to the members. So far I have had no opportunity whatever to examine the case as presented by the arguments of the counsel for the contestees, I think they should be distributed.

The President — The motion will be on Mr. Bowers's amendment, calling for the printing of the evidence, if I rightly heard Mr. Bowers's amendment.

Mr. McClure — Mr. President, I desire only to add a word to what Mr. Bowers has said in reference to the printing of the testimony. Of course, it will appear to the delegates an impossibility that a sufficient number of delegates who wish to examine the evidence taken can do so by examining the four copies of the evidence to which the Chairman of the Committee on Privileges and Elections has referred. Of course, no more important question can come before this Convention than the right of any man who has taken the oath of office to hold his seat. I have no doubt that in the end we all of us will agree with the report of the committee, but

I should consider myself derelict in the duty that I owe to myself and this Convention and to the holders of the seats if I did not examine the evidence upon which the report of the committee is based. The question of a few dollars of cost should not interfere with a proper performance of our duty in this regard. We have had this question of printing — this question of spreading out for the edification of the constituents of the delegates to this Convention, their remarks upon the rules and upon petty questions before us, and already we have engaged to spend considerable money upon matters of very little importance. I only want to urge my sense of duty in this regard in saying that I should not be asked to vote that a man who has come here and taken the oath of office is not entitled to hold his seat, when I had not seen a particle of the testimony upon which the act is based. Briefs of counsel, as at least 130 of us know, are one-sided, biased. Sometimes the testimony is set forth in a way that illuminates one side of the question a little beyond the facts and we ought not to be asked to act upon briefs alone. I hope, sir, we will have the satisfaction of having this testimony printed and placed upon our files as early as Thursday of next week, so that on Wednesday, when this matter is to be taken up, we will have had ample time to examine into the merits of the case.

Mr. Becker — Mr. President, while I agree entirely with the suggestion of the gentleman from New York, that if any gentleman has not confidence in the committee's report, which I understand to be unanimous; is that correct, Mr. Hirschberg?

Mr. Hirschberg — Yes, sir.

Mr. Becker (continuing) — A unanimous report. If he is fearful of not having an opportunity to examine this testimony, which is in four duplicates and which is here in the hands of the Convention, he will, of course vote in favor of this resolution. There are, however, some facts connected with this testimony that ought to be explained to the Convention before a vote is taken upon this portion of the resolution. When the Committee on Contested Seats came to Buffalo to take the testimony in the case, they undertook to, and did take some direct testimony which bore solely upon the issues involved in this contest. Later on, they found that if they undertook to do that, there was such a mass of evidence that they would have to sit at a large expense to the Convention for a considerable period of time to take the testimony and an agreement was arrived at between counsel, a courteous and proper agreement in every respect, by which the minutes of evidence which had been taken

on the investigation of these tremendous outrages which was had in our Police Court, some of which I had the honor of conducting myself, as a member of the Citizens Committee, serving without pay for that purpose, and other evidence that had been taken before the Committee on Contested Seats of the Assembly for the purpose of determining a contest in that Assembly District which involved not only the outrages in the First Ward, but also in other wards, the Nineteenth and Second, was, by stipulation, admitted in this case, and the committee was left, with the aid of counsel to pick out such portions of it as affected issues involved in this contest, and the issues have been practically, by common consent of counsel, made the issues which should have been directed. Now, if we print this testimony in the case as it came before the committee, the gentlemen who desire to examine it will not only have the labor and the pleasure of examining the testimony, upon which, one side or the other, the committee has based its report, but a large mass of other testimony relating to other matters and things pertaining to the conduct of the election in the city of Buffalo last fall. I simply make that statement so that the gentlemen of the Convention may understand it in voting upon this resolution. It seems to me personally, and it is stated as a fact, that while there are four copies here for use, and while this report is a unanimous report, it may be putting the Convention to a very large expense and be taking a retrograde step upon the action of the Convention yesterday; yet, for my part, if Mr. Bowers and his associates desire to have it printed and insist upon it as a right, after this explanation, I personally shall not oppose it.

Mr. Griswold — Mr. President, of course the result of the contest, this election contest, may not be so very important, but here is a question not only involving the rights of these delegates that come here with a regular certificate of election and the contestants, but the rights of the constituents whom they are supposed to represent. We act here as judges and with all the responsibility of judges of the election of the different delegates. Now it seems to me that there is no more important duty that can be performed by this Convention than to determine the rights of contesting delegates. Now it must be well understood and known by this Convention that we are in ignorance as to what the rights of these parties are. The whole main body of this Convention may have opinions in advance acting upon their own feelings and desires, but as to having evidence upon which they can act we have not got it before us, and if we vote, we vote blindly, and it is the duty of every delegate here to ascertain carefully and truthfully what were the facts per-

taining to that election and yet it is proposed and can the majority of this Convention propose to take the responsibility of saying that we shall vote without any true knowledge of what takes place and what are the facts of that election? It is not so material as to what shall be the final result, but will this Convention and the majority take the responsibility of compelling a vote upon a question of that kind without the opportunity of knowing what the truth is with regard to that election? It seems to me that it is almost an imperative duty, on the part of this Convention, whether it shall change the rule or not (it is at least a precedent), that we shall know what were the facts in regard to that election. Therefore, it seems to me that it is eminently proper that this Convention should know or at least have an opportunity of knowing what the facts of that election were.

Mr. Cookinham — I have the honor of being the Chairman of the sub-committee that went to Buffalo to take the evidence in this matter. At that time we realized that it would be very expensive to print the evidence. We, therefore, directed that four copies be made and it is made in four volumes for each copy, so that if the gentlemen upon the other side desire to read the evidence there are sixteen volumes that can be placed in their hands, so that sixteen delegates can be reading the evidence at the same time. Now, Mr. President, it was not our desire to keep from the Convention the facts in this case, but rather to lay the facts before them. Nevertheless, if it shall be the wish of the gentlemen (may I say upon the other side?), that this evidence shall be printed, I, for one of this committee, shall vote that it be printed and laid before them. Mr. President, I have in my possession one of the briefs submitted by one of the counsel. I present it to the Convention in order that the Convention may give direction as to what shall be done with it.

Mr. Nichols — Mr. President, I would like to inquire of the committee if there was any substantial dispute upon the questions of fact presented to the committee?

The President — Perhaps Mr. Hirschberg can state.

Mr. Hirschberg — I will answer all those questions when the discussion is about to terminate.

Mr. Nichols — Mr. President, that seems to bear upon the question as to whether this testimony shall be printed. If there was no substantial dispute about the questions of fact it does not seem to me that the Convention should be put to the delay and the expense of printing the evidence. If the facts, as found, are substantially agreed upon, why print the evidence? It, therefore, seems to me

that the question I ask is a pertinent one to the matter upon which we are about to act. Therefore, I think the Convention should be given information upon that single question.

Mr. Barhite — Mr. President, I desire to call the attention of the Convention to the fact that this matter of printing the evidence has at least indirectly been passed upon by this Convention. At page 130 of the Convention Journal, we find that Mr. Hirschberg offered a resolution in the words following:

"Resolved, That the Committee on Printing be directed to cause 500 copies of the arguments of the respective counsel in the contests in the Thirtieth District made before the Committee on Privileges and Elections to be printed, for the use of the Convention, instead of the evidence."

That resolution, with a slight amendment, was adopted. It seems to me this motion to print the evidence is out of order, unless that resolution is reconsidered.

Mr. Alvord — Mr. President, I desire to say but a very few words upon this matter, sir. I am very sorry indeed that my friend from Erie (Mr. Becker), gave way as far as he has. This is an attempt, and the first one that I have met politically upon this floor to fasten upon the majority of this Convention, when the time shall be opportune for that purpose, the cry that we have unnecessarily, and contrary to what we have done but the day before, upon the question of printing, heaped up the expenses of this Convention. There is no necessity whatever, sir, even without the proposition just made by the gentleman who preceded me, there is no necessity for the printing of this matter. There is a unanimous report of both sides politically upon the floor of this Convention, and we are here called upon, in the face and eyes of that unanimous report, in the solemn duty of determining whether a man is entitled to his seat or not, in the face and eyes of that, we are called upon to question that report of what the evidence is, so as to see whether they have done rightly. I, for one, sir, desire to have placed upon record now and for all times hereafter, that if this resolution shall pass, either by courtesy or otherwise, through this Convention, that the blame for it is a brand upon the Democracy so far as the expense engendered by it is concerned.

The President — The Chair wishes to state, in answer to Mr. Barhite's point of order, the view that the Chair takes of the matter now before the Convention. It is true, that on the fifth day of June, a resolution was passed, on motion of Mr. Hirschberg, by which the Committee on Printing was directed to cause 500 copies of the

arguments of the respective counsel in the contest to be printed, for the use of the Convention, instead of the evidence, which was an implied vote or resolution not to print the evidence. That, however, was before the report of the committee came in reporting the facts as found by them, and although ordinarily it might require a formal reconsideration of that vote, the Chair is of the opinion that as this comes up upon the report of the committee calling for the action of the Convention upon the facts and based upon the facts, Mr. Bowers's motion is entirely in order without a reconsideration of the vote of June fifth. Now the House will understand exactly how the matter stands. Mr. Springweiler has moved that the report be printed and made a special order for the twenty-seventh of June. Mr. Bowers moves to amend by inserting after the word "report" the words "and the evidence shall be printed and laid upon the tables of the members."

Mr. Gilbert — Mr. President, I had hoped that it would not be necessary to print the evidence. I had hoped that the testimony in its present form with the report of the committee, unanimous as it is, would be satisfactory to this Convention; but if there is any considerable number of members of this Convention who feel that they ought to examine the evidence, and to have a better opportunity for doing so than the papers now before them permit, I desire to say here and now that I am in favor of having them given that opportunity. Mr. President, we would like to avoid all unnecessary expense and we ought to do it, but if there is a considerable number of men here who say, and we are bound to believe they say what they mean, that they want to examine it, and think that a better opportunity should be given, I think it vastly more important that such an opportunity should be given them than it is to save the expense of printing.

Mr. President, I would say that it would be the happiest day of my life when all the citizens of the State of New York, irrespective of their political affiliations, would simply stand up and say: One thing we are in favor of, namely, honest elections at every point of our elective life in the State of New York, and we stand for that proposition against all temptation. Now I give the Democrats of this Committee on Privileges and Elections great credit for having concurred in this report from that committee. I am not one of those who believe that the sole purpose of the minority in this body is to practice pettifogging politics. I am disposed to believe that all the members have come here under the solemnity of the oath which they have taken and with the consciousness that, in the future they will be judged by what they shall do here; that they are disposed

to rise to the plane of statesmanship and be above mere petty political strife. I am disposed to give every man credit who stands upon the floor of this Convention and says that he wants to examine the evidence. I am disposed to say, sir, that he does it in good faith, and that so far as my vote is concerned, he shall have all reasonable opportunity to say when the vote is taken: I have examined the case; I am clear what my duty is and I am prepared to vote without regard to the effect it will have upon the political fortunes of any individual or any party. Therefore, Mr. President, I hope by so doing we shall stimulate the highest conception of duty of every delegate to this Convention and give the fullest opportunity for its exercise. I hope, Mr. President, if this motion is insisted upon by any considerable number of gentlemen, I do not say the minority, because I do not draw any lines here as between Republicans and Democrats, that the request will be granted for the printing of this evidence. Let us stand together and let us work together for all that ought to be done.

Mr. Peck — Mr. President, what I have to say upon this subject perhaps can be put as pertinently in the form of an inquiry as any other. A few days ago, when this matter was voted upon indirectly, as the chairman suggests, in the form of a resolution that the briefs of the counsel should be printed and submitted to the Convention in the place of the printed testimony, I supposed that I should receive at least a printed copy of the briefs of both sides. There has been presented to the Convention the briefs in extenso of the contestants. I have not found upon my table any copy of the brief of the other side and yet we are informed this morning by the chairman of the sub-committee that he has such a brief and that he will send it to the desk for the action of the Convention. Now, it seems to me that before any action is taken, before, if you please, it is sent to the desk, that under the resolution of the Convention and before anything is done, there should be the brief of the sitting members distributed to the Convention, and I, therefore, move that this amendment be laid upon the table until that brief is printed and distributed.

Mr. Cookinham — Mr. President ——

The President — The question is not debatable. Mr. Peck moves that the matter be laid upon the table until the brief of the sitting members are printed and distributed.

Mr. Cookinham — Mr. President, I think with just a word he will withdraw his motion, if he will allow me to make an explanation.

Mr. Peck — Certainly.

Mr. Cookinham — The fact is that the brief of the sitting mem-

bers is in the hands of the printer. The brief distributed for the contestants was not printed at public expense. It was printed by the contestants themselves and placed upon the tables of the members. The brief which I have presented this morning is a supplemental brief that could not have been presented until now. It seems to me that under the direction of the Convention already given the brief of the sitting members will be placed before the Convention just as soon as possible without any additional motion. The brief which I have presented this morning requires the action of the Convention.

The President — Does Mr. Peck withdraw his motion to lay upon the table.

Mr. Peck — I do not.

Mr. Hirschberg — Will Mr. Peck give way for a moment?

Mr. Peck — I will give way for Mr. Hirschberg, certainly.

Mr. Hirschberg — Mr. President, if the Convention will indulge me for a moment I will make a statement in reference to this matter which will, perhaps, have some influence with the members.

Mr. McClure — Mr. President, I rise to a point of order. I suggest that it will not be in order to withdraw the motion to lie on the table entirely. It will be hardly fair to withdraw it to have a statement made by one member and not have it answered by another.

The President — It is withdrawn for the present.

Mr. Hirschberg — I should not occupy the time of the Convention even for a few moments if I did not feel satisfied that I could give them some facts upon this matter which will be of use and value in determining how to vote upon the resolution which, as I understand it, is simply that the testimony taken in the contest in the Thirtieth Senatorial District shall be printed. I do not understand that this resolution either expressly or impliedly involves that the Convention shall wait for some action upon the report of the committee until that evidence shall be printed. Now it has been stated that about 2,000 pages of testimony were taken in the contest. After that evidence had been given, and a great deal of it relates to facts which are not embraced in the report of the committee and which by consent of counsel in the argument has been necessarily eliminated, a day was fixed for argument by the committee. Argument was heard on both sides and in accordance with the resolution which I presented, it was ordered that the arguments should be printed and furnished to the members of the Convention instead of the testimony, because it was believed that the admissions on both sides

as to what the testimony showed was sufficiently extensive and clear that if the arguments were placed in the hands of the Convention with the report when it came in, the members of the Convention could see for themselves that no good would be accomplished by the expense involved in printing the testimony. That resolution was passed on the sixth day of June. It is now the fourteenth. The arguments were placed in the hands of the Secretary on that day and I have no doubt were delivered to the printer. I have made inquiries while this discussion has been raging to know when the Convention could reasonably expect to be put in possession of the printed thirty pages of argument and I am now informed that the printer hopes to furnish it early next week. Allowing the same expedition for the printing of the evidence taken in this contest it would be unreasonable to expect that the testimony would be ready before the sitting of the next Constitutional Convention. (Laughter.) Nevertheless, if the wish is simply to have it printed, I for one would not oppose the resolution, but I make this statement so that the gentlemen who are desirous of having this testimony printed will see how futile it is to have the testimony printed before action is taken upon the report.

Now the question has been asked whether there has been any dispute on the facts in the evidence. I do not understand that there is any serious dispute, and the counsel on both sides do not seem to claim that there is any serious dispute. The action of the committee is based entirely upon what took place in the Fourth District of the First Ward, and to this extent at least I understand that the counsel agree. There is no dispute but that the entire vote on the Republican side in the presidential year in that district was 101. There is no dispute but that the sheriff saw fit to appoint 112 deputies to preserve order in that district, more than one deputy for each of the Republican voters. There is no dispute about the fact that an orderly line of Republican voters was formed at three o'clock in the morning, standing in front of the door of the booth. There is no dispute about the fact that these deputy sheriffs signalized their advent at six o'clock in the morning of that election day by falling upon these voters, smiting them hip and thigh, and scattering them to the four winds. There is no dispute about the fact that the booth was opened, the board organized, and the chairman immediately left; that the booth was then taken possession of by a man not sworn in or authorized to act as chairman, and that another person, not an inspector of election and not sworn in, took the place of the chairman that had fled. There is no dispute at all but that Mr. Kennedy's barkeeper took possession of one of the secret compartments,

remained in there all day long and took the ballots and folded them with a crease down the middle for each voter, and the ballots were voted in that way or not at all. There is no dispute about the fact that the next secret compartment was occupied by another young man and occupied by him the entire day. There is no dispute about the fact that one house, No. 133 Main street, thirty feet front, three stories high, had 129 voters registered from it and that sixty-three men voted from that house. It is conceded by all parties that warrants were issued for these 129 men and that officers who went there the day before and on election day, could not find one of them. There is no dispute about the fact that this house was hired by Mr. Kilcourse in October and abandoned the second day after election. There is no dispute that these men came to the polls and forgot their names; that they would go out, change their hats and coats and come back again. There is no dispute about the fact that the vote cast by the Democratic party was in excess of the entire vote cast by both parties in preceding years and in excess of the entire vote of both parties in the presidential year. The only dispute is the fact that the contestees claim that the large vote was got out by the intense fight on aldermen, but there is also no dispute about the fact that there was not one single scratch upon any ticket for the office of alderman and that all the candidates on each ticket from the highest to the lowest received precisely the same vote. Now all these facts are conceded. The only thing in the evidence on the part of the contestees is that numerous witnesses testified to what they did not see; that they did not see this, that and the other that has been testified to by the other side, and in general terms that the election was remarkably orderly on the day of election. It is also undisputed that the conduct of the sheriff in appointing these deputies, in disregarding his duty, as is charged impliedly in the report of the committee, has been the subject of investigation, and that he has been removed from his office in consequence solely of his misconduct in respect to the election in this election district on the day in question.

Now with all those facts before the Convention, with the knowledge that it will be physically impossible to have this testimony printed in time to serve any useful purpose in respect to the adoption or rejection of the report of the committee, if the Convention orders the printing of the testimony, I, for one, shall not oppose it. I should be glad to have it given to them. I know the more the delay, the more this testimony is read, the wider it is spread, the more complete will be the conviction of the members of the Convention in adopting this report that in acting as they have done the

members of the Committee on Privileges and Elections have done only what they have been constrained to do in the course of their duty.

Mr. Vedder — Mr. President, I notice that the President of the Convention, in his wisdom, when he appointed this committee of eleven on Privileges and Elections, selected four eminent lawyers, whom I have just been told by Mr. Davenport of Kings, are Democrats. I suppose he appointed them not only because they were good lawyers, but were also Democrats, that they might watch the Republicans on that committee to see that they did no wrong. We have heard only from the Republican members of that committee, and I would be pleased, and I think the Convention would, to hear from all four of the Democrats who were appointed upon that committee, because the Convention knows that they are able to sift the testimony, to get at the real evidence in the case, and that in no place, particularly in this form, would they permit a substantial right to be outraged. I would like to hear from these gentlemen to see whether, in their opinion, it is necessary to have all this testimony printed in order that the Convention could arrive at a proper and just and legal conclusion in the premises.

The President — Before the Convention proceeds, the Chair will state that Mr. Bowers has put his motion in writing and it appears to the Chair that it can only be offered as a substitute for Mr. Springweiler's motion, inasmuch as the two are absolutely inconsistent. As the motion now stands, it is this: That the evidence taken by the Committee on Privileges and Elections be printed before the consideration of the report. Mr. Springweiler's motion is that the consideration of the report be made a special order for Wednesday, June twenty-seventh.

Mr. Deady — Mr. President and gentlemen, the Democratic members of the Committee on Privileges and Elections, consider that not only was the testimony in favor of all of the contentions on the part of the contestants, but that there was no evidence whatever against those contentions. The three claims that were made on behalf of the contestants were: First, that there was fraud and intimidation at the polls; second, that there was fraud in voting; that the law had been transgressed in reference to the secrecy of the ballot, and third, that there was gross fraud in registration.

In reference to the registration, perhaps one fact has not been sufficiently emphasized, that the majority passed at that election last year, which was an off year, the Democratic majority in that district was larger than the total vote of both parties that had ever

been cast in the district. We considered, therefore, that the testimony was overwhelming on all points. Of course, the Convention will understand that there was no reflection whatever on the character of the contestees. It was admitted that they knew nothing about the frauds, and the report so finds. This whole fight was on the alderman of that district. The Republican alderman, for some reason, had been allowed to sit there for eight terms, sixteen years. At this time the Democrats rose in their might and drove him out, and with him two of the Republican delegates to this Convention. We considered, while we were not taking the part of the alderman, that we had a right to investigate thoroughly, and I assure the members of the Convention that no Democrat on that committee would have consented to this report unless he was satisfied that the testimony was overwhelmingly in favor of the contestants.

Now, Mr. President and gentlemen, so far as the printing of this testimony is concerned, of course it may be a delicate matter for me, or for any of the Democratic members of the committee, to suggest anything to our confreres in this Convention, but it would be impossible to have that printing done in time for any consideration, and I would suggest, if it could be done, there being a great deal of the testimony that is entirely irrelevant, if any could be arranged, that the pertinent parts of the testimony could be selected, the testimony referring to the questions of intimidation, to the fraud in the election, and to the action of these deputy sheriffs, the assaults on the Republican line and the false registration, or what we considered false registration, it would be perfectly proper; and if someone could be appointed or suggested to go over this testimony and select the parts to be printed, that that might be a solution of the difficulty.

Mr. Tibbetts — Mr. President, I move as a substitute, if it be in order at this time, that will protect the rights of members who desire to see the evidence or hear it, that the Secretary appoint two Assistant Secretaries, whose duty it shall be to read this evidence next Tuesday morning to such members of the Convention as shall be here.

The President — The Chair is of the opinion that it is not in order until the question on Mr. Bowers's substitute has been put.

Mr. Pratt — Mr. President, I move the previous question on the resolution of Mr. Bowers.

Mr. Bowers — Mr. President, I would ask that that motion be withdrawn for the present.

Mr. Pratt — I will withdraw it, Mr. President.

Mr. Peck — Mr. President, I renew my motion to lay on the table for the purpose of giving an opportunity for discussion, and it seems to me that before any other motion is made, I should have an opportunity to have my motion considered. It seems to me that by this time this Convention must be convinced, that before we can properly vote on the question, this enormous mass of testimony, we ought to see the briefs of both sides, because it may very likely be that after we compare the briefs of the two sides, those of us who are lawyers will be able to vote more intelligently, at least, and find out what the issues are, and how they are met by the opposing parties. If it appears on the face of the briefs, as it has been intimated here, that there is no substantial question of fact, it seems to me that this enormous mass of testimony ought not to be printed, but I cannot vote on the question until I see those briefs. I, therefore, renew my motion to lay this matter on the table, until the brief of the other side is submitted to the Convention.

The Chair put the question on Mr. Peck's motion to lay the whole matter on the table, and that the briefs of the contestees be printed and laid on the desks of members, and it was determined in the negative.

The President — The question is on Mr. Bowers's substitute.

Mr. McClure — Mr. President, Mr. Hirschberg has stated that nearly all the facts, and all that it will be necessary to have placed before us has been conceded by the respective attorneys in this matter. Now, some of us lawyers know what a statement of facts means. I rise to ask whether there can be placed before this Convention a concise statement of admitted facts, admitted on both sides, in reference to this particular district in which the committee has expended its labors and made examination? If we can have a short and concise statement of the facts admitted, as it is stated they are conceded by the attorneys for both sides, that will dispense with the necessity of printing the testimony, as I, for one, shall be willing to act upon such a statement of conceded facts.

Mr. Hirschberg — Mr. President, in order to secure unanimity in the committee, which was thought to be quite desirable if it could be secured, the report was drawn so as to embody a simple statement of the conceded facts to which all the members of the committee could subscribe, and I do not know where any simpler statement of the conceded facts can be found than in the report as presented.

As to the admissions of counsel, if the gentlemen will have patience to wait until that thirty pages of argument is printed — and

as we are now on the tenth day, it ought to be printed before long — and that is furnished to the members, they will have before them just what has been asked for.

Because the counsel were asked: "Do you admit that 112 deputies were appointed in this district?" "Do you admit that this was done and the other thing was done?" and they said yes. The only dispute is as to whether or not it was necessary that the contestants should identify each of the individuals who voted illegally, and show by affirmative evidence where they lived, and consequently that they did not live in this district. It was the legal conclusions to be drawn from the facts as they existed, which chiefly occupied the attention of the counsel. I supposed that brief would have been here long ago. I thought that inasmuch as fifty pages could be printed over night that thirty pages could perhaps be printed in a week or two.

Mr. McClure — I would like to inquire if the brief of the sitting members concedes the facts which are claimed by the contestants, and which are stated in the report of the committee.

Mr. Hirschberg — Mr. President, I have read that brief, and I do not understand that it makes any issue at all upon the questions of fact. I will read it to the Convention.

The first part of the brief is a statement that the rule of law applicable to the case, is the same as that laid down by the Court of Appeals in People v. Thacher (55 N. Y., 525), and the counsel states that the principles there are grouped under three divisions, and with that the committee agreed. He says that the only way in which the return can be disregarded is either, first, where the return is erroneous in that it does not correctly state the result of the election, as where the ballots were not properly counted, or their number was not properly returned, and there is no claim, on the part of anybody, that any such error existed in this case, and the committee has not so found; second, where some mandatory provision of the statute has been disregarded by the election officers, and the result of the election was affected thereby; third, where fraudulent votes were cast or the circumstances were such that fraudulent votes could have been cast, and it is probable that they were cast, and where lawful voters were not allowed to vote, or were intimidated and did not vote.

Now, the counsel says, "In what we have to say, we shall assume that the committee is familiar with the testimony and facts proved, and we shall confine our remarks to the election in the Fourth District of the First Ward.

The case at bar does not fall within the second class mentioned,

because no mandatory provisions of the statute were disregarded by the election officers, whereby the result of the election was affected. We concede that one important part of the election law was violated by the election officers, and that is the provision that no person shall go with the voter into the booth, where the tickets are folded, unless the voter is blind," etc.

He stated that upon the argument and he concedes it in the brief.

"The bald fact that there were some persons in the booths who aided in folding ballots for a considerable time, while the voting was going on, is shown. The question arises whether that fact is sufficient to justify the committee in rejecting the election return, and thereby disfranchise all the voters of the district. Hundreds of persons went into the booth where this person was and came out and voted, not one of them says that the intruder spoke to him or did anything further than fold the ballots. If anything further was done, if any voter was intimidated, or was solicited to vote a particular ballot, it would be a matter easily proven."

He argues that conceding the facts to be true, it does not affect the result of the election. He says "irregularities he may show, as the failure to swear in the temporary chairman of the board of inspectors, or the failure to require the voter challenged to sign and swear to a certain statement of his qualifications," that refers to the fact that the testimony was overwhelming upon the question that when a voter was challenged the oath was, "You solemnly swear that you are a voter." And nothing further, and he swore to that and his vote was taken.

"We have no desire to palliate the offense of the election officers in permitting men to accompany the voters into the secret compartment; but we contend that this single violation of the law standing by itself is not sufficient to annul the election return, without testimony showing that it influenced the casting of at least some votes."

My recollection of the testimony is, that some voters testified that when they got in the secret compartment, they were told by the individuals in charge, that they would not be allowed to vote unless they agreed to vote the Sheehan ballot; some of them testified that they changed to the Sheehan ballot and that then they were allowed to vote. That did not happen every time, but some times.

"The case is not within the third class mentioned because it is not shown that fraudulent votes were cast or that the circumstances were such that it is likely that fraudulent votes were cast; or that lawful votes were rejected. This proposition brings up for review a great mass of testimony that must be hastily passed over.

"Complaint is made of the colonization of voters. We leave this

complaint with the assertion that it is proper and lawful for an elector to remove from one election district to another for the sole and avowed purpose of acquiring the right to vote in the latter district. The law permits it, and those who would condemn it should endeavor to procure a change of the law by legislative enactment. It is not shown that any so-called colonist was not a lawful voter in the district where he voted."

The committee were largely influenced by inspection of the registry lists, and it was then discovered that if the act of registering in these districts should be taken as an indication that they had changed their residence, its effect was nullified by the fact that a great majority registered within the thirty days. The first day of registry was the seventh day of October, and the large bulk of the registry was done upon the other days succeeding the seventh of October.

"As to the breaking of the line of voters at the booth on the morning of election day" — this is in relation to the statement that the men sworn in were the most efficient men that could be got — "it is asserted that the police and deputy sheriffs broke up the line formed at the door of the polling booth, and there is no doubt, that they did break it." That is the statement of counsel.

"Now, what was that line? It was a line of some fifty of more Italians in charge of the witness, Tony George, and consisted of members of an oath-bound secret society, organized for the support of the Republican candidate for alderman."

That is the justification for the breaking up the line, that they had secretly sworn that they would vote for the Republican candidate.

"The line was formed about three o'clock in the morning. The first thing the police did was to arrest Tony George and lock him up for carrying concealed weapons. The contestants proved this first, as the first outrage of the day on the part of the police, but when it was shown that Tony George did have a revolver on his person, and that his arrest was proper, the attempt to make it an outrage failed. Who can say that this summary action did not have a salutary effect on the turbulent assemblage at the polling place later on? After the arrest, the police proceeded to do another wise thing, which resulted in the breaking of the line. They closed the street at the end of the block furthest from Perry street down which most of the voters would come to reach the polling place, and they compelled the voters to go beyond the polling place to the end of the block, where it was closed, and there turn and form in a line approaching the booth from that direction."

Now, sir, that was not only a wise thing, but it seems to me the

members of this Convention can derive a great deal of education from considering how nicely it was done.

"As to the throwing the men out of line. That men were thrown out of line is certain, but who were they? Was it not proper to throw them out?"

Mr. Holcomb — Mr. President, I would like to know whether the gentleman from Newburgh is reading an agreed statement of facts, or arguing the case?

Mr. Hirschberg — I am reading the argument of the contestees. The gentleman might very naturally suppose, that it was the argument for the contestants, because it reads that way, but it isn't.

He says it is conceded that men were thrown out of line, but he says the inference is that they were properly removed. He says: "The officers may have made a mistake in the case of Annis and Lindenbach, or what is more likely, these two men may have asserted their rights in a way to stir up strife, and were for that reason thrust aside." And then as to the 129 warrants that were issued, the only argument made is that they were applied for too late; they should have been applied for before the day preceding the election."

Now that is the entire brief. There is not in the brief a suggestion, there was not on the argument a suggestion that there was a single fact claimed by the contestees that amounted to anything, a single material fact, that was disputed by anybody.

Mr. Bowers — Mr. President, the debate which has taken place over the resolution which I offered has certainly indicated on both sides a desire to do the right and the proper thing, and I am confident that all the members of the Convention hold to the view that, entirely aside from any party feeling of any kind or nature, the sole object we seek to attain is to determine whether the report of this committee shall be adopted or not. It comes before us as the unanimous report of delegates of the highest standing in the Convention and I have no doubt whatever that in the end this report will receive the same unanimous approval at the hands of this Convention, as have all other reports that have thus far been brought in. It is entirely a question of principle, on which all delegates to the Convention must act in accord, that I suggest it. It was because I did not see my way clear to vote to deprive a man of a seat in this body without an opportunity to read the evidence on which my associates had reported, that he should be deprived of it that led to the offering of the resolution. I am well aware that the great majority of the delegates in this body, as many of them have stated upon the floor, would, even if entirely satisfied themselves to vote upon the question,

nevertheless yield to the view that I thus express and give us the opportunity of examining the evidence. The only questions at issue are the questions of delay and of expense. I understand that the printing can be done within a week, and that the cost will be under $500. If this be true, as we have already agreed upon a day nearly two weeks hence, when we are to consider this report, it would have seemed eminently proper that so small an expenditure should be made in order that the Convention, as a whole, should say to the people of the State, we, everyone of us, voted to unseat these gentlemen only when we were fully satisfied by an examination of the evidence, that such was our duty. I understand that all the delegates who have spoken to-day, urging somewhat contrary views, suggest that on the agreed statement of facts, or upon the briefs, or upon the reading of the four volumes of evidence before us, the delegates can satisfy themselves upon these facts without going to the expense of printing this evidence. If this be so, I shall be entirely satisfied to vote without the evidence being printed, and if, upon the brief which is to be given us, I suppose on Monday, it shall appear, as very evidently it will appear in a great degree, if the statements of the Chairman of the Committee on Privileges and Elections are correct, then those of us who desire to go into the matter further might still have access to the volumes of evidence which are in the hands of the committee, and I am now satisfied to allow this question to lie over until Tuesday, and then we can have examined this brief, and if those of us who have felt that a further examination ought to be had shall then conclude, as we very well may, that we have or can get all the light that is necessary to satisfy out consciences, I certainly shall interpose no further obstacle to the consideration of the report. If, on the other hand, on examining the brief, there are delegates in this Convention who feel that they are not in a position to vote upon this question, I shall expect the other delegates in this House to accept our statement in that regard as true, and, therefore, with the permission of the House, I will move that the entire report be laid upon the table until Tuesday next, and that at that time a date be fixed for its consideration.

The President — Mr. Springweiler's motion is that the report be printed and made a special order for the twenty-seventh.

Mr. Bowers — Mr. President, I do not want to have it made a special order until we have been able to determine whether we need the evidence. I, therefore, move that the report, as made, lie upon the table until Wednesday of next week, and by that time we can determine whether we need any further evidence or not; and that in

the meantime the brief of the contestees be printed and handed to the delegates.

Mr. Root — Mr. President, may I make a suggestion? The suggestion is that we ought to have the report printed and laid before us at the same time with the brief of the contestees.

Mr. Bowers — Certainly.

Mr. Root — My suggestion is, Mr. President, that these gentlemen, Mr. Bowers and Mr. Springweiler, agree, if it suits Mr. Hirschberg, to substitute for both of their motions a motion that the report be printed, and then let the motion of Mr. Bowers be renewed and laid upon the table. In that way we will get the report before us with the arguments of counsel.

Mr. Bowers — Will you accept an amendment that the reports and briefs be printed?

Mr. Root — I understand that the briefs are to be printed.

Mr. Hirschberg — Mr. President, my understanding is that the Convention has only ordered the printing of the oral arguments on both sides. They have not yet ordered the printing of the contestees' brief.

The President — That is the understanding of the Chair. There is no vote to print either the report or the brief.

Mr. Hirschberg — I would suggest, Mr. President, that the contestees' brief be printed, as well as the report of the committee.

The President — Does Mr. Bowers accept the amendment to his motion, that the briefs of both sides be printed with the report, and that the further consideration of the report be postponed until ——

Mr. Bowers — Wednesday, of next week, Mr. President?

The President — That will be Wednesday, the twentieth.

Mr. Bowers — I accept the amendment, Mr. President.

Mr. Dickey — Mr. President, I take it that it must be evident to this Convention, by this time, that the publication of this testimony would be useless waste of public money, and the question ought to be disposed of here and now. There should be a refusal to print it. If there is anybody whose conscience will not permit him to vote upon the question, without examining the testimony in the case, it has already been stated here several times that four copies of the entire testimony are here, and anybody whose conscience is troubled, can consult one or more copies of that testimony and fully advise himself of the subject-matter, before the question comes up for final determination. Most of us, when a unanimous report has been

made by a committee made up as this Committee on Privileges and Elections is, are satisfied to coincide with their views and adopt their report. The people who have been kept out of their seats here, as found by the unanimous report of this committee, from the beginning of this session up to now, have some rights here. The matter should not be delayed indefinitely, but it should be disposed of pretty soon after this report. Therefore, I hope that action will now be taken, looking to the refusal to print this testimony.

The President — The question is on Mr. Bowers's amendment. The Convention will understand that Mr. Bowers withdrew his motion for the printing of the evidence, and his present amendment to Mr. Springweiler's motion is that Mr. Springweiler's motion be amended so as to provide that the report and the briefs of both parties be printed and laid upon the desks of the members, and that the further consideration of the report be postponed to Wednesday, the twentieth.

Mr. Becker — Mr. President, I move to amend that motion by striking out the words "briefs of both parties," and inserting "briefs of the contestees." I understand that the briefs of the contestants are already printed and circulated at private expense, and not at the expense of this Convention. If there are enough copies left for distribution, why should we take up further time and spend further money in the matter?

The President — Will Mr. Hirschberg state whether all the briefs printed on the part of the contestants have been distributed?

Mr. Hirschberg — Mr. President, the contestants presented to the committee a brief which they themselves had caused to be printed, and having extra copies circulated among the members of the Convention a copy of that brief.

The President — Have the contestants presented any further brief?

Mr. Hirschberg — A brief only on the question of law, Mr. President.

Mr. President — I do not suppose Mr. Bowers desires that what has already been printed shall be re-printed.

Mr. Bowers — I accept the suggestion of the gentleman from Buffalo.

Mr. Hirschberg — Mr. President, before the question is put, I desire to contribute to the literature of the Convention the following, which has been placed in my hands by the courtesy of the Chairman of the Judiciary Committee:

the meantime the brief of the contestees be printed and handed to the delegates.

Mr. Root — Mr. President, may I make a suggestion? The suggestion is that we ought to have the report printed and laid before us at the same time with the brief of the contestees.

Mr. Bowers — Certainly.

Mr. Root — My suggestion is, Mr. President, that these gentlemen, Mr. Bowers and Mr. Springweiler, agree, if it suits Mr. Hirschberg, to substitute for both of their motions a motion that the report be printed, and then let the motion of Mr. Bowers be renewed and laid upon the table. In that way we will get the report before us with the arguments of counsel.

Mr. Bowers — Will you accept an amendment that the reports and briefs be printed?

Mr. Root — I understand that the briefs are to be printed.

Mr. Hirschberg — Mr. President, my understanding is that the Convention has only ordered the printing of the oral arguments on both sides. They have not yet ordered the printing of the contestees' brief.

The President — That is the understanding of the Chair. There is no vote to print either the report or the brief.

Mr. Hirschberg — I would suggest, Mr. President, that the contestees' brief be printed, as well as the report of the committee.

The President — Does Mr. Bowers accept the amendment to his motion, that the briefs of both sides be printed with the report, and that the further consideration of the report be postponed until ——

Mr. Bowers — Wednesday, of next week, Mr. President?

The President — That will be Wednesday, the twentieth.

Mr. Bowers — I accept the amendment, Mr. President.

Mr. Dickey — Mr. President, I take it that it must be evident to this Convention, by this time, that the publication of this testimony would be useless waste of public money, and the question ought to be disposed of here and now. There should be a refusal to print it. If there is anybody whose conscience will not permit him to vote upon the question, without examining the testimony in the case, it has already been stated here several times that four copies of the entire testimony are here, and anybody whose conscience is troubled, can consult one or more copies of that testimony and fully advise himself of the subject-matter, before the question comes up for final determination. Most of us, when a unanimous report has been

made by a committee made up as this Committee on Privileges and Elections is, are satisfied to coincide with their views and adopt their report. The people who have been kept out of their seats here, as found by the unanimous report of this committee, from the beginning of this session up to now, have some rights here. The matter should not be delayed indefinitely, but it should be disposed of pretty soon after this report. Therefore, I hope that action will now be taken, looking to the refusal to print this testimony.

The President — The question is on Mr. Bowers's amendment. The Convention will understand that Mr. Bowers withdrew his motion for the printing of the evidence, and his present amendment to Mr. Springweiler's motion is that Mr. Springweiler's motion be amended so as to provide that the report and the briefs of both parties be printed and laid upon the desks of the members, and that the further consideration of the report be postponed to Wednesday, the twentieth.

Mr. Becker — Mr. President, I move to amend that motion by striking out the words "briefs of both parties," and inserting "briefs of the contestees." I understand that the briefs of the contestants are already printed and circulated at private expense, and not at the expense of this Convention. If there are enough copies left for distribution, why should we take up further time and spend further money in the matter?

The President — Will Mr. Hirschberg state whether all the briefs printed on the part of the contestants have been distributed?

Mr. Hirschberg — Mr. President, the contestants presented to the committee a brief which they themselves had caused to be printed, and having extra copies circulated among the members of the Convention a copy of that brief.

The President — Have the contestants presented any further brief?

Mr. Hirschberg — A brief only on the question of law, Mr. President.

Mr. President — I do not suppose Mr. Bowers desires that what has already been printed shall be re-printed.

Mr. Bowers — I accept the suggestion of the gentleman from Buffalo.

Mr. Hirschberg — Mr. President, before the question is put, I desire to contribute to the literature of the Convention the following, which has been placed in my hands by the courtesy of the Chairman of the Judiciary Committee:

Mr. Hirschberg sent to the Secretary's desk a communication from the Central Labor Union of New York, asking that inasmuch as Herman Trapper is the only labor delegate in the Convention, that he be allowed to retain his seat.

The President — The question is now on Mr. Bowers's motion as it stands amended by him, requiring the report and the briefs of parties so far as not already printed to be printed and laid upon the desks of members, and that further consideration be postponed until Wednesday the twentieth.

Mr. McClure — I would like to inquire if the effect of this motion, if it should be carried, will be to deprive us of the consideration of this matter fully on the twenty-seventh.

The President — The Chair is of the opinion that it entirely displaces Mr. Springweiler's motion and brings the matter up for consideration one week in advance of the time named by him.

Mr. Hirschberg — Then, Mr. President, I hope the resolution will not prevail, for it will be impossible for me to be here at that time, and I desire to be here when the matter is acted upon.

Mr. Dickey — Mr. President, I move as an amendment, that we do not print the testimony; so that the matter may be disposed of here and now.

The President — Mr. Dickey moves as an amendment to Mr. Bowers's amendment, to add at the end of the amendment the words "and that the evidence shall not be printed." The question is on Mr. Dickey's amendment.

Mr. Maybee — Mr. President, I move that the motion of Mr. Dickey be laid upon the table.

The President — That would carry the whole matter to the table.

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

Mr. Root — Mr. President, I do not believe that it will be useful to print this testimony. I do not believe that the Convention will consider that it is justified in keeping the people of Buffalo out of their representation on the floor of this Convention while this testimony is being printed. But it seems to me that it is important that the people of Buffalo and the sitting members and those who look to them for representation should feel that we have been fair, and for that reason I hope that Mr. Dickey's amendment will not prevail, although I fully agree with the sentiment which dictated it. I hope that this Convention, in accordance with Mr. Bowers's motion, will let this matter stand until we can see what the arguments of the sitting members are, and whether they require us in

fairness to print this evidence. Then we can intelligently pass upon this question, and can pass upon it in such a manner that no one can say that these men have been deprived of their seats, if they are deprived of them, without a fair hearing. I hope, sir, that Mr. Dickey's amendment will not prevail, and that the motion, as it now stands, offered by Mr. Bowers, will be adopted.

Mr. Hirschberg — Mr. President, I would like to ask Mr. Bowers if he will consent to amend by making the date the twenty-sixth.

Mr. Bowers — The only objection to Tuesday is that we have such a light attendance on that day.

Mr. Hirschberg — Then Wednesday, the twenty-seventh. The whole thing will probably be disposed of then.

The President — Mr. Bowers will state whether he agrees to change the date from the twentieth to the twenty-seventh.

Mr. Bowers — I think, Mr. President, that we ought to pass upon this question of whether we are going to have anything printed next Wednesday.

Mr. Peck — Mr. President, I ask for a rising vote upon this question.

The President — The question is on Mr. Dickey's amendment to Mr. Bowers's amendment, by adding to it the words "and that the evidence shall not be printed."

Mr. Peck — Mr. President, I withdraw my request as to the amendment.

Mr. Cochran — Mr. President, I rise to a point of order, that the amendment to the motion to lay on the table is out of order.

The President — There is no motion pending to lay on the table.

Mr. Cochran — I understood that the motion of Mr. Bowers was to lay the entire matter on the table until Wednesday.

The President — The question is on Mr. Dickey's amendment to Mr. Bowers's amendment, by adding to it the words "and the evidence taken shall not be printed."

The Chair put the question as last stated, and it was determined in the negative.

The President — The question is now on Mr. Bowers's amendment, and it will be taken by a rising vote. Gentlemen will understand exactly the situation of the question. Mr. Springweiler moved that the report be printed and made a special order for Wednesday, the twenty-seventh. Mr. Bowers moves to amend by providing that not only the report, but the briefs, so far as not already printed and

distributed, be printed and laid upon the desks of the members, and that the further consideration of the question be postponed until next Wednesday. If that amendment is adopted, then the question will be finally taken upon Mr. Springweiler's motion as amended for the making of the report the special order for Wednesday next.

The Chair put the question as stated, and it was determined in the affirmative, by a rising vote.

The President — The question is now on Mr. Springweiler's motion as amended. The Convention will understand exactly the state of the question: That the report and the briefs, so far as not already printed, be printed and laid upon the desks of the members and that further consideration of the subject be postponed until next Wednesday and that the report be made a special order for Wednesday, the twenty-seventh.

Mr. Bowers — Mr. President, may I have that resolution read? I do not quite understand it. I suppose we must postpone our decision from to-day until next Wednesday and then decide.

The President — The Chair understood that the object of postponing the matter until next Wednesday for further consideration, was that the Convention should then be in full possession of the matter to determine whether the evidence should be printed or not. That does not seem to be inconsistent, if the Convention sees fit to adopt it, with Mr. Springweiler's motion that it be made a special order for Wednesday following.

Mr. Hirschberg — Mr. President, I think the Chair is quite correct. The original motion was that it should be made a special order for the twenty-seventh, and that is simply amended by Mr. Bowers's amendment, that meanwhile and until next Wednesday it shall lie upon the table, and in the meantime be printed and the points be printed.

Mr. Springweiler — Mr. President, I will withdraw my motion if my second is willing.

The President — The Chair is of the opinion that Mr. Springweiler has not control of the matter so that he can withdraw it. It has been amended and before the House, and the question is on the adoption of Mr. Springweiler's motion as it stands amended, that the report and briefs, so far as not already printed, be printed and distributed, and further consideration of the matter be postponed until next Wednesday, and that the consideration of the report be the special order for Wednesday, the twenty-seventh.

Mr. Alvord — Mr. President, under the circumstances, in order to avoid all trouble, as I believe we are all very nearly, if not quite agreed upon this matter, I move to postpone the proposition which the Chair has last announced until next Wednesday.

Mr. Root — Mr. President, I rise to a point of information. Would not that postpone the order of the Convention that the report and the contestees' brief be printed, until next Wednesday?

The President — If Mr. Root addresses his remarks to the Chair, the Chair states that it undoubtedly would.

Mr. Kerwin — Mr. President, I move as an amendment to the pending motion to strike out the words "Wednesday, June twenty-seventh." That will allow all printed matter to come before the Convention. The resolution offered by Mr. Springweiler calls for the printing of the briefs and the report. My motion is to strike out "June twenty-seventh" from the motion of Mr. Springweiler.

The President — Mr. Kerwin means to strike out that part of the motion which makes it a special order for Wednesday, the twenty-seventh?

Mr. Kerwin — Yes, sir.

Mr. Alvord — Mr. President, I rise to a question of information. I desire to ask the Secretary to read the proposition of Mr. Bowers, which we have laid upon the table or have made a matter for next Wednesday.

The President — Mr. Bowers did not move to lay upon the table. His amendment, which was adopted, was to have the report printed, and the briefs, so far as not already printed, printed and distributed, and that the further consideration of the subject be taken up on Wednesday next.

Mr. Alvord — Mr. President, did we not vote in favor of the proposition, so far as Mr. Bowers's matter was concerned, in favor of printing?

The President — We did, as an amendment to Mr. Springweiler's motion, which has not yet been passed upon as amended.

Mr. Alvord — It being an amendment to Mr. Springweiler's motion, and absolutely germane to the subject, does it not, as a matter of necessity, carry the question of printing beyond doubt by the Convention, and, therefore, an attempt to pass Mr. Springweiler's resolution cannot withdraw the previous action on the amendment.

Mr. Truax — Mr. President, I move that we now adjourn. It seems to me that when the delegates shall have had one night's

sleep upon this question they will be able to find out where they are at. It is evident that no one now, except the President of this Convention, knows where he is at.

Mr. Gilbert asked Mr. Truax to withdraw for a moment his motion to adjourn.

Mr. Truax withdrew his motion to adjourn, as requested.

Mr. Gilbert — Mr. President, instead of making this a special order for Wednesday, the twenty-seventh, I move we make it a special order for Wednesday, the twentieth.

Mr. Tekulsky — Mr. President, I move to strike out "Wednesday, the twenty-seventh," and add thereto that on the 20th of June we shall then decide what day to take further action.

Mr. Foote — Mr. Chairman, I understand we are all agreed that Wednesday, the twenty-seventh, is the proper day for the final consideration of this report. It seems to me this can best be accomplished by adopting the motion fixing the twenty-seventh as the day for the final hearing upon this report, and postponing until the twentieth the consideration of the motion as to whether the evidence shall, or shall not be printed.

Mr. J. Johnson — Mr. President, I rise to second the remarks which have just been made. I understand it was asked on behalf of the sitting member, that consideration be postponed until the twenty-seventh, and that is the last date that has been suggested. I understand, further, that it is asked that the question of printing be postponed until the twentieth. Now, sir, it seems to me that these two requests, being all that is asked, all that is desired, and obviously in accordance with the sentiment of the Convention, that in a spirit of fairness these two should go together, and if we lay over until Wednesday the question of printing, we should have it understood that the consideration is to come up one week later and not thresh the question over again, as to which it seems to me, we now practically concur.

Mr. Vedder — Mr. President, what is the motion before the House?

The President — I will state the question again. The motion as it now stands amended, is that the report and the briefs, not already printed, be printed; that the matter be then postponed for further consideration and the report be made a special order for the twenty-seventh.

Mr. Vedder — What shall we do on the twentieth, Mr. President?

The President — At that time the question which seems to agitate

the members will come up as to whether we want any more printing done.

Mr. Vedder — Mr. President, I understand that the question is substantially this, that the report of the committee and the briefs of the contestees be printed, and that on the twentieth instant we then shall decide whether the testimony shall be printed or not and the special order for the consideration of the report will be on the twenty-seventh?

The President — That is so.

Mr. Mereness — Mr. President, I move the previous question on the question before the House.

The Chair put the question on the adoption of Mr. Mereness' motion that the main question shall now be put, and it was determined in the affirmative.

The President — The question is now on Mr. Springweiler's motion, as it has been repeatedly stated by the Chair. The effect of it is that the report and the briefs of the contestees and any other brief that has not already been printed be printed and distributed at once, and that further consideration of the matter, including the matter of printing, stand over until Wednesday next, but that the report shall be made a special order for Wednesday, the twenty-seventh. A rising vote is called for by Mr. Peck.

The Chair put the question as last stated, and it was determined in the affirmative.

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

Mr. Roche — Mr. President, I ask to be excused from attendance at to-morrow's session before the motion to adjourn is put.

The President — Unless objection is made Mr. Roche is excused from attendance here to-morrow.

Mr. Roche — Mr. President, I ask unanimous consent to move that 500 extra copies be printed of proposed amendment printed No. 199. It is an important amendment, relating to the canals and to the Superintendent of Public Works. This morning, I endeavored to get an extra copy of the amendment, and I am told that there are none here. The usual number has been printed and yet they are all gone. The reason I ask for this extra number is that I understand there is to be a meeting here in Albany of canal men. The Canal Committee of this Convention is also to hold an important public session early next week, and as this document seems to be in demand, I would like to have the Convention order the printing

of an extra number at once, so that they can be placed upon the files of the members, and such of them as are not placed upon the files shall be kept in the document room, only for the use of the members and of the recognized reporters of this Convention. I do not know how the matter stands in regard to Mr. Alvord's amendment, which is printed No. 200, whether that has also suddenly run out; but as it is an important one, if Mr. Alvord has no objection, I will include it in my motion. I think they should go together. I have spoken to Mr. Cady, the chairman of the committee, on the subject. Mr. McDonough also has one. They all relate to matters which are to be considered at this meeting to-morrow, and I move that 1,000 extra copies of these proposed amendments be ordered to-day by the President and distributed in the manner I have suggested; Nos. 199 and 200. Mr. McDonough's amendment, relating to canals, is No. 67. Also the amendment of Mr. McMillan.

Mr. Dean asked to have No. 26 included.

The President — In the absence of objection, by unanimous consent, the vote will be taken on the motion of Mr. Roche, that printed Nos. 199, 200, 67, 27 and 10, all relating to the subject of canals be printed and deposited and distributed as Mr. Roche suggested.

The Chair put the question upon Mr. Roche's motion, as last stated, and it was determined in the affirmative.

Mr. Springweiler — Mr. President, I rise to a question of privilege. It is with some diffidence that I rise, as the matter makes me more conspicuous than it at first seemed. The communication that has been received from New York assumes that Mr. Trapper is the only bona fide labor delegate to this Convention, and I desire to state that that is not so. We have others here who are labor delegates, and I, therefore, move that this communication be returned to the place from which it came, and that the parties from whom it came be informed that there are others here who are bona fide labor delegates.

The President — The letter has not been received by the Convention and the Chair is of the opinion that the motion is out of order.

Mr. Truax — Mr. President, I move that we now adjourn.

The Chair put the question on Mr. Truax's motion to adjourn and it was decided in the affirmative, whereupon the Convention adjourned to June fifteenth, at ten o'clock A. M.

Friday, June 15, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber at the Capitol, Friday, June 16, 1894.

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

The Rev. D. W. T. Van Doren offered prayer.

The Journal of Thursday, June 14, 1894, was read and approved.

The President — Memorials are in order. The Chair has received an official communication from the Central Labor Union of New York, protesting against the unseating of Mr. Trapper, which will be referred to the Committee on Privileges and Elections.

The communication is as follows:

CENTRAL LABOR UNION.
CLARENDON HALL, 114 AND 116 E. 13TH STREET,
NEW YORK, *June* 12, 1894.

Hon. Joseph Choate:

DEAR SIR.— The following resolutions were adopted at the last meeting of the Central Labor Union:

Whereas, An attempt is being made by the dominant political party to unseat Herman F. Trapper as a delegate to the Constitutional Convention, and

Whereas, Herman F. Trapper is the only bona fide labor delegate in the Constitutional Convention, having been nominated by the Central Labor Union of Buffalo, and endorsed by the Democratic party,

Resolved, That the Central Labor Union of New York protest against the attempt to unseat Mr. Trapper on the grounds of election fraud, of which he was not the beneficiary, but the unfortunate victim.

Resolved, That copies of these resolutions be sent to President Choate of the Constitutional Convention, Elihu Root, Chairman of the Committee on Contested Seats, and to Mr. Trapper.

Respectfully yours,
JOHN S. HENRY,
Secretary C. L. U.

The Chair has also received a communication from the G. A. R. of Kings county, in reference to the protection of veterans in the civil service.

Referred to the Committee on Military Affairs.

Also, a petition from Thomas Tyas, in reference to the pardoning power.

Referred to the Committee on Governor and State Officers.

Mr. Alvord — Mr. President, I have the honor and pleasure of introducing the following petition:

Petition of D. H. Bruce, W. Kirkpatrick, Nathan F. Graves, E. B. Judson and other representative citizens of Syracuse, in reference to civil service reform.

Referred to the Select Committee on Civil Service.

The President — The Chair also presents a large number of petitions upon the same subject, which have been received by the Chair and will be referred to the same committee.

Mr. McMillan presented the petition of several members of the Merchants Exchange of Buffalo and also another from citizens of Buffalo, in reference to civil service reform.

Referred to the Select Committee on Civil Service.

Mr. McMillan — Mr. President, I present the memorials relating to the civil service which heretofore were referred to the Committee on Governor and State Officers, and I send them to the Clerk's desk and ask that they be referred to the select committee. They are duplicates of those referred to the former committee.

Referred to the Select Committee on Civil Service.

The President presented a large number of petitions of the citizens of New York on the same subject and they were referred to the same committee.

The President also presented the petition of Sidney B. Boyce, in regard to the capitalization of corporations.

Mr. Foote presented the petition of several citizens of New York city against the appropriation of public moneys for sectarian purposes.

Referred to the Committee on Charities.

Mr. Foote also presented the petitions of several citizens of Rochester in reference to civil service reform.

Referred to the Select Committee on Civil Service.

The President — Motions, notices and resolutions are in order. The Secretary will call the districts.

The Secretary called the districts.

Mr. Cady — Mr. President, I send the following notice to the desk and ask that it be now read.

The Secretary read the notice as follows:

"The Committee on Canals will give a public hearing on Wednesday, June twentieth, at three o'clock P. M., in the Senate Chamber, to organizations and individuals interested in the canals of the State, and in proposed constitutional amendments affecting the same. All members of the Constitutional Convention who have introduced proposed amendments on the subject are respectfully requested to attend the meeting."

The President — Propositions for amendment to the Constitution are in order, and the Secretary will call the roll of districts.

The Secretary called the districts.

O. 217.— Mr. Towns offered a proposed amendment to the Constitution, sections 1 to 21, inclusive, of article 3, relative to legislative organizations and power.

Referred to the Committee on the Powers and Duties of the Legislature.

O. 218.— Mr. R. M. Johnston offered a proposed amendment to section 5 of article 4 of the Constitution, in relation to the pardoning power of the Governor, etc.

Referred to the Committee on the Governor and State Officers.

O. 219.— Mr. Riggs offered a proposed amendment to section 4, article 3 of the Constitution, with reference to banking and trust companies.

Referred to the Committee on Banking.

O. 220.— Mr. C. H. Truax offered a proposed amendment to article 1, section 10 of the Constitution, in relation to lotteries.

Referred to the Committee on Preamble and Bill of Rights.

O. 221.— Mr. Parmenter offered a proposed amendment to section 2 of article 10 of the Constitution, relating to the mode of choosing county, city, town and village officers.

Referred to the Committee on County, Town and Village Officers.

O. 222.— Mr. Abbott (by request) offered a proposed amendment to article 2, section 1 of the Constitution, relative to suffrage.

Referred to the Committee on Suffrage.

O. 223.— Mr. Foote offered a proposed amendment to section 5 of article 2, by adding a clause defining the meaning of the word "ballot," as used in said section.

Referred to the Committee on Suffrage.

O. 224.— Mr. Foote also offered a proposed amendment to section 1 of article 2 of the Constitution, by providing for submitting to the vote of the people, male and female, the question whether the

word "male" be stricken from said section and defining the effect of an affirmative vote in its favor by a majority of the people so voting.

Referred to the Committee on Suffrage.

O. 225.— Mr. Carter offered a proposed amendment to section 18, article 6 of the Constitution, relating to the election of justices of the peace.

The President — Should it be referred to the Judiciary Committee, Mr. Carter?

Mr. Carter — I would ask that that be referred to the Committee on County, Town and Village Officers.

The President — It is referred to the Committee on County, Town and Village Officers.

O. 226.— Mr. Porter offered a proposed amendment to article 10, section 10 of the Constitution, relative to the qualifications of coroners.

Referred to the Committee on County, Town and Village Officers.

O. 227.— Mr. Porter also offered a proposed amendment to sections 2, 3, 4 and 5 of article 3 of the Constitution, relative to apportionment, and providing for a minority representation.

Referred to the Committee on Legislative Organization.

O. 228.— Mr. Davis offered a proposed amendment to section 7 of article 1 of the Constitution, granting to owners of private property the same rights accorded to those who take private property for public purposes.

Referred to the Committee on Preamble and Bill of Rights.

O. 229.— Mr. Root offered a proposed amendment to section 9 of article 4 of the Constitution, relative to the veto power.

Referred to the Committee on the Governor and State Officers.

O. 230.— Mr. Tekulsky offered a proposed amendment to section 10 of article 1 of the Constitution, relating to the right of petition and divorces and lotteries.

Referred to the Committee on Preamble and Bill of Rights.

O. 231.— Mr. Lincoln offered a proposed amendment to establish a Court of Claims, amending article 6, by adding a new section.

Referred to the Committee on Judiciary.

O. 232.— Mr. Bigelow offered a proposed amendment to the first section of the second article of the Constitution, in relation to female suffrage.

Referred to the Committee on Suffrage.

The President — Reports of standing committees are in order.

Mr. Hamlin, from the Committee on Printing, presented the following report, which was read by the Secretary (on Resolution No. 49):

IN CONVENTION, *June* 12, 1894.

The Committee on Printing, to whom was referred the resolution offered by Mr. Banks, relating to underscoring of certain portions of printed matter to be submitted to the Convention, do hereby recommend the acceptance and adoption of the following portion of said resolution, viz.:

Resolved, That when a proposed constitutional amendment is introduced amending existing sections of the Constitution, the new matter shall be underscored, and when printed shall be italicized and all portions of such resolution proposed to be omitted by the amendment shall be included in brackets.

F. H. HAMLIN,
Chairman.

Mr. Hamlin — Mr. President, I will only say in regard to this report, that it has been submitted, after a conference with the printer and after hearing all parties interested in the matter, and it seems to be satisfactory.

Mr. Vedder — Mr. President, is this the same resolution that was adopted a few days since upon the recommendation of the Committee on Legislative Powers? It is put on file and propositions are being introduced in accordance therewith. I understand that all matters that are stricken out are to be included in brackets, and that new matter is to be underscored and italicized, is it not, which is the same resolution which was passed a week ago?

Mr. Hamlin — Mr. President, the report is in the same words as the resolution offered by Mr. Banks, except that the amendment offered by Mr. Kerwin, recommending that matter omitted should be stricken through, is not reported. It was discovered by the committee on inquiry of The Argus Company, that it would be impossible to do so without considerable delay, and, therefore, the committee did not report favorably upon Mr. Kerwin's amendment.

Mr. Vedder — Mr. President, I could not hear what the gentleman said, but Mr. McKinstry of Chautauqua county, who sits near me, says that my resolution had reference to the introduction of proposed amendments and this has reference to the printing. In that case the resolutions are not alike.

Mr. Banks — Mr. President, I would like to call Mr. Vedder's attention to the fact that this resolution is similar to the rule which

has prevailed in the Senate the last three or four years. I think it is rule 31. This merely points out what alterations have been made in the amendments to the Constitution, by putting in brackets what is left out and printing the new matter in italics.

The President put the question on the adoption of the resolution and it was determined in the affirmative.

Mr. Hamlin also offered the following report from the Committee on Printing:

IN CONVENTION, *June* 12, 1894.

The Committee on Printing would respectfully report and request the adoption of the following resolution:

R. 78.— Resolved, That the Compiler or other person having charge of the files of the Convention hereafter furnish 250 copies of each of the papers required for such files, properly punctured and perforated in such manner as to facilitate filing the same.

F. H. HAMLIN,
Chairman.

Mr. Hamlin — Mr. President, the only object of this resolution is simply to make the files of this Convention more satisfactory. The documents required for the Convention have not been perforated and the files are very uneven. It is simply a matter of convenience that this resolution is recommended.

The President put the question on the adoption of the resolution and it was determined in the affirmative.

The President — Are there any other reports from standing committees?

Mr. Moore — Mr. President, I move that we do now adjourn.

Mr. Hirschberg — Will Mr. Moore give way for a moment?

Mr. Moore — Certainly.

Mr. Hirschberg — Mr. President, I would like to be excused from attendance at the Convention next week in order to discharge official duties as district attorney at the Court of Oyer and Terminer in Orange county.

The President — If there is no objection, Mr. Hirschberg will be excused from attendance next week.

Mr. Gilbert — Mr. President, allow me to present the report of the Special Committee on Civil Service.

The Secretary read the report as follows (Resolution No. 55):

"The Committee on Civil Service, to which was referred the resolution offered by Mr. R. M. Johnston, calling on the Governors

and mayors of cities for information in regard to the civil service, to report in favor of the adoption of the following as a substitute for the original resolution:

Resolved, That the mayors of the several cities of the State be requested to forward to the Convention copies of the civil service rules of their respective cities and reports of the proceedings thereunder, together with such other information as will aid the Convention in arriving at correct knowledge as to the operation, effect and expense of the civil service law of the State.

JOHN I. GILBERT,
Chairman of Special Committee on Civil Service.

The President — Under the rules, this will be referred to the Committee on Cities, as it calls for information from the mayors of cities.

Mr. Gilbert — Mr. President, it relates to our business and I think should be considered now.

The President — It was a report of your committee?

Mr. Gilbert — It was a report of our committee.

The President — This already having been referred to one committee and reported by them, is now in order for consideration. The question will be on its adoption. It calls upon the mayors of cities for information to enable the Committee on Civil Service to perform their duties.

Mr. R. M. Johnston — Mr. President, are amendments in order?

The President — Certainly.

Mr. R. M. Johnston — Mr. President, I move you, sir, that this report be so amended as to include the Governor of the State.

Mr. Gilbert — Mr. President, I have only to say that the resolution as originally offered did contain what he now seeks to put in by amendment, and the committee were of the opinion, except the gentleman who makes the motion, that it was better to have it in the form in which the committee has recommended it, and I hope the amendment will not be adopted.

Mr. Holcomb — Mr. President, is a further amendment in order? I would like to have the resolution include all the State officers.

The President — Does Mr. Holcomb make that as an amendment?

Mr. Holcomb — I would like Mr. Gilbert, if he will accept an amendment of the report concerning the civil service rules, to include all the State officers and not single out the Governor alone.

Mr. Gilbert — Mr. President, I will say to the member from New York that it was the opinion of the special committee that it was sufficient in this resolution to ask for information from the mayors, with the understanding that the State officers and the Governor can be seen by us conveniently, and that it had better not be included by us in this resolution, and I hope it will be the sense of the Convention to adopt it as reported.

Mr. Holcomb — Mr. President, I am content with that, but if the Governor be requested to give the information by an amendment to this report, then I think the other State officers should be requested to give the information. If the amendment be not adopted, then I am content with it as it is.

The President put the question on Mr. Johnston's amendment, and it was determined in the negative.

The President put the question on the adoption of the resolution, and it was determined in the affirmative.

Mr. E. R. Brown offered the following resolution:

R. 79.— "Resolved, That the Superintendent of Public Buildings should restore the rail in the rear of the chamber to protect the seats of members."

Mr. Brown — Mr. President, unless there is objection to this resolution I would like to have it adopted to-day so that we can be relieved from the annoyance to which we are subject, on our return next week. I do not think that it is practicable to restore the rail around the sides, but these seats around the door here, it seems to me, can be protected. I would like to call the attention of the Chair to the fact that the practice of this Convention is much more liberal than the practice of the Assembly. Our doorkeepers here are a mere formal matter, any one being permitted to go on the floor and leave it and it seriously impedes the work of the members in the rear of the chamber.

The President — The Sergeant-at-Arms will see that persons not entitled to seats do not come within the rail without necessary orders.

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

Mr. Becker gave notice that the Committee on Legislative Organization would meet at 3 P. M., Tuesday, June 19, 1894, at its own meeting room, to consider further the matter of separating city, State and national elections, before going into conference with the other committees on Wednesday.

Mr. Holls gave notice that the Committee on Education will meet on Tuesday, immediately after the adjournment of the Convention.

The President — The Sergeant-at-Arms is directed to ascertain whether the noise which disturbs the Convention so much on the floor below cannot be dispensed with during the recess.

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

The President put the question on the motion to adjourn, and it was determined in the affirmative, whereupon the Convention adjourned until Tuesday, June 19, 1894, at 10 A. M.

Tuesday, June 19, 1894, 10 A. M.

The Constitutional Convention of the State of New York met at the Assembly Chamber in Albany, N. Y.

President Choate called the Convention to order.

The Rev. Canon Stewart offered prayer.

The Journal of June fifteenth was read and approved.

The President — The presentation of memorials is now in order. The Chair has received a large number of memorials in respect to the civil service and they are referred to the Select Committee.

Mr. Barhite presented the petition of a large number of citizens of Rochester, with regard to the inspection of reformatories, asylums, etc.

Referred to the Committee on Charities.

Mr. Osborn presented the petition of many citizens of Putnam county in reference to civil service reform.

Referred to the Select Committee on Civil Service.

Mr. Cady presented the petition of a number of citizens of Columbia county for a constitutional prohibition against the appropriation of public money for sectarian purposes.

Referred to the Committee on Education.

Mr. Parkhurst presented the petition of a number of citizens of Bath, in regard to the inspection of certain religious institutions.

Referred to the Committee on Charities.

Mr. Bigelow presented the petition of Charles Collins and seventeen others of New York city, in reference to civil service reform.

Referred to the Select Committee on Civil Service.

Mr. Alvord presented the petition of seventy-five citizens of Syracuse, in reference to the inspection of certain religious institutions.

Referred to the Committee on Charities.

Mr. Lester presented the petition of a number of citizens of Saratoga county, asking for an amendment to the Constitution, providing for an annual inspection of asylums, etc.

Referred to the Committee on Charities.

Mr. Lester — With the indulgence of the Chair and in connection with the presentation of this memorial, I desire to add a word or two by way of explanation. I had the honor, about two weeks ago, of presenting to the Convention a similar petition or memorial to that which I have just now presented, and the morning after its presentation I found myself extensively advertised throughout the State as being the custodian of escaped nuns, etc., and as being extremely anxious to ascertain if there were any other similar characters confined against their will in the nunneries and convents of the State, and also as earnestly desiring an amendment to the Constitution, providing for the annual inspection of institutions of that character. Now, Mr. President, I think any inference of this kind from the presentation of a petition, is utterly unwarranted. I believe it to be the privilege of every citizen of this State, who has any ideas in respect to the amendment of the Constitution, to communicate such ideas to this Convention; and I suppose, sir, there is no more appropriate way to communicate opinions of this sort than by means of a petition or memorial, signed by the individuals themselves. And I suppose, sir, that there is a corresponding duty upon the delegates of every district to whom a memorial of this character is entrusted by their constituents, to present it, with the least possible delay, to the Convention. And, sir, I think it is an utterly unwarranted conclusion that because a delegate presents such a petition or memorial, he is necessarily in favor of the proposition which is embodied in it. I, acting upon that view of my duty, presented this petition, as I also presented a petition asking that the word "male" be stricken from the Constitution of the State. But, sir, I protest against any inference that, because I present these petitions, I concur in the sentiment expressed in either one of them or favor either of those propositions for the amendment of the Constitution.

The President — I have a communication from the Herkimer County Pomona Grange, asking that the word "male" be stricken from the Constitution, and it will be referred to the Committee on Suffrage.

Also, a communication from the Manufacturers Association of Kings and Queens counties, in respect of elections for city and county officers, biennial sessions of the Legislature and various other matters, which will be referred to the Committee on the Organization of the Legislature, the Committee on Cities and the Committee on Taxation.

Mr. Arnold presented the petition of citizens of Poughkeepsie in reference to civil service reform.

Referred to the Select Committee on Civil Service.

Mr. Cookinham presented the petition of H. D. Pixley and others, of Utica and Rome, against the appropriation of public funds for sectarian purposes.

Referred to the Committee on Charities.

The President — A communication has been received from the Superintendent of the Banking Department which the Secretary will read.

The Secretary read the following communication, No. 5 (Resolution No. 67):

STATE OF NEW YORK,
BANKING DEPARTMENT,
ALBANY, *June* 15, 1894.

To the Constitutional Convention, Capitol, Albany:

GENTLEMEN.— In pursuance to the request contained in your resolution of the fourteenth instant, I have the honor to transmit herewith so much of the information desired thereby as I have the data to furnish, and also some of the details bearing on the subject not specifically mentioned in said resolution.

You will please find annexed hereto a list of the savings banks and institutions of the State, with the location of each, the number of accounts reported as dormant, as shown by the reports made to this department for the years 1890, 1891, 1892, 1893 and 1894, and the number of accounts reported as dormant which have been paid or become active since they were so reported, as shown by the lists made to the department for the years 1891, 1892, 1893 and 1894, and also a slip of chapter 414, Laws of 1889, the original law requiring reports and lists of dormant accounts, which you will find re-enacted in section 28 of chapter 689 of the Laws of 1892, which chapter is known as the Banking Law.

You will notice, by reference to the law annexed (see last clause of section 2), that the banks are not required to state the sums to the credit of such dormant accounts in their reports, and I am, therefore, unable to give you the amount or amounts of such accounts.

The law also provides for the giving of but two dates in and of the last interest credits, and not the date of the last transaction from which date they would "remain unclaimed." Consequently, I cannot furnish the required "detailed statement as to how long such amount or amounts have remained unclaimed."

I have thus given you all the information required by the resolution that I can furnish from the reports and lists on file in the department, and in addition thereto the number of accounts reported as dormant and those which have been subsequently reported to have been paid or become active and shall be glad at any time to answer any further inquiries you may desire to make regarding the subject-matter of the resolution.

Very respectfully yours,
CHARLES M. PRESTON,
Superintendent of Banks.

Attached to the communication was the following:

CHAPTER 414.

An Act to Provide for Reports of the Dormant Account in Savings Banks Incorporated Under the Laws of this State.

Approved by the Governor June 8, 1889. Passed, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Every savings bank or institution or institution for savings now existing or which hereafter may be organized under and by virtue of the laws of this State, shall, on or before the first day of June in each year, make a report in writing to the Superintendent of the Banking Department, verified by the oath of the two principal officers of the institution, concerning such accounts of depositors of amount of five dollars or more, as have been dormant for twenty-two years and upwards, from the first day of May, preceding; that is, accounts which have not been increased or diminished by deposits or withdrawals, exclusive of interest credits. The accounts of depositors whose pass-books have been presented at the bank for the entry of interest earned within the period of twenty-two years, shall not be deemed dormant accounts within the meaning of this act.

Sec. 2. The first report of each savings bank, made in compliance with the provisions of this act, shall accurately state the full names of all depositors which the books of the bank show to have five dollars or more to their credit, whose accounts have been dor-

mant for twenty-two years or upwards. Such reports shall also state the date on which the original deposit was made, the last known place and residence of the depositor, his or her occupation, date of birth, nationality, parents names, if known, and the date when the bank discontinued the crediting of interest on each account, together with any additional date which may aid in determining the ownership of such dormant accounts. All subsequent reports, in addition to dormant accounts not previously reported, shall contain a list of such previously reported accounts as have either been paid or become active accounts since the last report through partial payments or the presentation of pass-books for the entry of interest due to the account. It is expressly provided, however, that the sums to the credit of such dormant accounts are not required to be stated in the reports provided for by this act.

Sec. 3. Any wilful false swearing, in regard to such reports shall be deemed perjury, and be subject to the prosecutions and punishment prescribed by law for the offense. If any savings bank shall fail to make the report required by this act, at the time so required, it shall forfeit the sum of one hundred dollars per day for every day such a report or statement shall be so delayed or withheld, and the Superintendent may maintain an action in his name of office to recover such penalty, and when collected, the same shall be paid into the treasury of the State, and be applied to the expenses of the Banking Department; but the Superintendent may, for sufficient cause, extend the time for making such report, not exceeding thirty days.

Sec. 4. The Superintendent of the Banking Department is directed and required to provide for the keeping in his office of an index of the names of these depositors reported to him under the provisions of this act; and whenever any inquiry shall be made to him concerning such dormant accounts, he may require the applicant or applicants to furnish evidence of their rights to the same, and if satisfied that such applicant, or his or her principal has a lawful claim to one or more of the dormant accounts reported to him, he shall indicate to the person making the application by which of the savings banks the account or accounts are held.

Sec. 5. The Superintendent of the Banking Department shall assess the expenses incurred in carrying out the provisions of this act upon the savings banks reporting dormant accounts pro rata, according to the number of accounts reported, and the sums so contributed shall be paid into the treasury of the State for that purpose.

Sec. 6. This act shall take effect immediately.

State of New York, Office of the Secretary of State, ss.:

I have compared the preceding with the original law on file in this office, and do hereby certify that the same is a correct transcript therefrom and of the whole of said original law.

FREDERICK COOK,
Secretary of State.

1. Albany City Savings Institution, Albany, N. Y.
2. Albany County Savings Bank, Albany, N. Y.
3. Albany Exchange Savings Bank, Albany, N. Y.
4. Albany Savings Bank, Albany, N. Y.
5. Cohoes Savings Institution, Cohoes, N. Y.
6. Home Savings Bank, Albany, N. Y.
7. Mechanics and Farmers Savings Bank, Albany, N. Y.
8. Mechanics Savings Bank, Cohoes, N. Y.
9. National Savings Bank, Albany, N. Y.
10. Binghamton Savings Bank, Binghamton, N. Y.
11. Chenango Valley Savings Bank, Binghamton, N. Y.
12. Auburn Savings Bank, Auburn, N. Y.
13. Cayuga County Savings Bank, Auburn, N. Y.
14. Elmira Savings Bank, Elmira, N. Y.
15. Hudson City Savings Institution, Hudson, N. Y.
16. Cortland Savings Bank, Cortland, N. Y.
17. Fishkill Savings Institute, Fishkill, N. Y.
18. Matteawan Savings Bank, Matteawan, N. Y.
19. Mechanics Savings Bank, Fishkill-on-the-Hudson.
20. Pawling Savings Bank, Pawling, N. Y.
21. Poughkeepsie Savings Bank, Poughkeepsie, N. Y.
22. Rhinebeck Savings Bank, Rhinebeck, N. Y.
23. Wappingers Savings Bank, Wappingers Falls, N. Y.
24. Buffalo Savings Bank, Buffalo, N. Y.
25. Empire State Savings Bank of Buffalo, Buffalo, N. Y.
26. Erie County Savings Bank, Buffalo, N. Y.
27. Western Savings Bank, Buffalo, N. Y.
28. Fulton County Savings Bank, Johnstown, N. Y.
29. Catskill Savings Bank, Catskill, N. Y.
30. Jefferson County Savings Bank, Watertown, N. Y.
31. The Carthage Savings Bank, Carthage, N. Y.
32. Watertown Savings Bank, Watertown, N. Y.
33. Brevoort Savings Bank, Brooklyn, N. Y.
34. Brooklyn Savings Bank, Brooklyn, N. Y.
35. Bushwick Savings Bank, Brooklyn, N. Y.
36. City Savings Bank of Brooklyn, Brooklyn, N. Y.

37. Dime Savings Bank of Brooklyn, Brooklyn, N. Y.
38. Dime Savings Bank of Williamsburgh, Brooklyn, N. Y.
39. East Brooklyn Savings Bank, Brooklyn, N. Y.
40. East New York Savings Bank, Brooklyn, N. Y.
41. Germania Savings Bank of Kings County, Brooklyn, N. Y.
42. German Savings Bank of Brooklyn, Brooklyn, N. Y.
43. Greenpoint Savings Bank, Brooklyn, N. Y.
44. Kings County Savings Institution, Brooklyn, N. Y.
45. South Brooklyn Savings Institution, Brooklyn, N. Y.
46. Williamsburgh Savings Bank, Brooklyn, N. Y.
47. Oneida Savings Bank, Oneida, N. Y.
48. East Side Savings Bank, Rochester, N. Y.
49. Mechanics Savings Bank, Rochester, N. Y.
50. Monroe County Savings Bank, Rochester, N. Y.
51. Rochester Savings Bank, Rochester, N. Y.
52. Amsterdam Savings Bank, Amsterdam, N. Y.
53. American Savings Bank, New York city, N. Y.
54. Bank for Savings in the City of New York, New York city, N. Y.
55. Bowery Savings Bank, New York city, N. Y.
56. Broadway Savings Institution, New York city, N. Y.
57. Citizens Savings Bank, New York city, N. Y.
58. Dollar Savings Bank, New York city, N. Y.
59. Dry Dock Savings Institution, New York city, N. Y.
60. East River Savings Institution, New York city, N. Y.
61. Emigrant Industrial Savings Bank, New York city, N. Y.
62. Equitable Savings Institution, New York city, N. Y.
63. Excelsior Savings Bank, New York city, N. Y.
64. Franklin Savings Bank, New York city, N. Y.
65. German Savings Bank in the City of New York, New York city, N. Y.
66. Greenwich Savings Bank, New York city, N. Y.
67. Harlem Savings Bank, New York city, N. Y.
68. Institution for the Savings of Merchants' Clerks, New York city, N. Y.
69. Irving Savings Institution, New York city, N. Y.
70. Manhattan Savings Institution, New York city, N. Y.
71. Metropolitan Savings Bank, New York city, N. Y.
72. New York Savings Bank, New York city, N. Y.
73. North River Savings Bank, New York city, N. Y.
74. Seaman's Bank for Savings, New York city, N. Y.
75. Twelfth Ward Savings Bank, New York city, N. Y.
76. Union Dime Savings Institution, New York city, N. Y.

77. United States Savings Bank, New York city, N. Y.
78. West Side Savings Bank, New York city N. Y.
79. Farmers and Mechanics' Savings Bank, Lockport, N. Y.
80. Niagara County Savings Bank, Niagara Falls, N. Y.
81. Oneida County Savings Bank, Rome, N. Y.
82. Rome Savings Bank, Rome, N. Y.
83. The Savings Bank of Utica, Utica, N. Y.
84. Onondaga County Savings Bank, Syracuse, N. Y.
85. Skaneateles Savings Bank, Skaneateles, N. Y.
86. Syracuse Savings Bank, Syracuse, N. Y.
87. Cornwall Savings Bank, Cornwall, N. Y.
88. Goshen Savings Bank, Goshen, N. Y.
89. Middletown Savings Bank, Middletown, N. Y.
90. Newburgh Savings Bank, Newburgh, N. Y.
91. Walden Savings Bank, Walden, N. Y.
92. Warwick Savings Bank, Warwick, N. Y.
93. Fulton Savings Bank, Fulton, N. Y.
94. Oswego City Savings Bank, Oswego, N. Y.
95. Oswego County Savings Bank, Oswego, N. Y.
96. Putnam County Savings Bank, Brewster, N. Y.
97. College Point Savings Bank, College Point, N. Y.
98. Jamaica Savings Bank, Jamaica, N. Y.
99. Long Island City Savings Bank, Long Island City, N. Y.
100. Queens County Savings Bank, Flushing, N. Y.
101. Roslyn Savings Bank, Roslyn, N. Y.
102. State Savings Bank, Troy, N. Y.
103. Troy Savings Bank, Troy, N. Y.
104. Richmond County Savings Bank, West Brighton, N. Y.
105. Staten Island Savings Bank, Stapleton, N. Y.
106. Schenectady Savings Bank, Schenectady, N. Y.
107. Seneca Falls Savings Bank, Seneca Falls, N. Y.
108. Riverhead Savings Bank, Riverhead, N. Y.
109. Sag Harbor Savings Bank, Sag Harbor, N. Y.
110. Southold Savings Bank, Southold, N. Y.
111. Ithaca Savings Bank, Ithaca, N. Y.
112. Ellenville Savings Bank, Ellenville, N. Y.
113. Kingston Savings Bank, Kingston, N. Y.
114. New Paltz Savings Bank, New Paltz, N. Y.
115. Rondout Savings Bank, Rondout, N. Y.
116. Saugerties Savings Bank, Saugerties, N. Y.
117. Ulster County Savings Institution, Kingston, N. Y.
118. East Chester Savings Bank, Mt. Vernon, N. Y.
119. Greenburgh Savings Bank, Dobbs Ferry, N. Y.

120. The Home Savings Bank, White Plains, N. Y.
121. Peekskill Savings Bank, Peekskill, N. Y.
122. Peoples Savings Bank, Yonkers, N. Y.
123. Portchester Savings Bank, Portchester, N. Y.
124. Sing Sing Savings Bank, Sing Sing, N. Y.
125. The Union Savings Bank of Westchester county, Mamaroneck, N. Y.
126. Westchester County Savings Bank, Tarrytown, N. Y.
127. Yonkers Savings Bank, Yonkers, N. Y.

Number of dormant accounts reported to the department in accordance with the provisions of chapter 414 of the Laws of 1889, or chapter 689 of the Laws of 1892:

1890	5,063
1891	411
1892	459
1893	447
1894	587
Total	6,967

The number of accounts heretofore reported dormant which have been paid or become active since being so reported, as per list on file:

1891	161
1892	116
1893	106
1894	105
	488

Referred to the Committee on Banking.

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

The Secretary called the roll of the districts.

Mr. Riggs — Mr. President, I rise to a question of privilege. I find from the rules, as reprinted, that rule 63 contains a clause which I moved to strike out, and which was stricken out at the time, and yet it was still contained in these rules as reprinted. Since the rule was adopted, I took the liberty of communicating with the Hon-

orable Thomas B. Reed, and with your permission I will read his letter in reply.

"WASHINGTON, D. C., 13*th June*, 1894.

MY DEAR SIR.—I see that the 'Tribune' has commented on your letter, which I meant to have sooner answered. While thanking you for that, I take the opportunity to add that the rule of which you sent me a copy, seems to me objectionable in requiring men to vote under penalty. It has always seemed to me that no assembly had a right, or if it had a right, had any business to make a man vote. If he has no opinion, why should he be forced to express one? Better leave that to those who have opinions. Whoever has no opinion acquiesces in the result, and the result is reached.

Very truly yours,

T. B. REED.

Hon. James W. Riggs."

Mr. President, this letter contains exactly the objection that I made to the arbitrary character of the concluding clause of that rule; but I do not think it a matter of much consequence, and since I have on my side the opinion of the probable next Republican candidate for President, I am quite content to let the matter stand as it is.

The President — The Secretary informs me that the rule as it stands in the final reprint of Document No. 9, agrees with the rule as set forth in the Journal and the Record.

Mr. Riggs — That may be. Yet a mistake has been made. But, I repeat, the matter is of little practical consequence, and I have no fear that any man presiding in this Convention will act unfairly under this rule, absurd and contradictory as it now stands.

Propositions for amendments to the Constitution are in order, and the Secretary will call the districts.

The Secretary called the roll of the districts.

O. 233.— Mr. Tucker presented a proposed amendment to section 1, article 11 of the Constitution, relating to militia exemptions on account of scruples of conscience.

Referred to the Committee on Military Affairs.

O. 234.— Mr. Smith presented a proposed amendment to section 6, article 1 of the Constitution, to better protect the enjoyment of natural rights, and prohibit compulsory examinations in cases to recover damages for personal injuries.

Referred to the Committee on Preamble and Bill of Rights.

O. 235.— Mr. Roche presented a proposed amendment to sections 9 and 11 of article 8 of the Constitution, to limit the power of counties, cities and villages to incur debts and tax.

Referred to the Committee on County, Town and Village Government, and also the Committee on Cities.

O. 236.— Mr. Roche also presented a proposed amendment to section 19 of article 6 of the Constitution, to fix the terms of justices of inferior local courts and their compensation.

Referred to the Committee on Judiciary.

O. 237.— Mr. Parmenter presented a proposed amendment to section 2 of article 13 of the Constitution, relating to calling of future Conventions to revise or amend the Constitution, and submitting the same to the qualified electors of the State for their approval or disapproval.

Referred to the Committee on Constitutional Amendment.

O. 238.— Mr. E. R. Brown presented a proposed amendment to article 1 of section 8 of the Constitution, relating to freedom of speech and of the press.

Referred to the Committee on Preamble and Bill of Rights.

O. 239.— Mr. Parkhurst offered a proposed amendment to article 2 of the Constitution, by inserting therein a new section, providing for voting by electors who are inmates of soldiers and sailors' homes.

Referred to the Committee on Suffrage.

O. 240.— Mr. Pratt offered a proposed amendment to article 7 of the Constitution, by adding a new section thereto, relating to taxation.

Referred to the Committee on Taxation.

O. 241.— Mr. Pratt also offered a proposed amendment to article 7 of the Constitution, by adding a new section thereto relating to taxation.

Referred to the Committee on Taxation.

The President — Reports of standing committees are in order, or reports of select committees.

Under the unfinished business of general orders there are upon the table two proposed Constitutional amendments; one introduced by Mr. Vedder, from the committee of which he is the Chairman, and one introduced by Mr. Roche, from the Committee on Powers and Duties of the Legislature. What is the further pleasure of the Convention?

The Secretary read the following:

The President has designated as reporter, Edward S. Luther for The Albany Argus, the New York Press and the New York Morning Journal.

Mr. Bowers and Mr. Hedges requested to be excused from attendance upon the Convention to-morrow, and no objection being made, they were excused.

On motion of Mr. Root, the Convention adjourned to June twentieth, at ten o'clock A. M.

Wednesday, June 20, 1894.

The Constitutional Convention of the State of New York, met in the Assembly Chamber at the Capitol, Wednesday, June 20, 1894.

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

The Rev. C. P. Evans offered prayer.

The President — Before further proceedings, the Chair wishes to state that it was called to his attention a few days ago that, on the appointment of the Committee on Legislative Organization and Apportionment, only sixteen members were named, whereas the rules require seventeen. Seventeen were originally named as the list of committees was prepared, but by some unaccountable accident the name of Mr. Barrow, who had been named as one of the seventeen members, was omitted. I state this by way of apology to the Convention and to Mr. Barrow for the blunder, and Mr. Barrow's name will be added to the list, where it originally belonged.

The presentation of memorials is now in order. The Chair has received a large number of petitions in reference to civil service, all of which will be referred to the Select Committee on Civil Service.

Mr. Francis presented the petition of 570 citizens of the Eighteenth to the Twenty-third Senate Districts against the appropriation of public funds for sectarian purposes.

Referred to the Committees on Education and on Charities.

Mr. Wellington presented a petition of the faculties of Hamilton Theological Seminary and Colgate University and 1,025 other citizens of the Twenty-fourth, Twenty-fifth and Twenty-sixth Senate Districts upon the same subject.

Referred to the Committees on Education and on Charities.

Mr. Barhite — Mr. President, I desire to introduce a memorial requesting the Constitutional Convention to adopt an amendment

making owners of property upon which intoxicating liquors are sold, liable for all damages arising from the sale of such liquors. I think it is proper for me to state in introducing this memorial, that I want it understood that I am not committed to the proposition which it contains, but on account of the eminent respectability and character of many persons whose names are attached to this somewhat lengthy petition, I think it is but fitting that they should have a chance to be heard in this Convention upon any subject which they may deem proper and right.

The President — Mr. Barhite, to what committee should the petition be referred?

Mr. Barhite — I think it should be referred to the Committee on Legislative Powers and Duties.

Mr. Schumaker — Mr. President, I want to ask the gentleman from Rochester (Mr. Barhite) a question. Is there not a law of this State exactly in the form of the amendment which the gentleman now proposes to put into the Constitution? I understand that there is a law upon the statute books exactly in the form in which they propose to put it into the Constitution.

Mr. Barhite — Mr. President, if I may be allowed to answer the gentleman, I understand that perfectly well. I do not believe that a Constitutional Convention is the proper place for the consideration of that subject, but I introduced the memorial simply upon the ground that I stated.

The memorial was referred to the Committee on Legislative Powers and Duties.

Mr. Lauterbach presented the petition of 1,280 citizens of New York city and Brooklyn, against the appropriation of public funds for sectarian purposes.

Referred to the Committees on Education and on Charities.

Mr. Durfee presented the petition of the Palmyra Grange, opposing an increase of Senators and Assemblymen and the increase of their salaries.

Referred to the Committee on Legislative Powers and Duties.

Mr. Durfee also presented the petition of the Wayne County Council of Patrons of Husbandry against the appropriation of public funds for sectarian purposes.

Referred to the Committee on Education.

Mr. Hamlin presented the petition of Arthur P. Rose and others, relating to the civil service.

Referred to the Select Committee on Civil Service.

Mr. Dean presented the petition of 750 citizens of the Thirtieth, Thirty-first and Thirty-second Senate Districts, against the appropriations of public funds for sectarian purposes.

Referred to the Committees on Education and on Charities.

Mr. Parker presented the petition of the Orleans Baptist Association of New York State, representing a church membership of 1,871, and a constituency of about 9,000, upon the same subject.

Referred to the Committee on Charities.

Mr. Davis presented the petition of C. E. Nellis and other citizens of Tonawanda, relating to the inspection of certain religious institutions.

Referred to the Committee on Charities.

Mr. Bigelow presented an address of the Proportional Representation Society of New York city, to the members of the Constitutional Convention, in regard to apportionments.

Referred to the Committee on Legislative Powers and Duties.

Mr. Acker presented the petition of 650 citizens of the Twenty-seventh, Twenty-eighth and Twenty-ninth Senate Districts, against the appropriation of public funds for sectarian purposes.

Referred to the Committee on Charities.

Mr. Gibney presented the petition of 1,050 citizens of the Fifteenth, Sixteenth and Seventeenth Senate Districts on the same subject.

Referred to the Committees on Education and on Charities.

President Choate presented the communication of the Monitor Iron Works of New York city, relating to competition of prison labor.

Referred to the Committee on State Prisons.

President Choate presented a communication from the Secretary of State, which was read by the Secretary, as follows, No. 6 (Resolution No. 72):

Hon. Joseph H. Choate, President Constitutional Convention, Albany, N. Y.:

SIR.— In response to the request of your honorable body, under date of the fourteenth instant, you are respectfully informed that the records of this office show that the number of indictments for murder in the first and second degrees found by grand juries of the several counties of this State, from January 1, 1889, to January 1, 1894, together with the convictions of each degree had upon such indictments, including pleas of murder in the second degree, are as follows:

Indictments:

Murder, first degree	174
Murder, second degree	18

Convictions:

Murder, first degree	32
Murder, second degree	55

Pleas:

Murder, second degree	4

Very respectfully,

ANDREW DAVIDSON,
Deputy Secretary of State.

Referred to the Committee on State Prisons.

Mr. Forbes offered the following resolution:

R. 80.— "Resolved, That the Committee on Apportionment be requested to report immediately in regard to any proposed amendments referred to them."

Mr. Forbes — Mr. President, as is well known, we have had very little business before the Convention as a body. We have a proposed amendment, number 13, which does not give sufficient information for me to determine what is proposed in the way of the distribution of the different districts of the State. I, therefore, think that as a Convention, we should take up this matter, there being nothing before us at the present time.

Mr. Dickey — Mr. President, in the absence of the Chairman of the Committee on Apportionment, I rise to debate the resolution.

The President — The resolution, giving rise to debate, will lie over for one day under rule 50.

Mr. Cady offered the following resolution:

R. 81.— "Resolved, That the Secretary forthwith request the mayor of each city in the State, except New York and Brooklyn, to state to the Convention, in writing, on or before the 29th day of June, 1894, the date on which municipal elections in his city are provided by law to be held; and whether any change in the date of such elections has been made within the five years last past, and if so, what change; and whether any unsuccessful attempt has been made within that period to change such dates by bill introduced into the Legislature, and if such change has been so suggested, the date on which it was proposed to hold such elections.

"Resolved, That when such information shall have been received, the answers of the respective mayors shall be printed as one docu-

ment and be placed on the files of the Convention without further orders."

This resolution, under rule 50, is referred to the Committee on Cities, to be reported upon within three days.

Mr. Pratt offered the following resolution:

R. 82.— "Resolved, That the Comptroller of the State be requested to furnish to this Convention, at as early a date as practicable, a statement of all property situate within the several counties of this State exempt from taxation under the laws of this State, as shown by the statements of the clerks of the boards of supervisors of the several counties of the State transmitted to the Comptroller under and in pursuance of chapter 525 of the Laws of 1893."

Also, the value, kind, nature and character of such exempt property as far as the same is shown by said statements of said clerks of said boards of supervisors.

The President — That is referred, under the rule, to the Committee on State Finances and Taxation for report.

The President — Presentation of proposed amendments to the Constitution is in order. The Secretary will call the districts.

The Secretary called the districts.

O. 242.— Mr. Floyd offered a proposed amendment to the Constitution, to amend section 16 of article 1, limiting the disability of Indians to purchase or sell lands to those included within the government reservation.

Referred to the Committee on Indians.

O. 243.— Mr. Jenks offered a proposed amendment to the Constitution, to amend article 9, by providing that certain executive officers of cities shall be entitled to seats in the local legislative bodies thereof.

Referred to the Committee on Cities.

O. 244.— Mr. Sanford offered a proposed amendment to the Constitution, to be known as section 2, to amend article 9 in regard to the Board of Regents.

Referred to the Committee on Education.

O. 245.— Mr. Forbes offered a proposed amendment to the Constitution, to amend section 3 of article 7, relating to canal debt.

Referred to the Committee on Canals.

O. 246.— Mr. Holls (by request) offered a proposed amendment to article 10 of the Constitution, to improve methods of legislation.

Referred to the Committee on Legislative Powers and Duties.

O. 247.— Mr. Lester (by request) offered a proposed amendment to the Constitution, to amend section 13 of article 6, relating to the compensation of the judiciary.

Referred to the Judiciary Committee.

The President — Reports of standing committees are in order, and the chairmen of the several committees, as they are called, will bear in mind the obligation to report within three days upon various resolutions that have been referred to them. The Secretary will call the committees.

The Secretary called the committees.

Mr. Vedder, from the Committee on Powers and Duties of the Legislature, to which was referred a Constitutional amendment (O. 34), introduced by Mr. Lauterbach, entitled, "Proposed Constitutional amendment, to amend section 1 of article 12, relating to the oaths of officers, etc.," reports adversely thereon.

The President — The question is on agreeing with the report of the Committee on Powers and Duties of the Legislature on the amendment offered by Mr. Lauterbach.

Mr. Lauterbach — Mr. President, I am not much surprised at the adverse report. The proposed amendment was very ardently advocated by gentlemen who considered a great number of constitutional amendments, most of which have found favor with the various committees to which they have been referred. In respect to this especial amendment, it did not carry with it the great weight of my personal endorsement, but as the great mass of amendments proposed were of a character of the very best, I took the tare with the wheat. The amendment called for an oath by an outgoing officer to the effect that he had not suffered himself to be bribed during his incumbency. I had made the argument at the organization where the amendment was very earnestly urged, that the man who would commit bribery would not hesitate to commit perjury, and in order to prove perjury you would have to prove bribery, and that either offense was great enough of itself without duplicating it. The amendment was, however, so earnestly urged that an opportunity was afforded to those who had insisted upon its submission. The matter was argued before the committee yesterday, and the arguments evidently were not strong enough to induce the committee to adopt the suggestions of those who were earnestly interested in it. I may say as to the rest of the amendments which emanated from the same source, that I believe they are all beyond any such criticism, and that the gentlemen who originated them and who discussed them at length before the Judiciary Committee,

the Cities Committee and other committees, receiving the encomium of those committees yesterday for the splendid work which they had performed, in respect to which I was simply their representative, will receive encomium enough when the whole of their work has been passed upon, to suffer them to bear silently and meekly the reproof of this adverse report, which I received in the first instance, and which they must permit me to transmit to them in the second. I agree with the report of the committee, and think that it should be adopted.

Mr. Goodelle — Mr. President, I would like to inquire whether or not it is to be expected of the several chairmen of the different committees to report to the House upon the proposed amendments which are adversely passed upon by them. It seems to me, if this course is to be pursued, that we will occupy the greater portion of the time of this Convention in useless discussion, where parties who propose amendments which have been adversely reported have full opportunity in Committee of the Whole, as I understand it, to there propose amendments and have them passed upon. That being my view of the case, I move that the report lie upon the table.

The President put the question on the motion to lie on the table and the motion was lost.

The President — The question is on agreeing with the adverse report of the Committee on Legislative Powers and Duties.

Mr. Vedder — Mr. President, this proposition was duly referred to the Committee on Legislative Powers and by that committee duly referred to a sub-committee who had the matter under consideration for a couple of weeks, and the sub-committee of the standing committee reported unanimously against the proposed amendment, which report was concurred in by the Committee on Legislative Powers unanimously, and they ordered me to report the proposed amendment adversely. You will remember that I made a statement about ten days ago, that I had such a report, but would not report it in the absence of the mover of the amendment, Mr. Lauterbach, who was then in New York on duty. Yesterday Mr. Lauterbach asked permission to have the proposition reconsidered, and to be heard by John S. Smith of New York and Mr. Hawes of New York, from the City Club, or the Republican Club ——

Mr. Lauterbach (interrupting) — Much better than the City Club.

Mr. Vedder (continuing) — And a hearing was had by the whole committee, that is, there was a quorum present, and a vote was taken again upon a motion to report it adversely, which was agreed

to by the committee with only two dissenting voices. The amendment is this, in short: The Constitution now provides that an official by appointment or election, shall, before beginning his duties, take a certain oath prescribed by the present Constitution, that he will faithfully perform his duties, etc. This amendment proposes that at the expiration of his term of office, he shall take a similar oath, and unless it is taken within ten days from the expiration of his office, he shall be disqualified from voting or from holding office until he shall have taken it, and I presume that these gentlemen who appeared before the committee yesterday, exhausted all the arguments which could be produced in favor of the proposition, and it was this: That if an official had not properly performed the duties of his office, had been guilty of bribery or any other maladministration of his office, he would not take this oath, which would be a confession that he had been guilty of bribery or corrupt practices, and invite thereby prosecution by the district attorney and the grand jury. The committee believes that any one who, in office, would be guilty of accepting a bribe, or for any other maladministration or malversation in office, would not hesitate a moment to take the oath prescribed by this proposed amendment; that the crime of perjury would not be any greater than the crime that he intended to cover by perjury, and that it would have this deleterious influence upon the public, that it would lull to sleep the public if an official who had been guilty of corruption took this oath, that he had been pure and upright in his office, and that it would have a contrary effect from what the movers of the proposed amendment seek. That was the chief ground, I believe, of the adverse report; that it would not prevent corruption in office, and that a man who would be guilty of corruption would take the oath, which would be presumptive evidence of his innocence and which would lull the people to sleep, so that they would say that he was innocent, and that we will not look into the matter of his official conduct at all. And again, that if he did commit bribery or any other malversation or maladministration in office, he would take the oath and thereby attempt to clear himself; for to prove perjury, it would require as strong evidence as to prove bribery, and, therefore, this amendment would be useless and worse than useless. Those were the reasons which prompted the committee to make this adverse report.

Mr. Lauterbach — Mr. President, I do not know that there was any need to give the sting of the adverse report, and then rub it in with that speech. I could not do any more than to permit judgment to be entered *pro confesso*, but if it was found necessary to dilate upon the subject by the committee who submitted the report,

perhaps a few words will be proper in response, in behalf of those who considered the subject with great care, as to the reason why they desired an amendment of this kind to the Constitution. They believed that the impending fear produced by the certainty of the necessity of making an oath at the termination of their official life, that during the period of their official career they had not been guilty of receiving bribes directly or indirectly might have a salutary effect in preventing the receipt of bribes. It might have the salutary effect of checking what might not be supposed to be an actual receipt of a bribe, and cause a hesitation in receiving gifts or any thing of that kind, and when the batch of amendments was passed, after thorough consideration by the Republican Club, and this one amendment concerning which some criticism could be made, namely, the criticism that perhaps it was not right for the State of New York to promulgate broadcast the belief that its public officers were so capable of venialty and corruption that it was necessary to place this upon record by affidavit that they have not been corrupt during their term of office. That objection seemed to me to be so sound that I presented it to the body which passed this with other amendments. I made the statement to the sub-committee and I think they might have passed this amendment by *sub silentio* and not made the adverse report, and when the adverse report had been made to the House they might have passed it by, after my statement of my willingness to have the report adopted without further argument. But as the argument has been made, I desire in behalf of the gentlemen who so earnestly, so conscientiously, so sincerely, and in the opinion of many of the members of the Convention, so justly entertained the notion that this was a proper amendment to the Constitution, and that everything should be done that could secure the State of New York against corruption in office in any form, that I make this supplemental address, leaving the committee to do in respect to this report and in respect to this offspring of which I have assumed the paternity, whatever they desire to do.

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

Mr. Parkhurst, from the Committee on County, Town and Village Officers, to which was referred constitutional amendment (O. 62) introduced by Mr. R. M. Johnston, entitled, "An amendment to amend section 18 of article 6, relating to justices of the peace in cities," reports back said amendment and calls attention to the fact that the proposed amendment relates wholly to justices in cities.

The President — That committee should be discharged from the

further consideration and it will be referred to the Committee on Cities.

Mr. Root, from the Committee on Judiciary, to which was referred resolution No. 75, introduced by Mr. Titus, relative to information from district attorneys touching the number of appeals in criminal cases taken in their respective counties, reported in favor of the passage of the same, amended so as to read:

"Resolved, That the county clerks of the various counties in the State be requested to furnish forthwith to this Convention a statement showing the number of appeals in criminal cases taken in their respective counties for each of the five years last past."

The President put the question on the adoption of the resolution, and it was determined in the affirmative.

The President — There is a matter of special order to-day concerning the printing of the evidence in the Erie county contested cases.

Mr. Cookinham offered the following resolution:

R. 83.— "Resolved, That the evidence in the contested election case of Harvey W. Putnam and Thomas A. Sullivan against Charles Beckwith and Herman F. Trapper shall not be printed."

Mr. Cookinham — Mr. President, I have no desire to take the time of this Convention in speaking to this resolution.

Mr. McClure — Mr. President, I raise a point of order, there is a matter of special business before the Convention that ignores the consideration of this resolution now offered by Mr. Cookinham.

The President — What is the special business that it ignores?

Mr. McClure — The question is up of the matter laid over for consideration to-day as to whether or not the testimony taken in the Buffalo cases shall be printed.

The President — This resolution refers directly to that matter and the Chair deems it to be in order.

Mr. Cookinham — I supposed, Mr. President, that this was in the direct line of the special order, and, therefore, offered the resolution, but shall not detain the Convention to speak upon it, but shall call for the vote upon it unless some gentleman desires to discuss it.

Mr. McClure — Mr. President, I desire to say that, as one of the delegates who pressed upon the Convention last week the desirability of having the testimony taken in this case printed, and as one who concurred in the suggestion made that the matter should be laid over until to-day so that it could be decided whether or not

there was any necessity for the printing of the testimony, upon receiving yesterday the brief on the part of the contestees in this case, I made, in conjunction with the mover of the resolution that the matter be laid over until to-day, and one or two others who had taken an interest in the matter, a careful examination of the papers. I find that the brief for the contestants refers by folio numbers to the testimony taken, which we are assured is at the service of the Convention, contained in four volumes and also the brief submitted on the part of the sitting members, which contains a number of concessions of fact. I am prompt to say, Mr. President, to this Convention, that desiring that there shall not either be any unnecessary delay or unnecessary expense, I, for myself (and I speak only for myself), have reached the conclusion that, if the minutes can be placed where they will be accessible and can be had from this moment up to the twenty-seventh, when the matter is to be fully and finally considered, in my judgment, it will not be necessary to print the testimony which has been taken by the committee. But I desire to call the attention of the Chair and the Convention to the fact that during the whole of yesterday the minutes of testimony taken were not accessible. Inquiry having been made at the Secretary's desk and at other places, these minutes could not be obtained. I desire, personally, to make a careful examination of this case upon which to base my judgment as to whether or not a man elected to so important a body as this Constitutional Convention shall be deprived of his seat. I notice in the briefs the absence of statements of facts, which, perhaps, would do away even with the necessity of examining the testimony taken, such, for instance, as proof by witnesses produced by the committee of the failure on their part to vote by reason of any prevention which took place at the polls; but if it can be understood, and I propose, with the consent of the Convention, to make it a motion at the proper time, that one copy of these minutes shall be placed in the hands of the member holding the seat here and in his seat, Mr. Trapper, as he is to be seriously affected by the action of this Convention, and one other set be placed on the Clerk's desk this morning, so that from now until the twenty-seventh those who desire to examine the testimony can do so. I am glad to concur with those of the delegates who are desirous of avoiding unnecessary expense and delay, and believing that the printing of this testimony would cause considerable delay and some expense, I rose to say that provided these minutes can be made accessible in the manner I have suggested, for my part, I shall be willing to consider this case without asking that the evidence be printed.

Mr. Chipp — Mr. President, I will state for the information of Mr. McClure, that I understood that parties were looking for those minutes yesterday morning. I went to the Clerk of the Committee on Privileges and Elections, and he informed me that he had the minutes in his room. I communicated this information to the Secretary and said that if any gentleman wanted this testimony, it could be found in the committee room.

Mr. Griswold — Mr. President ——

The President — The Chair would state that there is now one complete set of this testimony at the Secretary's desk for any gentleman who wishes to examine it.

Mr. Griswold — Mr. President, I would offer the following resolution in view of the fact that this evidence is not printed and not to be printed, and in view of the fact that of course it is very difficult for the large number of this Convention, to find and examine the testimony of which I understand there are four stenographic copies. Now there are but two parties here, and I understand there are four stenographic copies, and I offer a resolution that in the absence of any printed copies of the evidence in the election contest that the Chairman of the Committee on Contested Elections give into the custody and control of Mr. Trapper until the termination of said contest two of the stenographic copies of the evidence. He is one of the persons most interested, and can give us an opportunity to examine the evidence. Otherwise we have no opportunity. This evidence has been sought for on several occasions, and it is found, I am told, sometimes locked in the desk, and I think it would be fair during this contest to leave two printed copies in the control of Mr. Trapper, whose case stands exactly the same as the other delegate whose seat is contested, and thus give a full and fair opportunity in the absence of the printed evidence.

The President — The Chair is of the opinion that Mr. Griswold's motion is an independent one. The question is on Mr. Cookinham's resolution.

Mr. Cookinham — Mr. President, I stated when this matter was last before the Convention that there were sixteen volumes of this. There are four complete copies of four volumes each. I also stated that it was at the disposition of the Convention, and if any delegate desired to read it, he could have it. I suppose the same condition of affairs exists to-day. The evidence has been in the room occupied by the Committee on Privileges and Elections, at least some of the copies, and I have no doubt it can be placed in the hands of Mr. Trapper in five minutes. Now, Mr. President, if the resolution

offered by me is adopted, I shall most heartily favor the proposition made by the gentleman who last addressed the Convention, that Mr. Trapper shall have the copies of the evidence.

Mr. Osborn — Mr. President, I called at the Secretary's desk yesterday morning to find those minutes and was informed that they had been given into the possession of the Clerk of the Committee on Privileges and Elections. I then repaired to the room of the Committee on Privileges and Elections and found the door locked and the room empty. I think it of the first importance that these minutes should be placed in the hands of the Secretary in such a way that the members can find them instead of chasing all over this building in a vain effort to get into committee rooms.

The President — The Chair will inform the gentleman that a complete copy is now on the Secretary's desk.

Mr. Alvord — Mr. President, I think the time on this subject has been exhausted, and I move the previous question.

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

The President — The question is on the adoption of Mr. Cookinham's resolution.

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

The President — The question is on Mr. Griswold's resolution. The Secretary will read the resolution.

The Secretary read the resolution, as follows:

R. 84.— "Resolved, In the absence of any printed copies of the evidence in the election contest, that the Chairman of the Committee on Contested Elections give into the custody and control of Mr. Trapper, until the termination of said contest, two of the stenographic copies of the evidence."

Mr. Cookinham — Mr. President, in the absence of the Chairman of the committee, perhaps it would be proper for me to say that the Chairman may not have in his possession, and it is a fact that he has not in his possession, two copies of this evidence. I think, however, that he has one copy and that one copy unquestionably can be delivered to Mr. Trapper. I should regret if this Convention should pass a resolution directing the Chairman of the committee to do that which it is impossible for him to do. The counsel, however, of Mr. Trapper, had a copy, and I have no doubt has a copy of it now, and Mr. Trapper can use that. I have no doubt that the Chairman of this committee can furnish him with another

copy and I, therefore, suggest or move that the word "two" be changed to "one."

Mr. McClure — Mr. President, those of us who have had a desire to be fully informed on this question, have had it stated over and over again, that there was accessible at all times, four complete copies of this testimony, and it was in view of that fact and in view of the probability that many of the gentlemen would desire to consult this testimony to a greater or less degree that decided me in making the suggestion that if such a course could be pursued, in my individual judgment, the printing of the testimony would not be necessary. I cannot understand why when we have reached a point when we say we will be satisfied to look over that testimony, that we are allowed but one copy. Seventy members may desire to look over the evidence, and they certainly cannot do it with one set, because one set comprises four books. I think that those four copies should be at once put in the control of this Convention by its Secretary, two of them, as Mr. Griswold suggests, to be put under the direction of Mr. Trapper, and the other two at the Secretary's desk for general use. I hope the motion, as made by Mr. Cookinham, will not prevail, and that we will have at once and until the twenty-seventh, four full copies at the absolute use and direction and control of the individual members of this Convention.

The President — Is Mr. Cookinham able to inform the Convention as to where the other three copies of this evidence are?

Mr. Cookinham — I believe that the Chairman of this committee has one complete copy at his residence, and that is the only one he has complete control of, so far as I know. One copy was furnished to the counsel of Mr. Trapper and Mr. Beckwith.

The President — That is one of the four copies?

Mr. Cookinham — That is one of the four copies. One copy now lies on the desk of the Secretary. We have no desire to keep the copies from the other side, but we do not desire to have a resolution passed that we cannot comply with. If the resolution will read that the Chairman of the committee and the Secretary will furnish two copies to Mr. Trapper and to Mr. Beckwith, I have not the slightest objection.

The President — Does Mr. Griswold accept the amendment?

Mr. Griswold — Of one copy?

Mr. Cookinham — No, sir; one copy furnished by the Chairman of the committee and one by the Secretary.

Mr. Griswold — Your amendment is that one copy shall be delivered to Mr. Trapper.

Mr. Cookinham — One copy to him and one copy to any other person designated by him.

Mr. McClure — Mr. President, I do not desire to speak too often on this matter, but we have had an unqualified statement that the four copies were here and it was perfectly well understood by my friends on the other side that we were anxious to reach a conclusion not to necessitate printing, on the distinct understanding that there were within the walls of this room four complete copies. I think these copies should have been gathered in so that yesterday when we made an endeavor to do something about this matter we could have had the copies under our control. Everything that the gentleman has said moves now to printing this testimony. The members cannot consider this matter fairly with only one copy. This committee controls the copies they have loaned the counsel and they can secure their return. I think the resolution that no less than four copies should be placed upon the desk, should prevail. I shall not be satisfied to dangle around Mr. Trapper's desk, together with sixty-nine other members, in order to see whether a wrong was perpetrated in Buffalo, but I am satisfied that the sixty-nine should view one of the four copies.

Mr. Cookinham — Mr. President, I apologize also for rising so frequently. I am informed by one of the committee that it is quite possible that one of the four copies is in the possession of the counsel of the contestants. He had it before the committee, but he did not leave it there. I have no question that the four copies can be furnished to-morrow if any one should desire it.

The President — The Chair will state for the information of the Convention that he is informed by the Secretary that there are two copies now accessible. The question is on the amendment to Mr. Griswold's resolution to substitute the word "one" for the word "two."

Mr. Cookinham — Mr. President, I withdraw my amendment, if there are two copies. I withdraw the amendment and let the vote be taken.

Mr. McClure — Mr. President, I move an amendment, that the third copy, that which is said to be in the control of the Chairman of the committee, be placed in the control of the Convention.

Mr. Crosby — Mr. President, I call for the original resolution.

The President — The resolution, as amended, is that two copies be placed in the immediate control of Mr. Trapper, to remain there until the final decision of the election question, and that the third copy now in the possession of the Chairman, be filed by him with the Secretary.

Mr. Crosby — I find that the understanding in this quarter of the room was that it was general as to all these cases.

The President — Only as to the Buffalo cases.

Mr. Lester — Mr. President, I suppose the only purpose of this resolution is to enable the members of this Convention to obtain access to the evidence which has been taken in this case. Now it seems to me that in order to accomplish such a result, it is much better to have the copies of the testimony remain with the Secretary of the Convention than to deliver them bodily to one of the parties to the contest. I cannot understand on what principle such a resolution should be made. It seems to me that it will remove from the members of the Convention that which it seems to be the unanimous desire of the members to obtain, and I think that the proper custodian of these copies of the testimony is the Secretary of the Convention, and not one of the interested parties.

Mr. Griswold — Mr. President, of course we have got to take this matter of this contest as it really exists. Here is the Committee on Contested Elections that are really the advocates of the contestants. They have taken the evidence, they have examind it, they know all about it, and they stand here taking charge of the case of the contestants, while the sitting delegates are without this evidence. It is perfectly apparent that we are without the printed testimony, and it is perfectly apparent that the sitting members are deprived of it. The case of the contestants is taken care of, which the whole committee advocates for them. Now the sitting members and others want an opportunity to examine that testimony.

Mr. Cookinham — Mr. President, I simply rise to say that I hope the resolution will be adopted.

Mr. Hottenroth — Mr. President, I notice on page 2 of Document 10, that there was no appearance of Mr. Trapper before the committee. I understand from Mr. Trapper that he was not, nor his counsel, notified of the meeting. I would like to ask the committee if any notice was sent?

Mr. Chipp — Mr. President, I will state that Mr. Trapper appeared by counsel at the opening of the sub-committee at Buffalo. After the hearing got well under way, Mr. Trapper's counsel left, and on

inquiry being made of the remaining counsel, the counsel of Mr. Beckwith, it was stated that the evidence would be to the same effect in each case and that Mr. Trapper was really depending upon his writ of prohibition and in any event the evidence that was taken that was favorable to Mr. Beckwith, would enure to the benefit of Mr. Trapper as well as to Mr. Beckwith. So I think his counsel did not appear after the first hearing.

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

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

The President — The question is on the adoption of the resolution of Mr. Griswold, as it stands amended, that two copies of this evidence be placed by the Secretary in the control of Mr. Trapper, there to remain until the election question is disposed of, and that the third copy, in the hands of the Chairman on Privileges and Elections, be filed with the Secretary.

The resolution was adopted.

The President — The Secretary will read the notices of committee meetings.

Mr. Vedder — Mr. President, haven't you omitted general orders? I wish to move that we go into general orders.

The President — There are two matters standing on general orders, two amendments reported by the Committee on Legislative Powers and Duties.

Mr. Vedder — Mr. President, I move that the Convention do now go into Committee of the Whole upon proposition No. 73 (Printed Nos. 73-173).

The President — Before that motion is put, the Secretary will read or state what the two amendments on general orders are.

The Secretary stated that proposed amendment No. 73, to amend section 15 of article 5 of the Constitution, in relation to the passage of bills, and proposed amendment No. 99, article 3 of the Constitution, by the addition of a new section prohibiting the Legislature or any division of the State from granting pensions to any civil officer or employe, not, however, including existing police and fire department pension funds.

Mr. E. R. Brown — Mr. President, I move that the Convention do now adjourn.

The President — Before that motion is put, the Secretary will read the notices of committee meetings.

The Secretary read the notices of committee meetings.

The President put the question on the motion to adjourn, and it was determined in the affirmative. Whereupon the Convention adjourned until to-morrow morning at ten o'clock.

Thursday, June 21, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber at the Capitol, Albany, N. Y., Thursday, June 21, 1894.

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

The Rev. A. Kennedy Duff offered prayer.

The Journal of Wednesday, June twentieth, was read and approved.

The President — Presentation of memorials is in order.

Mr. Storm — Mr. President, I have the pleasure of presenting a memorial from the Religious Society of Friends of New York city and vicinity in favor of female suffrage, and, I would like to explain to my colleagues from New York city and vicinity that the privilege of presenting this to this Convention is granted to me by reason of my connection with that society.

The President — What committee should that go to?

Mr. Storm — The Suffrage Committee.

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

Mr. Bush presented a petition of several hundred citizens of Ulster county against equal suffrage for women.

Referred to the Committee on Suffrage.

Mr. Carter presented the petition of Rev. F. B. Putnam, Rev. F. B. Neel and their congregations, against the appropriation of public funds for sectarian purposes.

Referred to the Committee on Charities.

Mr. Spencer presented the petition of citizens of Fulton county upon the same subject.

Referred to the Committee on Charities.

Mr. Dean presented the petition of the National Reform Association asking for the recognition of the State as a Christian government.

Referred to the Committee on Preamble.

Mr. Powell presented several petitions of citizens of Brooklyn in reference to a commission for the inspection of reformatories, asylums, convents, etc.

Referred to the Committee on Charities.

Mr. C. H. Lewis presented the petition of Horace White, C. W. Andrews and others of Syracuse, in reference to civil service reform.

Referred to the Select Committee on Civil Service.

Mr. Davis presented two petitions from a large number of citizens of Buffalo, favoring a commission for the inspection of certain religious institutions.

Referred to the Committee on Charities.

Mr. Moore (by request) presented several petitions upon the same subject.

Referred to the Committee on Charities.

Mr. Bigelow presented a petition of several citizens of Brooklyn in reference to civil service reform.

Referred to the Select Committee on Civil Service.

Mr. Porter presented the petition of the New York Academy of Medicine in reference to the qualifications of coroners.

Referred to the Committee on County, Town and Village Government.

The President presented a large number of petitions in reference to civil service reform.

Referred to the Select Committee on Civil Service.

The President — Communications from State officers are in order.

The Chair has received a communication (No. 7) from the Court of General Sessions of the city and county of New York, containing information called for by the Judiciary Committee, which will be referred to that committee. It contains statistics of crime. I do not think it is worth while reading, unless called for.

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

The Secretary called the districts.

Mr. A. H. Green offered the following resolution:

R. 85.— "Resolved, That the State Railroad Commission be requested to furnish this Convention with the following information respecting each street and elevated railroad in the cities of New York and Brooklyn, viz.:

" Name of road, capital stock outstanding, actual cash received for capital stock, bonds outstanding, actual cash received for bonds,

cost of road and equipment, taxes paid during last fiscal year, amount paid on account of change of motive power, route of road."

Referred to the Committee on Railroads.

Mr. Green also offered the following resolution:

R. 86.— "Resolved, That the State Comptroller be respectfully requested to furnish this Convention with a statement of the total amount of inheritance taxes collected in each of the counties of this State; also the amount of fees paid to the appraisers appointed by the several surrogates for the purpose of ascertaining the taxable values of the estates during the year 1893."

Referred to the Committee on State Finances and Taxation.

Mr. Lester offered the following resolution:

R. 87.— "Resolved, That as soon as practicable after the fourth of July, the Convention adjourn to the Village Hall of Saratoga Springs, there to continue in session during the warm weather of July and August, provided suitable arrangements for the accommodation of the Convention can be made; and that the Chair appoint a committee of five to consider the accommodations offered and to report upon their character and sufficiency and to recommend a date for such adjournment."

Mr. Goodelle — Mr. President, I rise to debate the resolution.

Mr. Lester — Mr. President, I suppose this resolution, although I believe the Convention to be overwhelmingly in favor of it, will probably provoke debate and that it will lie on the table under the rules.

The President — Does any gentleman rise to debate the resolution?

Mr. McDonough and Mr. Goodelle rose to debate the resolution.

The President — The resolution will lie over under the rules.

Mr. Cookinham — Mr. President, I offer the following resolution. I do not ask for its consideration, but I ask for its reading for the information of the Convention.

The Secretary read the resolution, as follows:

R. 88.— "Resolved, That when the Convention adjourn on Friday, June twenty-ninth, it be to meet on Monday, July ninth, at twelve o'clock noon."

The President — Does any gentleman wish to debate this resolution?

Mr. Holls — Yes, sir.

The President — It lies over until to-morrow under the rules.

Mr. Kellogg offered the following resolution:

R. 89.—"Resolved, That this Convention request the savings banks or institutions of savings of this State to furnish to the Banking Superintendent, upon his demand for the same, the amount of their unclaimed deposits without delay, and that when such report is completed, the Superintendent of Banking transmit the same forthwith to this Convention."

The President — Referred to the Committee on Banking, under the rules.

Mr. Kellogg — I wish, Mr. President, to state briefly why I introduce this resolution. A resolution was reported the other day from the Committee on Banking, which I introduced a few days ago, calling upon the Superintendent of Banking to furnish this Convention with the amount of unclaimed deposits in the savings banks of this State. The communication from the Superintendent of Banking in response to that resolution will be found in record No. 17. The communication does not contain the information which was wanted at all. On page 38 of our manual it will be found that all public officers, boards and commissioners, when requested to furnish information, are requested to do so, and I think, Mr. President, I have drawn the present resolution broad enough so that it will cover the ground, and that we shall get the information which is wanted.

Mr. Goodelle offered the following resolution:

R. 90.— "Resolved, That hereafter this Convention shall assemble at eleven o'clock A. M., instead of ten o'clock, until it shall order otherwise."

The President — Does any gentleman wish to debate the resolution?

Mr. Bowers rose to debate the resolution, and it went over, under the rules, until to-morrow.

Mr. Lester — Mr. President, if in order, I would like to request that the resolution which I introduced, calling for a vote upon the question of an adjournment of the Convention to Saratoga, lie over until Wednesday and be made a special order for that day, for the reason that it is a matter of considerable moment, and all the members of the Convention, I think, have an opinion upon it, and it ought to be discussed and decided when the attendance of the Convention is large, and not when many members are absent from their places.

The President — Perhaps that motion will be more proper

to-morrow, when it comes up. It has already gone over, and it cannot be changed without unanimous consent.

Propositions for amendment to the Constitution are in order. The Secretary will call the districts.

The Secretary called the districts.

O. 248.— Mr. Gibney offered a proposed constitutional amendment to article 3 of the Constitution, conferring power on boards of supervisors to fix the compensation of county and town officers and to confer on said board further local legislative power.

Referred to the Committee on County, Town and Village Government.

O. 249.— Mr. Lester offered a proposed constitutional amendment to section 3 of article 2, relating to gaining and losing a residence for the purpose of voting.

Referred to the Committee on Suffrage.

O. 250.— Mr. Pratt offered a proposed constitutional amendment to article 7, section 14, relating to limitations of claims against the State.

The President — Referred to the Judiciary Committee, Mr. Pratt?

Mr. Pratt — I would suggest also to the Canal Committee.

The President — And also to the Canal Committee.

The President — The proposed amendment (O. 15), offered by Mr. Marks, which has already been referred to the Judiciary Committee, will also, at his request, be referred to the Committee on Preamble.

Mr. Cookinham — Mr. President, I ask unanimous consent to make a brief statement. The Governor of the State of Texas and a very large number of distinguished gentlemen, consisting of the mayors of nearly every city in the State of Texas, are now in this chamber. I move, Mr. President, that they be extended the courtesy of this Convention and they be presented by the President to the Convention, and I move, Mr. President, that the vote be taken by rising.

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

The President — Will Mr. Cookinham act as a committee to escort the Governor to the Chair? Will the other gentlemen from Texas accept the privileges of the floor and take seats?

Mr. Cookinham and the Sergeant-at-Arms escorted Governor Hogg to the well of the chamber.

The Sergeant-at-Arms — Mr. President, I have the honor to introduce the Governor of the State of Texas.

The President — Will the Governor be as good as to take a seat by my side?

Governor Hogg — Thank you, sir.

The President — Gentlemen, I have the great pleasure to present to the Convention Governor Hogg, of Texas, who, I am sure, will be pleased to say a few words to you. (Applause.)

Governor Hogg — Mr. President and gentlemen of the Convention, this is rather an unexpected turn in the pilgrimage of our Texas friends accompanying me. We are visiting the north and east as friends from Texas returning the visits of the gentlemen who have been to the southland lately. We are to mingle with the people of this section socially, not on business or politically. Of course we could not well, in our pilgrimage, omit the historic town of Albany, the home of great men, the resort of the talent of New York, the law making center, where the people are now relaying the foundations of their government by a new Constitution. We had a curiosity from Texas to see this body of men in session. We are proud now to face you, and to say that from the south, down in Texas, grand old Texas, as the Tribune once said, "Democracy's king," we come to extend the hand of fellowship to you, gentlemen, and to bid you God-speed in laying the foundations of the great Empire State of New York soundly and safely, for the perpetuity of human liberty according to the American idea. (Applause.) Gentlemen, I thank you for the compliment you pay me, and I will not indulge you in political discussion or try to teach the people of New York how to make a Constitution. (Applause and laughter.)

The President — I am sure the delegates in this Convention assembled heartily appreciate the expressions of good will that come to us from Texas. (Applause.)

The next business in order is reports from standing committees, and the chairmen will remember to report the resolutions which have been sent to them from day to day.

Mr. Becker — Mr. President, I ask unanimous consent out of order to introduce the following resolution:

The Secretary read the resolution, as follows:

R. 91.— "Resolved, That one hundred copies of the resolutions of the Committee on Legislative Organization in reference to the separation of city from State and national elections be printed, for

distribution among the members of the committee now engaged in conference with the Cities Committee."

Mr. Becker — Mr. President, there are eighty-five members altogether, and the conference requested yesterday that the action that had been taken by the Committee on Legislative Organization should be printed for distribution. There are too many copies to be prepared by any other method than printing.

Mr. I. S. Johnson — Mr. President, I move to amend by inserting "three hundred," so that each member of this Convention may have a copy.

The President — Do you accept that amendment, Mr. Becker?

Mr. Becker — Certainly.

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

The President — The Secretary will call the list of the committees as they stand in order.

The Secretary called the list of committees.

Mr. Acker, from the Committee on State Finances and Taxation, to which was referred resolution No. 17, offered by Mr. Kellogg, entitled a resolution requesting a report of the Comptroller, reported in favor of the passage of the same, with amendment.

The President — The Secretary will read the resolution as it stands reported and amended by the Committee on State Finances and Taxation.

The Secretary read the resolution, as follows:

"Resolved, That the Comptroller be requested to inform this Convention whether he has any information in his office giving the value of property which is exempt from taxation in this State. If so, give the value of such property duly classified and also the location of such property by counties and its value."

The President put the question on the adoption of the resolution, and it was determined in the affirmative.

Mr. Hamlin, from the Committee on Printing, presented the following report (Document No. 21):

IN CONVENTION, *June* 20, 1894.

The Committee on Printing, having had referred to them the following resolution, offered by Mr. Cookinham:

R. 76.— "Resolved, That the subject of printing and publishing for the Convention, which was not covered by the rules or the direc-

tions of the Convention heretofore given, be referred to the Committee on Printing, with instructions to examine and report thereon at the earliest practical date, as to what should be printed and published, and also the best method of doing the same and to whom should be furnished copies thereof," respectfully report as follows:

First. In regard to the Manual and compilations, your committee are of the opinion that it is not desirable that the pictures of the delegates to this Convention should be distributed as public documents through this and other States, and accordingly offer the following resolution and recommend its adoption:

Resolved, That the 719 volumes of the series known as volume 2, part 1, of the Manual, be distributed among the members of the Convention, as follows: To each delegate and to the Secretary of the Convention, four volumes and the residue to the President, to be disposed of by him as he shall deem proper, and that no more be printed.

Resolved, That the other volumes of said Manual and compilations be distributed as follows: To each of the delegates and to the Secretary of the Convention three volumes of each series; to the State library, two volumes; to the Senate library, two volumes; to the Assembly library, two volumes; to the Regents of the University, the residue thereof to be distributed by them to the public officers, the incorporated colleges and universities of the State, and to exchanges, including one set for each of the States and Territories.

Second. In reference to the publication, binding and distribution of the documents and the debates and proceedings of the Convention, your committee offer for your consideration and recommend for adoption the following resolution:

Resolved, That the verbatim report of the proceedings and debates of the Convention which has heretofore been printed and placed on the files of the delegates should be continued. That hereafter there should be printed daily 800 copies thereof, of which twenty-five copies should be at the disposal of the President, and that in addition thereto 600 copies should be printed and bound and distributed as follows: To each delegate, two copies; to the State library, five copies; to the Senate library, five copies; to the Assembly library, five copies; to the county clerk of each county for the library of each county, one copy; to the Regents of the University, the residue of said copies, to be distributed by them to the public offices of the State and the incorporated colleges and universities thereof, and to exchanges, including one set for each of the States and Territories.

Resolved, Further, that 600 copies of all documents ordered printed be bound and distributed in like manner.

Resolved, Further, that 1,000 copies of all proposed constitutional amendments be printed, of which twenty-five shall be at the disposal of the President.

Third. As to the distribution of the report of the proceedings of the Convention among the newspapers of this State, the committee offer the following preamble and resolution for the consideration of the Convention and recommend its adoption:

Whereas, It is deemed due to the people of this State that full reports of the proceedings of this Convention be published in current form, your Committee on Printing submits the following resolution and recommends its favorable consideration by the Convention:

Resolved, That the Compiler be directed to enter into a contract, if possible, with the Journal Company and The Argus Company, respectively, of the city of Albany, on the following conditions, namely: To print the entire proceedings and debates of this Convention, including record of votes by division and roll call from this date until the close of the Convention for a sum not exceeding $7,500 in each newspaper, provided said publishers will agree to mail one copy of their daily issue to the office of each newspaper and periodical in the State of New York, excepting monthly and trade publications, and to provide each member of this Convention with two copies of the newspapers containing the proceedings of this Convention, and also provided that said publishers waive all further claim against the State under their contract with the Compiler, dated April 5, 1894. Said papers to publish complete each day of the Convention proceedings of the day before, unless an afternoon or evening session is held, then such afternoon or evening proceedings to be published not later than the second succeeding day.

Resolved, That in the opinion of the committee, said contract will give all needful immediate publicity to the proceedings of the Convention, and no other regular distribution of reports or documents will be required during the session of the Convention.

All of which is respectfully submitted as the recommendations of a majority of the committee.

F. H. HAMLIN,
Chairman.

The President — This report of the Committee on Printing having been received and read, is before the Convention. The Convention will observe that there are at least three independent propo-

sitions and that at least the first proposition contains a number of subdivisions. Unless a division of the question is called for the first question will be on the first recommendation as a whole.

Mr. Alvord — Mr. President, that is a very voluminous document, very far-reaching in reference to the question of printing. Read hastily here for the first time, I am, for the first time, partially acquainted with its contents. It, therefore, seems to me under the circumstances that it should not be hastily passed through this body and I move, therefore, that for the present it lie on the table, and in the meantime be printed, so that we can understand and know all about it.

Mr. McDonough — Mr. President, I would ask the Governor to make it a special order for next Tuesday.

Mr. Alvord — I will make it a special order for Tuesday or Wednesday, just as may be wanted.

Mr. Jesse Johnson — I ask that it be made a special order for to-morrow and then the melee can begin.

The President — What day do you wish it made a special order for, Mr. Alvord?

Mr. Alvord — Wednesday.

The President put the question on the motion to make the report a special order for next Wednesday, and it was determined in the affirmative.

Mr. Hamlin — Mr. President, I would like to move to reconsider that motion for the reason that there is already set down the election case for Wednesday, and it seems to me that it would interfere with that.

The President put the question on the motion to reconsider and it was determined in the negative.

The President — There are no special orders for to-day.

Mr. Root — I move that the Convention adjourn.

Mr. McDonough — Mr. President, there is something else.

Mr. Vedder — I hope the gentleman will withdraw that motion.

The President — Do you withdraw the motion, Mr. Root?

Mr. Root — I do, sir.

Mr. Vedder — I move that the committee go into Committee of the Whole on proposed amendment No. 173. It will not take but a few moments.

The President put the question on Mr. Vedder's motion, and it was determined in the affirmative — ayes 70, noes 35.

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

Chairman Alvord — The Clerk will read the proposed amendment.

Mr. Vedder — Mr. Chairman, the original number was 73. It was reported with some amendments, and it is now 173 on the files.

The Secretary read proposed amendment No. 173.

Mr. Vedder — Mr. Chairman, the object of this amendment, I think, was apparent to each delegate as it was read. Under the Constitution, as it now is, a bill may be amended upon its third reading. This prevents a bill from being amended on its third reading. Under the Constitution, as it now is, a bill may be passed when it is not printed. An amendment may be made to it which changes the whole nature of the bill, and without any of the members of the Legislature knowing anything about it, except, perhaps, the mover. Especially is this true during the last days of a session. There has probably been more bad legislation by reason of this defect in the Constitution than because of any other. This is the way it works: The Clerk announces the reading of a bill; he begins its reading, and a member of the Legislature offers an amendment which no one may understand but himself, and the amendment is adopted, and the reading goes on and the bill is passed as amended. In the hurry and probable confusion of the moment, no one but the mover of the amendment may know exactly what it is or how it affects the nature and subject-matter of the bill. It may radically change the character of the bill itself and thereby be contrary to the wish of the House, and yet it passes, reliance being placed on the statements of the mover of the amendment, who may himself have misjudged its effect in changing the bill. This will prevent that. This makes it imperative that every bill must have been printed and upon the desks of the members at least one calendar legislative day before it can be voted upon or before it can be passed, and on its third reading no amendment can be made to it, nor can any debate be had. When the bill is being read, there can be no debate whatever, and it provides that after having been read, the vote shall be immediately taken thereon, so no bill under this amendment could pass without every Senator and every Member of Assembly knowing precisely what it was, for he can look upon his files and read it and follow the reading of the Clerk. It is an exceedingly common thing, and happens at every

session of our Legislature, that an apparently insignificant amendment is offered on the third reading of a bill. The bill passes with it. The amendment may be innocent of itself. It then goes into the engrossing room, and what was left undone to change the nature of the bill on its third reading is done in the engrossing room, and it goes to the Governor, and no one knows how the amendment got in, and it can be traced to no one in particular. All we know is that the members have voted upon a certain bill, and when it reached the Governor it was an entirely different bill. Under this amendment such tricks as I have suggested could no longer be played, the occupation of legislative magicians would be gone and purer and better legislation would result therefrom.

Mr. Bush — Mr. Chairman, if I may be permitted to ask the gentleman a question, is there anything in this amendment, under the gentleman's construction which would prevent a motion to recommit a bill with instructions to amend as follows?

Mr. Vedder — Certainly.

Chairman Alvord — The gentleman from Cattaraugus will comply with the rule, that before he answers the gentleman he should be recognized by the Chair.

Mr. Vedder — Mr. Chairman, in answer to the gentleman from Ulster (Mr. Bush), I would say, that it would prevent the doing of anything on the third reading of a bill except to vote it up or vote it down.

Mr. Bush — Mr. Chairman, I am heartily in favor of the object proposed to be accomplished by this amendment, but I am a little in doubt whether or not this proposed amendment accomplishes the purpose. Under the rules of the Legislature, as they now exist, we have a rule that provides that no bill shall be amended on its third reading; but every gentleman who has served in the Legislature knows that that is always avoided by moving to recommit the bill to the committee from whence it came, with instructions to amend, and thus making the proposed amendment. Now, it has always been contended that that did away with the rule that no bill could be amended on third reading. It is true that this proposed amendment provides that no bill shall be finally passed until it is printed, but the rules of the Legislature also provide that no bill shall be passed until it is engrossed. So I cannot see wherein this proposed amendment differs from the rules of the Legislature as they now exist; and if that be true, and this proposed amendment should receive the same construction that the rules of the Legislature receive, I cannot see where any good can be accomplished.

I would ask the Convention, particularly those who are familiar with legislative rules and have served in the Legislature, to look into this question, because, as the Senator from Cattaraugus himself says, it is of vital importance that amendments to bills on third reading should be prohibited. There should be some method adopted by which every bill should be on the members' desks, subject to their inspection, as it is finally passed, and not have an amendment proposed just as the vote is to be taken; because in that case no person can tell what the effect of that proposed amendment will be. In this chamber particularly, it is an extremely difficult thing to comprehend just exactly what is being said, let alone, on the spur of the moment, to comprehend the far-reaching effect of a proposed amendment. It is an excellent thing, no doubt, that all bills should be printed, but that does not differ from the present legislative rule which is to the effect that they should be engrossed or printed, as they were this last winter, and this does not differ from the present legislative rule that no bill can be amended on third reading. Therefore, I do not quite comprehend how this proposed amendment, as it now is, will accomplish the purpose which the gentleman from Cattaraugus proposes to accomplish. If it does, I will be glad to have him, or some other gentleman, explain the matter more fully before we vote upon it. I think it is an extremely important question — one of the most important, probably, that this Convention will have to act upon.

Mr. A. H. Green — Mr. Chairman, looking cursorily over this amendment, it seems to me that there are objections to it that the chairman of the committee might possibly explain, and I will briefly state those that occur to me. It is well known to every gentleman having to do with legislative bodies that occasionally a bill is challenged as to the correctness of its passage, and proof has to be taken as to whether or not it had a two-thirds vote. That is sometimes challenged, as you know. Now, in the first line of this proposed amendment it says: "No bill shall be passed until it has been printed and been upon the desks of the members at least one calendar day prior to its final passage," etc.

Now, how are you going to prove whether it has been on the desks of all the members during the legislative day? Suppose the bill is challenged in that respect, where is the proof of it? It seems to me that this is a matter that had much better be left to legislative discretion rather than attempt to amend it here. The provisions of the present Constitution, it seems to me, are quite adequate, although I

should be very glad, personally, to see any amendments made that will correct the many abuses that exist in the forms of legislation.

I will ask another question here. The amendment proceeds as follows: " Prior to its final passage, unless the Governor or the acting Governor shall certify," etc. I do not know of any such officer as an acting Governor. There is a Lieutenant-Governor, but I know of no officer who is designated as acting Governor. We are dealing with matters of importance and it appears to me that we had better use language that is understood by everybody, in the Constitution and in the law. It should be made, it appears to me, if that was intended, " the Lieutenant-Governor."

Another matter, " the question upon its final passage shall be taken immediately thereafter and without debate." Suppose a bill has gone through its various stages of legislation and comes to the order of third reading and a gentleman desires to express his opinion as to the measure when it has become perfected. He finds that he simply has to vote aye or no upon the proposition. It appears to me that to cut off debate at that stage of the bill is ridiculous.

Mr. Vedder — Mr. Chairman ——

The Chairman — The gentleman from Cattaraugus may speak again if there is no objection.

Mr. Spencer — Mr. Chairman, I have another query to put to the chairman of the Committee on Powers and Duties of the Legislature, which he may be permitted to answer, I trust, together with those propounded by the gentleman from New York (Mr. A. H. Green). I am heartily in favor of the object sought to be obtained by this proposed amendment, but I doubt whether it will accomplish the purpose intended. It is, I believe, well known that a provision of this character contained in the present Constitution, has been held merely directory, and that an act passed in violation of the provision is not void. I would like to know from this committee whether they have investigated that question, and whether the proposed amendment requiring the bill to be printed and upon the desks of the members at least one calendar legislative day, would be regarded simply as directory and not mandatory, and whether a bill passed in violation of that clause of this proposed amendment would be void. It seems to me, sir, that if we are to amend this provision of the Constitution we should touch it at such a point and in such a manner that any act passed in violation of the provision should be void. Otherwise the object which we seek to accomplish is not accomplished, and the provision in the Constitution becomes prac-

tically a dead letter. It had occurred to me that the subject might be approached from another direction, and that no bill should be passed unless it had been introduced prior to a certain time in the life of the Legislature. I would like to know, as I have stated, whether the committee regard this provision which they have inserted in the present section as compulsory upon the Legislature, and whether an act passed in violation thereof would be void or whether it would be valid?

The Chairman — The gentleman from Cattaraugus (Mr. Vedder) will explain.

Mr. Vedder — Mr. Chairman, I will try to answer the objections, if I can, in the order in which they were made. The gentleman from Ulster (Mr. Bush) seems to doubt whether this is any better than the rules of the Senate and Assembly, as they now exist, upon this question. The difference between a legislative rule which may be set aside by unanimous consent, and a Constitutional provision, is very evident. This is a fixture, and cannot be set aside by the courtesies of the Senate or Assembly by unanimous consent. Its provisions must be strictly followed. It would be impossible under this amendment to have an amendment made to a bill during or upon its third reading. It says, " upon the last reading of a bill no amendment thereof shall be allowed." A motion, therefore, to refer the bill back to the committee whence it came, with instructions to insert or strike out new matter and to report forthwith, is an amendment and could not be made under this provision. The proposed amendment says, " it shall not be amended," and you cannot do indirectly what you are forbidden to do directly. A motion made that the bill be referred to the committee, with instructions to amend, in any particular, is an amendment, precisely the same as if a member asked that it be amended without going to the committee. Going again to the committee, under instructions to amend, in any particular, and to report forthwith, would not, of course, cure it of its defect of being amended on its third reading. This proposition, it seems to me, is too plain for argument. It is self-evident.

Again, the first part of the amendment says that no bill shall be passed until it shall have been printed. That would preclude a bill from being read unless all of it had been printed, and then if you attempted to amend it, upon its third reading, and did amend it, it would not have been printed twenty-four hours before you passed it. So that at both ends of the amendment we have it clinched that upon its third reading no amendment of any kind or character shall be allowed. In other words, under this amendment no bill can be

passed unless the members have had a chance to have seen the whole bill and read it twenty-four hours before it is passed, precisely the same as it was when it was passed. I do not see how language can be employed to make it any stronger. This particular provision, its effect, the effect of the language and its legal construction were submitted by me to a gentleman of this Convention, and if I should give you his name you would all say that no man stands higher as a lawyer than he. He said to me precisely what I am saying to you now, that it was sufficient, in his opinion, to have it stand simply that no bill should be passed unless it should have been printed and upon the desks of the members one day before its passage, to preclude every amendment. But he said, "You had better clinch it at both ends by saying 'and upon the last reading of a bill no amendment thereof shall be allowed.'" No amendment shall be allowed directly or indirectly. I do not see how language can be any stronger than that, that you cannot amend it upon third reading.

Now, I expected that some member of the Convention would say: "Supposing, upon its third reading, after it shall have been printed twenty-four hours, some defect is found in the bill, what are you going to do about it?" Do this: Pass the bill, then move a reconsideration of it. It will then be before the Senate or Assembly, which ever it may be, and then can be referred back to the committee, amended and reprinted, and then voted upon again precisely as this amendment prescribes.

The gentleman from New York (Mr. A. H. Green), in making an objection to this amendment, stated that he believes in using plain words. That is right. They are always best. He objects to using the term "acting Governor." I follow the Constitution of the State of New York in that language. In section 7 of article 4 it is stated that "if, during a vacancy of the office of Governor, the Lieutenant-Governor shall be impeached, displaced, 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." Now, when the Governor cannot act, the Lieutenant-Governor acts. The Lieutenant-Governor is not Governor. He acts as Governor. If the Lieutenant-Governor shall become incapable of serving, should be impeached, should die, resign, or be absent from the State, then the President *pro tempore* of the Senate acts as Governor, and that may occur during the session of the Legislature. Therefore, I say that if a great exigency should happen in the State, and it was necessary to introduce a bill and pass it through both houses in an hour, all you would have to do in such a case would be to go to the Governor-

elected, or to the acting Governor, in the language of the amendment, and secure from him a certificate as to the necessity of it, under his hand and the great seal of the State, and that would justify you in passing such an important exigent measure without having it printed twenty-four hours before it could be passed.

Again, Mr. Spencer raises the objection that this may not be mandatory, but declaratory merely, or directory. I assume, from the fact that under the Constitution as it now is, it prescribes that immediately after the reading of a bill the vote shall be taken, and it has been held that that was merely declaratory and not mandatory, and not essential to the passage of the bill. That after that and just before "this act shall take effect immediately" they might do a great many things by referring it back, and so forth, on the ground that it simply prescribes what shall be done. But this amendment uses different language. It says that no bill shall be passed unless this is done; no bill shall become a law unless this is done. It clinches it in that way. It says it shall not be. You shall not do it. It says "thou shalt not" very emphatically. The other provision simply prescribes that it shall be done but it does not fix the penalty that it shall not become a law unless it is done. This does do that. This says it shall not be a law unless you do certain things prescribed by the amendment.

Then objection was made in reference to the meaning of the words "legislative day," and what the proof would be in reference to that. I suppose, Mr. Chairman, that the proof that it had been printed and upon the desks of the members one calendar, legislative day prior to its passage, would be in accordance with some rule which the Legislature would make for that express purpose, that whether or not the provision of such a section as this of the Constitution had been complied with, would be shown by the records of each branch of the Legislature. We cannot and ought not to try to make rules in detail; we should be content to establish general principles. We should set in the Constitution the great lights by which the Legislature is to be guided and the Legislature should make its own rules in consonance with them. It would be easy to make a rule so that the Journal would show whether a bill had been printed, and placed on the desks of members one legislative day prior to the third reading, and under the decision of the courts the truth of such a record could not be questioned. Also, a rule could be made which should provide that the presiding officer of each house should certify to the fact whether or not it had been printed and upon the desks of the members one calendar, legislative day

prior to its final passage. Those are things for the Legislature to regulate, and not for the Constitution to provide.

Mr. Bowers — Mr. Chairman, it seems to me that enough has already been said in this Convention to show that the bill in the form in which it is reported, ought not to pass. It is quite evident that the general sense of the Convention is in favor of an amendment which will carry out the substance of the present proposed amendment, but I doubt if number 173, as reported by the committee, will make the slightest change in the present legislative proceedings. Indeed, the matter we are now considering is sufficiently serious to require us to get it into such shape that it will, without doubt, accomplish the object sought to be reached. I have no doubt whatever that the suggestion of the gentleman from Ulster (Mr. Bush) is entirely correct, and that the mandatory provision of this bill, as now proposed, could be made naught by a resolution sending it back to a committee, with instructions to report it in a certain form, for this reason. The present amendment reads that no bill shall be passed until it has been printed. If we should add an amendment there "and in the form in which passed has been upon the desks of the members," etc., we would do something towards removing that objection. As it stands now, the only prohibition is that a bill shall not be passed until it has been printed and been upon the desks of the members at least one calendar, legislative day. There is no prohibition against its being passed in some amended form. The only provision in that regard is that there shall not be an amendment upon the final reading. At this point in the proposed amendment to the Constitution another most material change is made, one which I do not precisely understand the intent of and which we certainly must understand before we pass the measures. The old section, 15, reads: "No bill shall be passed unless by the assent of a majority of all the members elected to each branch of the Legislature, and the question upon the final passage shall be taken immediately upon its last reading." The proposed amendment to the Constitution says, "and the question upon its final passage shall be taken immediately thereafter and without debate." I really can see no reason for this Constitutional Convention prohibiting the Legislature, if they so desire, from entering upon a debate, even at the last moment, and it seems to me that instead of improving the present condition of affairs that this proposed new article of the Constitution might be so construed as to do more damage than good. There have been several verbal changes made from the old provision of the Constitution. The old provision was to the effect that a majority of all the members elected to each

branch of the Legislature must vote. The word "all" is left out in this proposed amendment. It may not be material, but I do not think it ought to be modified in that respect. I think this amendment should go back to the committee. I think, also, if it is to be passed at all, that the suggestion which has been made that the courts will construe this as merely directory is a good one. If we are going to deal with the question, we should deal with it by an added clause that a bill passed in violation of these provisions shall be void. Therefore, for the purpose of getting these questions before the committee, who, I have not the slightest doubt, will consider them in such a manner as to give the protection they seek to accomplish by this proposed amendment, I desire to move that the bill be amended as follows: In line 3, after the word "and," insert "in the form in which passed." In line 8, between the words "of" and "the," insert the word "all." In lines 11 and 12, strike out the words "thereafter and without debate," and insert in place thereof, "upon its last reading." At the end of line 12 insert "a bill passed in violation of these provisions shall be void." And I move that these suggested amendments be referred back to the committee for their further consideration.

The Chairman — The gentleman will reduce his various matters to writing.

Mr. Maybee — By the consent of the gentleman from Cattaraugus, I desire to offer an amendment.

The Chairman — The gentleman will give way a moment until the Clerk reads the amendment offered by the gentleman from New York (Mr. Bowers).

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

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

Mr. McClure — I suggest that it is not in order for this committee to direct a recommittal of this matter to the special committee from which it came.

The Chairman — The Chair did not understand that there was any motion of that kind.

Mr. McClure — The gentleman from New York (Mr. Bowers) made such a motion.

Mr. Bowers — I move to amend the bill, and I put that in writing. I also move to refer it back to the committee. If out of order, I withdraw the last part of the motion and accept my correction.

The Chairman — The motion is withdrawn; the question is on the amendment as reported by the committee. Are there any further amendments?

Mr. Bowers — I did not withdraw my amendment. I merely withdrew the last part of my motion.

The Chairman — The gentleman withdraws his motion to recommit, and I hope he never will make a like one, for it is in violation of parliamentary rules. (Laughter.) The Secretary will read the amendment.

Mr. E. R. Brown — While the Secretary is reading the amendment, I would like to make a suggestion in relation to another point in this bill.

The Chairman — The Chair would inform the gentleman that it is not in order at present until the Secretary shall make out from the bad writing of the gentleman from New York (Mr. Bowers) what his amendment is. The Secretary will try and read it.

The Secretary read the amendment as proposed by the gentleman from New York (Mr. Bowers).

Mr. Maybee — By the consent of the Chairman of the committee, I offer the following amendment: "Add at the end of the proposed amendment 'any bill passed otherwise than as provided shall be void.'"

The Chairman — The question will be on the amendment of the gentleman from Sullivan (Mr. Maybee).

Mr. A. H. Green — Mr. Chairman.

The Chairman — The gentleman from New York, Mr. Green.

Mr. W. H. Steele — Mr. Chairman, I rise to a point of order, that no gentleman of this Convention can speak more than once where others wish to speak, or more than twice without the consent of the Convention.

The Chairman — The gentleman will be informed that a new matter is before the committee, and, therefore, the gentleman from New York (Mr. A. H. Green) is entirely in order. The gentleman will proceed.

Mr. A. H. Green — Mr. Chairman, it will be observed by the gentlemen of the Convention, upon looking at the provision of the present Constitution, that it is a matter of definite ascertainment whether a bill is properly passed or not. The present provision is general and furnishes the means of ascertainment whether the bill has been correctly passed by the absolute official call of the ayes and noes; and there it leaves it to the discretion of the Legislature to

make its own rules as to what they shall do. Now, with all respect to the chairman of the committee, I would respectfully request information whether in the divers and extensive affairs of this State, bills passing affecting taxation, personal liberty, etc., we are to be left to the determination as to whether a bill has been passed or not, to the assent of a half a dozen members that a bill has been on their tables for a certain length of time. Is that it? How are we to ascertain? Do I understand the gentleman to say that if three or four or a half a dozen men say so, that that is to decide the matter? As to the question of the Acting Governor, the Constitution provides here distinctly that the Lieutenant-Governor, in the absence of the Governor, takes his place. When the Lieutenant-Governor is disabled, then there may be an Acting Governor, and this ambiguity would be prevented by inserting the words " Lieutenant-Governor or the Acting Governor." As to the question in reference to the final passage of the bill, I have no doubt that it would be undesirable to have the provision as embodied in the words " and without debate." For myself, I should much prefer the Constitution as it now stands, leaving some discretion in the Legislature as to the method of its own action.

Mr. W. H. Steele — I am very glad, sir, that I was the first subject under these new rules to be called to order. My legislative experience, though somewhat extended, had never before met with that point in reference to the number of times of speaking, but being the ruling of the Chairman, I respectfully submit. Mr. Chairman, this proposition is worthy to be brought before the Convention in the first Committee of the Whole. It probably is as important a proposition in its bearings as will be brought before the Convention, and, therefore, it requires the profound consideration of every member of the Convention. The Chairman of the committee has said very truly that the amendment of bills on third reading has oftentimes given rise to serious errors and very serious departures from the original intentions of the bills. But there are two sides to this question. I recall one to mind which was made in the chamber on the other side, the Senate, and which, had it not been made on third reading, would have very seriously interefered with the pleasure and pay of the members of this Convention. The act of 1894, amendatory of the act of 1893, was upon its third reading, with one clause that was very seriously objected to by myself, and one which I did not feel at liberty to propose to eliminate. That clause was this, that the members of this Convention should not be entitled to pay for any adjournment that exceeded three days. On the third reading of that amendment a Democratic Senator moved to strike out

that clause. The clause was stricken out and now this Convention can sit one day in the week or one day in the month, as it chooses. Therefore, we have one good example of the benefits of amending a bill upon its third reading.

Further than that I may say the privilege of amending a bill upon its third reading has existed as long as parliamentary law has existed. The idea of taking a vote immediately after the bill was read through, which has been questioned in this House, was simply to prevent that old familiar practice of *log-rolling*, of having three or four or five bills, after their third reading, laid upon the tables until the bad element of the Legislature could gather sufficient force and by their combination *log-roll* them all through at once. But, sirs, in the old Convention, after they had been in session over eight months, in fact, on the 13th day of February, 1868, but fifteen days before the Convention adjourned, the honorable President of that Convention offered a resolution to the Convention which read something like this: "I find that this Convention is in a serious dilemma, one that has hampered it all the way through, and that is that there is no provision in the rules of this Convention, similar to the one in the Legislature, allowing a bill to be referred or recommitted on its third reading, with instruction to report amendments. I respectfully suggest to the Convention that the Committee on Rules should formulate a rule of that kind and that all action heretofore had upon any proposition shall be considered as intermediate." The rule was formulated and is now in the original rules of this Convention as they stood before they were amended. If that Convention found, after eight months of their deliberations, that such a rule was a necessity, it strikes me that this Convention should also consider carefully whether that might not be taken as something to be thoroughly and fairly considered before this amendment was passed. I believe, with the Chairman, that this rule is in the line of reform. I believe it is in the line of pure and honest legislation. But, before this amendment is passed, it seems to me, sirs, that every member of this Convention should give it his most careful consideration and attention. No limit of time has been set, but I know that this Convention must be seriously tired, since we have held forty minutes beyond our usual time, and, therefore, with all respect to the Chairman of the committee and the introducer of this overture, I move that this committee do now rise, report progress and ask leave to sit again.

The Chairman put the question, and it was determined in the affirmative.

The Committee of the Whole thereupon rose and the President resumed the chair.

Mr. Alvord — Mr. President, the Committee of the Whole has had under consideration Overture No. 173, introductory No. 73, entitled proposed constitutional amendment to amend section 15 of article 3 of the Constitution, in relation to the passage of bills, have had the same under consideration, but not having gone through therewith, have requested me, their Chairman, to report that fact to the Convention and I ask leave to sit again.

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

Mr. Moore — I move to amend the report of the committee by striking out the word "overture" and inserting the words "proposed constitutional amendment."

The President — An obvious error of the Chairman of the Committee of the Whole. I think that amends itself under the orders already passed.

The President put the question upon agreeing with the report of the Committee of the Whole, and it was determined in the affirmative.

The Secretary read the designation of E. C. Cuyler, as Convention correspondent of the New York Press, in place of E. S. Luther.

On motion of Mr. Roche the Convention adjourned to June twenty-second, at ten o'clock A. M.

Friday, June 22, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber at the Capitol, Friday, June 22, 1894.

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

The Rev. DeWitt G. Rockefeller offered prayer.

The Journal of Thursday, June twenty-first, was read and approved.

The President — Presentation of memorials is in order.

The Chair has received more memorials in respect to the civil service, which will be referred to the Select Committee on Civil Service.

Mr. Francis presented the petition of David Wiggins and others,

of Bath-on-the-Hudson, in favor of an amendment to secure annual inspection of reformatories, asylums, etc.

Referred to the Committee on Charities.

Mr. Francis also presented the petition of H. L. Graves and others of the same place on the same subject.

Referred to the Committee on Charities.

Mr. E. A. Brown presented the petition of Martha Jennings and 2,250 others of Herkimer county, in favor of an amendment striking out the word " male " from the Constitution.

Referred to the Committee on Suffrage.

Mr. Baker presented the petition of the Oswego county lodge of the I. O. of G. T. in favor of woman suffrage.

Referred to the Committee on Suffrage.

The President — If there are no more memorials to be presented, communications from State officers are in order. There are no such communications. The Secretary will call the districts for notices, motions and resolutions.

Mr. Mulqueen offered the following resolution:

R. 92.— Resolved, That the Secretary furnish the representatives of the press attending the Convention a copy of each proposed amendment and of the Journal as soon as printed.

The President — Does any gentleman wish to debate that resolution? If not, the question will be on the adoption of Mr. Mulqueen's resolution.

Mr. Moore — Mr. President, I heartily second the resolution of the gentleman from New York.

The President — Do you wish to debate it?

Mr. Moore — No, sir; I do not.

Mr. Root — Mr. President, may the resolution be read?

The Secretary again read the resolution.

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

Mr. Lester — Mr. President, if in order, I desire to move that the consideration of the resolution introduced by me yesterday, relative to the adjournment of this Convention to Saratoga, be made a special order for Thursday next.

The President — Mr. Lester's request is in order, the resolution having been laid over from yesterday. It was in reference to the contemplated removal of the sessions of the Convention from Albany to Saratoga. He now moves that the consideration of that

resolution be made a special order for Thursday next, and the question will be on that motion.

Mr. Lester — Mr. President, I would like to say a few words in support of this motion. This question is one which concerns every member of this Convention, and one which it seems to me ought to be considered when the majority of the greatest possible number of the Convention are present here in order to consider it. There are a number of gentlemen who are interested in regard to that question upon both sides, some desiring to go and some think that it is inexpedient. I make this motion so that all the gentlemen who have an interest in that question, so far as possible, may be present and consider it, and I hope the motion will be carried.

The President — Gentlemen will observe that, under rule 24, this motion seems to require a two-thirds vote for its adoption. Any matter may be made a special order for any particular day by the acceptance of the report of the Committee on Rules, or by a two-thirds vote, or by unanimous consent.

Mr. McDonough — Mr. President and gentlemen, I think this matter ought to be disposed of to-day. It is a matter of considerable importance to the members of this Convention as to whether they are to remain here for the rest of the session or to go elsewhere. Many of them desire to take their rooms and houses for the rest of the session, if we are to remain here, and they are in an uncertain state. This resolution, as I understand it, provides for the appointment of a committee, and that committee is to visit Saratoga and report back again. It leaves it in a state of uncertainty, and we are just as well able to dispose of it this morning as we will be next Thursday, and on that account I object to making it a special order.

Mr. Kerwin — Mr. President, while I do not wish to oppose Mr. Lester's motion to lay this matter upon the table until next Thursday, still I think it is just as well to settle it this morning. As Mr. McDonough says, some of the gentlemen from out of town desire to make their arrangements for the summer, and I know some of the gentlemen who sit near me desire to make arrangements to go into the country near by Albany. If Mr. Vedder's proposed amendment had been in force we could not have this situation of affairs. This is one of the amendments that went on to the appropriation bill, and no one knew that it was in there until after the bill had been signed by the Governor.

The President — Gentlemen will remember that this motion precludes debate on the main question, and gentlemen should confine themselves to the consideration of the motion to postpone.

Mr. Mereness — Mr. President, I think this matter should receive the consideration of the full Convention, and as a matter of courtesy to Mr. Lester, I think it should be made a special order for next Thursday.

Mr. Alvord — Mr. President, I desire to say that while I am heartily against this proposition, I agree with my friend who last addressed the Convention, that as a matter of courtesy to the gentleman representing Saratoga, it should go over, and I therefore will vote with him.

Mr. Moore — Mr. President, I think it is due to Mr. Lester that it should be made a special order as he requests. It can hurt nobody to have it made a special order on a future day.

Mr. Maybee — Mr. President, I think the matter ought to go over and be made a special order for the time specified. I do not think there is any danger of this Convention now or at any other time voting to go to Saratoga, and because there is not, I think as a matter of courtesy, the resolution should go over.

Mr. A. B. Steele — Mr. President, if I remember correctly, Mr. Lester stated yesterday that when the motion was called up to-day, he would ask to have its consideration deferred until some other day next week. I know of several gentlemen who were obliged to leave Albany, and when that matter was suggested they said, why, this question will not be disposed of until next week, and it seems to me in justice to all, and that there may be full and fair expression, that the matter should stand over as was contemplated by the mover of the resolution until next week when they will all be here.

Mr. Francis — Mr. President, I heartily approve of the suggestion that the matter go over and be made a special order, as suggested by the gentleman from Saratoga. It is due in the line of courtesy and fairness. Therefore, I hope that his motion may prevail.

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

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

The President — The question now is on the motion of Mr. Lester to make his resolution in respect to removal to Saratoga, a special order for Thursday of next week.

Mr. McDonough — Mr. President, I call for a standing vote.

The President — It will have to be so because it requires a two-thirds vote.

The President put the question, and, on a rising vote, eighty-one

were counted in the affirmative, and the President declared the motion evidently carried by a two-thirds vote.

Mr. Abbott was excused from attendance Tuesday and Wednesday of next week.

Mr. McIntyre was also excused from attendance on Tuesday and Wednesday of next week.

Mr. Holls was excused from attendance on Tuesday of next week.

Mr. Hill was excused from attendance on Tuesday and Wednesday of next week.

Mr. McDonough — Mr. President, I give notice now that I will ask for a call of the House next Thursday, when this matter comes up, so that we will have a full attendance here.

Mr. Deady was excused from attendance on Tuesday and Wednesday of next week.

Mr. Woodward was excused from attendance on Tuesday of next week.

Mr. Giegerich was excused from attendance the whole of next week.

Mr. Hamlin was excused from attendance on Tuesday and Wednesday of next week.

Mr. Mullen was excused from attendance on Tuesday and Wednesday of next week.

Mr. Redman was excused from attendance on Tuesday and Wednesday of next week.

Mr. Holcomb was excused from attendance the whole of next week.

Mr. McKinstry was excused from attendance on Tuesday of next week.

Mr. Platzek — Mr. President, I desire to present, out of order, by request, the petition of Mrs. Lee Faulkner and 1,122 others of New York county in favor of woman suffrage.

Referred to the Committee on Suffrage.

Mr. Moore was excused from attendance on Tuesday of next week.

Mr. Hamlin offered the following resolution:

R. 93.— Resolved, That there be printed for the files of the Convention 500 copies of proposed constitutional amendment, No. 69, in addition to the number heretofore printed.

Mr. Hamlin — Mr. President, the object of this resolution is simply to restore to the files of the Convention No. 69. No. 69, as it stands upon the files, is the same as No. 54, and by some mistake the actual No. 69 has been destroyed. This resolution is simply to restore it.

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

Mr. Davis — Mr. President, on the twenty-second day of May, Mr. Marks, from the Fifth District, presented to this Convention a proposed amendment to section 7 of article 1. That proposed amendment was sent to the Committee on Judiciary. On June fifth, Mr. Sanford, of the Eighth District, presented to the Convention a proposed amendment to the same section of the same article. That proposition was sent to the Committee on Preamble. On June fifteenth, I presented a proposition to amend the same section and the same article, and that proposition was sent to the Committee on Preamble and Bill of Rights. Now, sir, I believe that these three propositions, Nos. 15, 141 and 230, ought to be considered by the same committee inasmuch as they relate to the same section and the same article, and if there are no objections, I ask the President to direct that the Committee on Preamble and Bill of Rights consider these three propositions in joint session. If there are any objections, I desire to make a motion to that effect.

The President — Will Mr. Davis please write out his motion or resolution and send it to the desk? The Chair will first ask if any objections are made to the Commitee on Judiciary and the Committee on Preamble being requested to hear these three amendments in joint session. If no objection is made that direction is given to the matter.

Mr. Root — Mr. President, the Judiciary Committee has finished its hearings upon that subject. It has no time to return to it. We will be happy to confer with the members of the Committee on Preamble, but we cannot give the time to further hearings on that matter. I object to any direction that we go into a joint hearing.

Mr. President — What order will the Convention make on this position of the Judiciary Committee? Does Mr. Davis insist on his motion?

Mr. Davis — Mr. President, so far as I am concerned, I am perfectly willing that the Committee on Preamble and Bill of Rights entertain all of the proposition, but Mr. Marks is absent this morning, and it would be hardly fair to him to take his proposition from the Committee on Judiciary and send it to another committee.

The President — The Chair will state that on Mr. Marks's application yesterday, this same matter was referred to the Committee on Preamble. It was first referred to the Committee on Judiciary and then in addition referred to the Committee on Preamble.

Mr. Davis — Mr. President, all I cared for was to get those three amendments before the same committee. Now, I pretend to say that the amendment I have presented is of considerable importance, and I desire, when the committee report, that the Convention will adopt their report, and I should regret very much to have one committee come in and report one amendment and another committee report in the opposite direction on the same matter. If the amendments are to go to the Committee on Preamble, that is all I ask for.

The President — Then you do not press your motion?

Mr. Davis — No, sir.

Mr. E. A. Brown — Mr. President, I believe, under the law, in relation to the holding of this Convention, there is a provision in reference to the distribution of the documents of the Convention. I move that this Convention present to the public library of the village of Dolgeville one set.

The President — Perhaps Mr. Brown does not remember that there is a pending motion upon the table designating the institutions to which the documents are to be sent. Do you desire this as a separate motion?

Mr. Brown — Yes, sir; I desire to have it a separate motion. I believe that it does not cover this.

The President — Does that give rise to debate?

Mr. Mulqueen — I offer as an amendment that a copy be also sent to the Harlem library of the city of New York.

The President — The Chair remembers and the Secretary also that that institution is mentioned in the pending motion that was laid upon the table many days ago.

Mr. Mulqueen — I withdraw the amendment.

Mr. Root — Mr. President ——

The President — Mr. Root, do you desire to debate this question?

Mr. Root — I do.

Mr. Jesse Johnson — Mr. President, I desire to amend the resolution to send a copy to the Brooklyn law library.

The President — The resolution has gone over until to-morrow.

Mr. Jesse Johnson — Then I will put mine as an independent motion.

The President — Does any gentleman wish to debate that?

Several gentlemen rose to debate the resolution.

The President — It goes over until to-morrow.

Mr. Manley — Mr. President, I desire a copy also sent to the Queens County Bar Association.

Mr. Alvord — I propose to discuss it.

The President — It goes over until the next day.

Mr. Acker — Mr. President, I move that they send a copy to every library in the State.

The President — Public and private?

Mr. Acker — Public and private. Let them all have it.

Mr. Hamlin — I wish to debate that.

The President — Mr. Acker's motion goes over under the rules.

Mr. Becker — Mr. President, I desire to move for a reconsideration of the vote by which the hearing of the contest in Erie county, of Putnam and Sullivan against Trapper and Beckwith was set down for a special order for next Wednesday. I desire to state that I do so for this reason: I propose to have it made, if possible, a special order for next Thursday instead of next Wednesday. The reasons are that some members, I am informed, will be out of town next Wednesday, away from the Convention. It is a matter personal to me, and I wish to be here at that time. I will be unable to be here on Wednesday. I would like to move a reconsideration of the vote in order to move that the consideration of that contest be made one day later.

The President — Under rule 48, Mr. Becker's motion is not in order. It will require unanimous consent.

Mr. Becker — I ask unanimous consent.

The President — Does any member object to the motion being put on the reconsideration of the vote? The reason that it is out of order is that a motion to reconsider any vote must be made on the same day on which the vote proposed to be reconsidered was taken, or on the legislative day next succeeding.

No one objecting, the President put the question on the motion to reconsider the vote and it was determined in the affirmative.

Mr. Becker — Mr. President, I now move to substitute Thursday next.

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

Mr. Alvord — Mr. President, I desire to make a similar motion of reconsideration in the case of the special order in reference to the report of the Printing Committee. I desire to state the reason that I do it is that Mr. Hamlin, who is chairman of that committee, is necessarily absent at Yale College on Wednesday next, as it is his twenty-fifth year of graduation. I, therefore, think it is courteous to him to carry this over until Thursday. I, therefore, ask unanimous consent that I may make a motion to reconsider in order to bring about that result.

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

Mr. Alvord — I move, sir, that it be made a special order for Thursday, immediately after the special order moved by the gentleman from Buffalo (Mr. Becker).

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

Mr. Storm — Mr. President, I would like unanimous consent to make a correction in proposed amendment No. 111.

The President — The motion as to reprinting was simply as to one number.

Mr. Storm — I withdraw the motion.

Mr. Pratt was excused from attendance on Tuesday and Wednesday of next week.

The President — Presentation of constitutional amendments are in order.

O. 251.— Mr. Holls offered a proposed constitutional amendment to article 8, to prohibit the use of public money for any school or educational institution wholly or partially under the control of any church or religious denomination.

Referred to the Committee on Education.

O. 252.— Mr. Cassidy offered a proposed constitutional amendment to sections 1, 2, 3, 4 and 5 of article 7, in relation to the canal debt and the maintenance of the canal.

The President — Referred to the Committee on Canals.

Mr. Cassidy — Mr. President, I ask that it also be referred to the Committee on Taxation.

The President — Referred to the Committee on State Finances and Taxation.

O. 253.— Mr. Nichols offered a proposed constitutional amendment to article 2, section 4, relating to the registration of voters.

Referred to the Committee on Suffrage.

O. 254.— Mr. Hawley offered a proposed constitutional amendment to amend section 1 of article 8 of the Constitution so as to further restrict the creation of corporations by a special act.

The President — Referred to the Committee on Powers and Duties of the Legislature, and to Railroads, Mr. Hawley?

Mr. Hawley — And to the Committee on Corporations.

The President — And to the Committee on Corporations.

O. 255.— Mr. O. A. Fuller offered a proposed constitutional amendment to article 3, section 20, in relation to taxation.

Referred to the Committee on State Finances and Taxation.

The President — Reports of standing committees are in order. The Secretary will call the committees.

The Secretary called the committees.

Mr. Acker, from the Committee on State Finances and Taxation, to which was referred resolution No. 86, introduced by Mr. A. H. Green, entitled "A resolution calling upon the Comptroller for a statement of the total amount of inheritance taxes collected in each of the counties, also amount of fees paid to the appraisers appointed by the several surrogates, for the purpose of ascertaining the taxable values of estates during the year 1893," reported in favor of the passage of the same without amendment, and recommend its adoption in words following:

Resolved, That the State Comptroller be respectfully requested to furnish this Convention with a statement of the total amount of inheritance taxes collected in each of the counties of this State; also the amount of fees paid to each of the county treasurers, and also the amount of fees paid to the appraisers appointed by the several surrogates for the purpose of ascertaining the taxable values of the estates during the year 1893.

The President put the question on the adoption of the resolution, and it was determined in the affirmative.

Mr. Jesse Johnson, from the Committee on Cities, to which was referred the resolution, No. 81, introduced by Mr. Cady, entitled "A resolution asking for information of the mayors of cities," reported in favor of the adoption of the same, with amendment.

The President — The Secretary will read the resolution, as amended.

The Secretary read the resolution as follows (No. 81):

" Resolved, That the Secretary forthwith request the mayor of each city in the State, except New York and Brooklyn, to state to the Convention in writing, on or before the 29th day of June, 1894, the date on which municipal elections in his city are provided by law to be held, and whether any change in the date of such elections has been made within the ten years last past, and if so, what change and whether any unsuccessful attempt has been made within that period to change such date by bill introduced in the Legislature, and if such change has been so suggested, the date on which it was proposed to hold such election.

" Resolved, That when such information shall have been received the answers of the respective mayors shall be printed as one document and be placed on the files of the Convention, without further order."

The President put the question on the adoption of the resolution, and it was determined in the affirmative.

Mr. Jesse Johnson, from the Committee on Cities, to which was referred resolution No. 61, introduced by Mr. A. H. Green, entitled "A resolution asking for information from the mayors of New York and Brooklyn concerning street railways," reported in favor of the passage of same with amendments.

The President — The Secretary will read the resolution as amended.

The Secretary read the resolution as amended as follows (No. 61):

" Resolved, That the mayors of the cities of New York and Brooklyn be requested to communicate with this Convention a statement showing the names of all the companies owning or claiming to own or operating surface or elevated railways in said cities. The amount of the capital stock of said companies respectively. The cost of said railways respectively. The line and route of railways operated by these companies respectively, so far as such information is within their control. Also, that they report the amount of fees, licenses or percentages paid annually to the said cities by each of said companies. The total amount of such percentages, fees, or licenses paid to the city of New York by the Metropolitan Traction Company. The names of foreign corporations leasing or operating railways in said cities. The amount of fees, licenses or percentages due to said cities by said companies respectively, and the length of time they have remained unpaid. The amount paid or agreed to be

paid by any of said companies on a change of its motive power. The present market price of the stock of said companies respectively. And whether the rights, privileges or franchises, respectively, were obtained from the Legislature or from the city authorities."

The President put the question on the adoption of the resolution, and it was determined in the affirmative.

Mr. Hedges, from the Committee on Military and Military Affairs, to which was referred the communication from Mr. L. C. d'Homerque, regarding the term of office of honorably discharged soldiers, sailors and marines of the late war, reported back requesting that it be referred to the Special Committee on Civil Service.

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

Mr. Goodelle, from the Committee on Suffrage, to which was referred resolution No. 43, introduced by Mr. Lincoln, entitled "A resolution requesting Congress to recommend and submit to the several States a proposed amendment to the National Constitution, requiring all voters to be citizens," reported adversely thereto.

Mr. Goodelle — Mr. President, the committee that has made this adverse report desires, through its chairman, to say to this Convention that the members of this committee were unanimous and agreed entirely with the sentiment embodied in the resolution, as well as in the spirit which prompted its proposal, but they have deemed it unwise and inexpedient to report affirmatively upon this resolution, for the reason that they are afraid it would be considered that this Convention was meddling improperly with the affairs of the Federal Government. Especially were they afraid that were this resolution to be passed by this Convention it might be regarded as a discourteous criticism upon the Constitutions of our sister States. It was for these reasons and for these alone that they have made this adverse report. And I am requested on the part of the gentleman introducing this resolution to ask that this report stand over until Thursday of next week and that it be made a special order for that day, which I most cheerfully do, and I therefore ask that it be laid over until Thursday of next week and made a special order of the day.

The President put the question on making the report a special order for Thursday of next week and it was determined in the affirmative.

Mr. Root, by unanimous consent, offered the following resolution:

R. 96.— "Resolved, That the Committee on Rules be directed

to report for the consideration of the Convention a rule fixing a day after which propositions to amend the Constitution will not be received and printed without special leave of the Convention."

Mr. Root — Mr. President, the object of that resolution is, in the first instance, to give notice to the public that they ought promptly to advise this Convention of such schemes for constitutional amendment as they may have. Our committee are now all at work considering what changes ought to be made in the various provisions of the Constitution upon the subjects to which the committees relate. It is exceedingly embarrassing to have a committee go through with the consideration of a subject and after it has passed to another subject, to have new amendments come before it, and other persons asking to be heard. We never will finish our business if this continues. The design of the resolution is not now to cut off the introduction of amendments, it is not now to fix a time when the introduction of amendments is to cease, but it is to set the machinery in motion to bring at a proper time before this Convention a rule for bringing that about and also to notify the public that they cannot wait until the 14th day of September to propose amendments to the Constituion.

Mr. Goodelle asked for the reading of the resolution.

The Secretary again read the resolution.

Mr. Goodelle — Mr. President, I am in favor of the resolution and I think it should be adopted.

Mr. A. H. Green — Mr. President, I should not favor the adoption of this resolution if it is to cut off the sources of information to this Convention at any time —

The President — It only applies to propositions for amendment, Mr. Green.

Mr. Green — Amendments to the Constitution; but, if any gentleman during the last three days gives us any information that will be useful I think he should have an opportunity to present it.

The President — Do you wish to debate the resolution? If so, it will stand over until Tuesday.

Mr. Green — Not at all.

Mr. Root — It is to be referred to a committee for consideration.

The President — Mr. Green's objection would be in order.

Mr. Osborn — Mr. President, may I ask the mover of the resolution a question? Does not Mr. Root think that the evil which he seeks to cure has cured itself, and that the flood of amendments has already stopped?

The President — Referred to the Committee on State Finances and Taxation.

O. 253.— Mr. Nichols offered a proposed constitutional amendment to article 2, section 4, relating to the registration of voters.

Referred to the Committee on Suffrage.

O. 254.— Mr. Hawley offered a proposed constitutional amendment to amend section 1 of article 8 of the Constitution so as to further restrict the creation of corporations by a special act.

The President — Referred to the Committee on Powers and Duties of the Legislature, and to Railroads, Mr. Hawley?

Mr. Hawley — And to the Committee on Corporations.

The President — And to the Committee on Corporations.

O. 255.— Mr. O. A. Fuller offered a proposed constitutional amendment to article 3, section 20, in relation to taxation.

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Mr. Goodelle — Mr. President, the committee that has made this adverse report desires, through its chairman, to say to this Convention that the members of this committee were unanimous and agreed entirely with the sentiment embodied in the resolution, as well as in the spirit which prompted its proposal, but they have deemed it unwise and inexpedient to report affirmatively upon this resolution, for the reason that they are afraid it would be considered that this Convention was meddling improperly with the affairs of the Federal Government. Especially were they afraid that were this resolution to be passed by this Convention it might be regarded as a discourteous criticism upon the Constitutions of our sister States. It was for these reasons and for these alone that they have made this adverse report. And I am requested on the part of the gentleman introducing this resolution to ask that this report stand over until Thursday of next week and that it be made a special order for that day, which I most cheerfully do, and I therefore ask that it be laid over until Thursday of next week and made a special order of the day.

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R. 96.— "Resolved, That the Committee on Rules be directed

to report for the consideration of the Convention a rule fixing a day after which propositions to amend the Constitution will not be received and printed without special leave of the Convention."

Mr. Root — Mr. President, the object of that resolution is, in the first instance, to give notice to the public that they ought promptly to advise this Convention of such schemes for constitutional amendment as they may have. Our committee are now all at work considering what changes ought to be made in the various provisions of the Constitution upon the subjects to which the committees relate. It is exceedingly embarrassing to have a committee go through with the consideration of a subject and after it has passed to another subject, to have new amendments come before it, and other persons asking to be heard. We never will finish our business if this continues. The design of the resolution is not now to cut off the introduction of amendments, it is not now to fix a time when the introduction of amendments is to cease, but it is to set the machinery in motion to bring at a proper time before this Convention a rule for bringing that about and also to notify the public that they cannot wait until the 14th day of September to propose amendments to the Constituion.

Mr. Goodelle asked for the reading of the resolution.

The Secretary again read the resolution.

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Mr. A. H. Green — Mr. President, I should not favor the adoption of this resolution if it is to cut off the sources of information to this Convention at any time —

The President — It only applies to propositions for amendment, Mr. Green.

Mr. Green — Amendments to the Constitution; but, if any gentleman during the last three days gives us any information that will be useful I think he should have an opportunity to present it.

The President — Do you wish to debate the resolution? If so, it will stand over until Tuesday.

Mr. Green — Not at all.

Mr. Root — It is to be referred to a committee for consideration.

The President — Mr. Green's objection would be in order.

Mr. Osborn — Mr. President, may I ask the mover of the resolution a question? Does not Mr. Root think that the evil which he seeks to cure has cured itself, and that the flood of amendments has already stopped?

Mr. Root — Mr. President, I will answer the gentleman. I do not think it has. I know of gentlemen outside of the Convention who have told me that they have in mind amendments which they propose to have presented. They are not hurrying themselves about it. I do not think they mean to hurry. I think they should have a reminder.

Mr. Alvord — Mr. President, I desire to say that I am heartily in favor of the resolution of the gentleman from New York (Mr. Root). We have got to come to some point where we will know just what we have got to consider in this Convention in the framing of a Constitution, otherwise, instead of being the 14th of September when we get through, it will be about ten years afterward.

Mr. Towns — I desire to ask the gentleman if it is expected to fix a day certain?

Mr. Root — Mr. President, I do not know whether I fully understand the question. The resolution does not contemplate fixing anything, excepting after consideration by the Convention of a report from the committee, and it does not contemplate fixing any day which will peremptorily exclude amendments to the Constitution, but rather fixing a time after which amendments which are sent in will not be printed as a matter of course, without special leave of the Convention.

Mr. Towns — And this Convention will have an opportunity of fixing that day?

The President — Always.

The President put the question on the adoption of the resolution, and it was determined in the affirmative.

Mr. Vedder, from the Committee on Powers and Duties of the Legislature, to which was referred the constitutional amendment introduced by Mr. Doty, introductory No. 124, entitled, "proposed constitutional amendment to amend section 18 of article 3 of the Constitution, to prevent passage of local or private acts in form of amendment to general laws," reported adversely thereto.

Mr. Doty — Mr. President, I desire to say that it was at my suggestion that the committee reported adversely on this proposition.

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

Mr. Root offered the following resolution:

Resolved, That the Committee on Judiciary be discharged from further consideration of proposed constitutional amendment No.

184, relating to the use of voting apparatus and that the same be referred to the Committee on Suffrage.

Mr. Root — Mr. President, that proposed amendment was manifestedly referred to the Judiciary Committee by mistake. Similar amendments are now before the Committee on Suffrage, and they are considering them.

The President put the question on the adoption of the resolution, and it was determined in the affirmative.

Mr. Nichols offered the following resolution:

R. 97.— Resolved, That whenever a committee shall have acted adversely on any proposed amendment to the Constitution such committee shall not report such adverse determination, unless requested in writing by the member introducing such amendment so to do.

The President — Does any gentleman desire to debate the resolution?

Mr. Cady — I do.

Mr. Root — Mr. President, I make the point of order that the resolution which has just been read by the Secretary relates to the rules of this Convention and under the rules must be referred to the Committee on Rules. That subject is specifically covered by a rule which was discussed and deliberately adopted in the Convention. My point of order is that the resolution must be referred instead of standing over until to-morrow. I call the President's attention to rule 16 as to the duties of committees; to rule 32 as to reports upon constitutional amendments, and to rule 56, which begins: "All proposed action touching the rules and orders of business shall be referred, as of course, to the Committee on Rules."

The President — The Chair is of the opinion that the point of order is well taken and this resolution is referred to the Committee on Rules.

Before the motion to adjourn is put, the Chair desires to state that a necessary engagement will prevent his attendance on Tuesday and Wednesday of next week and that the First Vice-President has consented to assume the duties of the Chair in his stead, which he has no doubt will be to the profit and pleasure of the Convention.

The Secretary read the announcements of committee meetings.

On motion of Mr. Barhite, the Convention adjourned until Tuesday morning, June 26, at ten o'clock.

Tuesday, June 26, 1894.

The Constitutional Convention of the State of New York met at the Assembly chamber at the Capitol, Albany, N. Y., Tuesday, June 26, 1894.

Vice-President Alvord in the Chair.

The Rev. Charles A. Alden, of Schenectady, offered prayer.

The Journal of Friday, June twenty-second, was read and approved.

Mr. Bigelow — Mr. President, I hold in my hand something in the nature of a resolution, but more in the nature of a declaration, which I will ask the permission of the Convention to read, and which I hope will be acceptable to them as an expression of their feeling in reference to the great national tragedy of which everyone is thinking and talking.

Mr. Bigelow here read the paper referred to, as follows:

R. 98.— "Whereas, An atrocious crime has been perpetrated upon the soil of a sister republic, which has caused one of the foremost of the nations to mourn, and shocked the civilized world. The President of France, while the guest of the principal industrial city of that republic and receiving the enthusiastic homage of its citizens, confiding, as he was abundantly warranted in doing, in their affection and loyalty, has been fatally stricken by the murderous knife of an alien assassin. Mindful of the austere virtue and personal dignity of the illustrious victim, mindful of the wise, prudent and patriotic administration of the government over which he so successfully presided, in the indirect benefits of which every nationality participated; mindful, too, of our incalculable obligations to the people who were first to extend the hand of fellowship to our infant republic in its extremity, and to welcome it into the family of nations;

Therefore be it resolved, That we, the People of the State of New York, in Constitutional Convention assembled, respectfully request the Senators from this State, in the Congress of the United States, to have conveyed, through appropriate channels, to the bereaved family of the late President Carnot, and to the government of which he was at once the ornament and the protector, the assurance of our sympathy, and of the profound indignation with which the dastardly crime to which he has fallen a victim, has inspired the members of this Convention and all the people of this Commonwealth."

Mr. Bigelow — Mr. President, I take it for granted that our government at Washington will lose no time in communicating to the government of France and to the family of its late President, the sympathy and sorrow produced by a crime which has bereaved them both, but, Mr. President, it has occurred to me that that step will hardly absolve us, representing as we do nearly one-tenth of the entire population of this union, from expressing our sympathy, expressing our abhorrence of a crime which has twice arrayed this nation in mourning, and which, unless it is met by some terrific expression of execration, threatens the very foundations of government and the order of civil society. We owe this as a duty, a duty inspired by prudence, by patriotism, by international comity, by all those holy principles of fraternity which make all men kin. It is doing as we should be done by. Nay, more, it is doing as we have been done by, by the very nation that is now mourning the loss of its chief magistrate. It was my lot to be residing in an official capacity in France when a miscreant deprived this country of the services of Abraham Lincoln. There was not an organized or constituted body of any description in France, I believe, whether political, social, artistic, scientific or industrial that did not make some formal expression of its sympathy for this nation in its trials, and regret for the loss which the world had sustained by the crime. For at least two or three weeks I was in receipt of letters, of signatures to memorials, and oral deputations, which left me scarcely any time during the working hours of the day for other business. Now, Mr. President, I do not think there can be any indelicacy, I do not think there can be any criticism made upon this body, representing as it does, as I have already said, one-tenth, nearly, of the entire population of the United States, swelling the volume of grief and execration for the crime and the criminal on this occasion. When Mr. Lincoln died, the expression that came from France was such I venture to say, as would have been produced by the death of no other living man, prince or peasant, and it came not merely from the throne but it came from the humblest cabin of the people. We, I think, can afford to make an expression suitable to this occasion, and I think we can afford to give to the world, to the country, an example which I trust may be imitated far and wide, among high and low, that France may understand, that the world may understand, that the wretches who are engaged in this propaganda of murder and assassination may understand that in this country there is no sympathy, there is no toleration, there will be no toleration for their class; and that they are to be hunted wherever the law and powers of the government can reach them. (Applause.)

Mr. Root — Mr. President, it seems to me eminently fitting that when the representatives of seven millions of people, who depend for the preservation of their lives, their liberty, their property upon the preservation of social order by free constitutional government, are gathered in the supreme council of the State revising the foundations of social order, and in another land a blow is stricken at the very heart of constitutional government, expressions of sympathy for the stricken people, and of abhorrence for the dastardly crime, should immediately proceed with heartiness and with sincerity from the people's representatives. The generous aid which the republic of France vouchsafed to the infant American colonies, more than a century ago, found immediate reflex action and benefit in her own struggle for liberty. Side by side with our own American experiment in constitutional government, the French experiment has beer going on for a century, under difficulties and surrounded by evils of which we have known nothing. Surmounting almost unsurmountable obstacles, triumphing in the midst of successive and apparently irretrievable defeats for twenty years, the republic of France has stood erect, upright, unshaken, consolidating and making perpetual the foundations of free constitutional government. And now the hand of the assassin has stricken down her chief magistrate and put her people into mourning. Mr. President, the cause of freedom and of constitutional government is one cause the world over. The enemies of constitutional government in France are the enemies of our government, of our liberty, of our homes. With ever changing form, the battle of good and evil, of right and wrong, of law and of license, goes on throughout the world. In the form which it assumes to-day, the enemies of freedom and of the law raise their horrid heads among us as well as in the cities of France. One arm for the good and the right must ever fight the same battle the world over against wrong and against evil. But one weapon stands ready for all. But one means of success in this eternal conflict is at the hands of all, and that is the universal sympathy and support of all good men the world over, and universal detestation and abhorrence the world over for the men who, like the assassins of Carnot, of Garfield, and of Lincoln, war against all that is purest and best in mankind. In God's name, and in Liberty's name, Mr. President, let the representatives of the great people of the State of New York send their sympathy to the stricken people of the republic of France. (Applause.)

Mr. Vedder — Mr. President, I am heartily in favor of these resolutions. I had prepared some resolutions on this subject, which I had intended to introduce this morning, but learning that our

distinguished fellow-delegate, who at one time represented this country at the court of France proposed to do the same, I deemed it exceedingly proper that he should move such resolutions, and, therefore, gave way to him. It is, Mr. President, singularly appropriate that this Convention of the people of the State of New York, who are met for the purpose of laying deeper, broader and firmer the foundation of human liberty and social order, should take emphatic note of the assassination of the President of our sister republic of France, a crime as it is against civilization and the peace of mankind. It has especially put in peril constitutional liberty throughout the world. A pure and noble man, a wise and patriotic magistrate, whose administration is illustrious with great deeds of statesmanship, patriotism and justice, is stricken down in the meridian of his usefulness and greatness, simply and only because he was the head of a government.

Assassination is teaching us awful lessons. Twice within thirty years have these red-handed enemies of the human race lowered our flag in mourning, and filled our hearts with woe. This recent and bloody tragedy of State is another and awful warning to the people of this State and of this great nation. It imposes upon us at this hour, engaged as we are in the work of better securing the people's right to life, liberty and the pursuit of happiness — an imperative duty. The people must be given the right to teach the lesson that while the greatest possible latitude will be given for freedom of speech, yet no speech shall be allowed which will incite to murder or to assassination. All people, within the borders at least of this great State, must understand that the sacred name of liberty shall not be invoked to shelter the enemies of the State and its society. It must be especially taught, so far as we can teach it by the fundamental law which we are proposing to amend, that those across the sea are welcome to these happy shores if they honestly propose to live this grand American life. The lesson must also be taught them by all the power which resides in every organized community, for its own safety that their peculiar notions of socialism and anarchy, if they have such notions, must be left on shipboard. Over the gates of the republic must be written "that he who enters here must leave anarchy and socialism behind."

Mr. President, the great sorrow of the brave people of France is also our sorrow. We can never forget the services and sacrifices of their patriots in our behalf during our early struggle for independence, particularly those of La Fayette. As that gallant Frenchman walked hand in hand with Washington and our fathers through the revolution, so in spirit, Washington and La Fayette walked with

the matchless soldiery of the Union through the fiery furnace of our civil war. In imagination go with me to Paris. In that capital city is the wondrous history of the French people written in iron and in stone. Its palaces, arches, columns and statues speak a various language. On the banks of the Seine, among the people he loved so well, is the gorgeous mausoleum of the great Napoleon, inclosing and hallowing his dust, so far as the work and art of man can hallow it. Around that tomb, keeping their eternal watch and guard, are the sculptured marshals of France, from whose marble lips you may hear the thrilling story of Jena, of Marengo, of the sun of Austerlitz and the snows of Moscow, and also the mighty words that were spoken by the forty centuries from the summit of the pyramid to the intrepid spirits of the army of Egypt. Look at the tombs of the mighty dead who are sleeping in Pere-la-Chaise and the Pantheon, in Notre Dame, inspiring beyond expression; but the modest tomb, near the little church, of General La Fayette speaks the language of liberty and love, that Americans best understand. The one excites our admiration, and the other kindles anew our patriotism and commands our affection. Linked together in immortality are the names of Washington and La Fayette. When the people of this republic shall have worshipped liberty at the tombs of Washington, Lincoln, Grant, Garfield and other tutelar saints of Columbia, and shall pray for other lessons in patriotism, they will reverently turn their hearts and faces toward the tombs of La Fayette and Carnot. Mr. President, I heartily second these resolutions. (Applause.)

Mr. Blake — Mr. President, I move that this Convention evinces its appreciation of the resolution offered by Mr. Bigelow, and the noble and sympathetic sentimennts it expresses, by a rising vote.

Mr. Storm — I can scarcely refrain, at this time, from making a few remarks, for my blood is stirred as it has never been stirred before. I have often wondered why I was such an ardent American citizen although foreign born. I can better understand it after hearing the remarks of my colleagues, Mr. Bigelow, Mr. Root and Mr. Vedder. I can better understand it, Mr. President, because I happened to be born in France. I have scarcely words to express my feelings at this time, owing to the deep agitation that I experience. I will only say that I am prouder to-day than I ever have been of being born in France, and I am prouder to-day than I ever have been of being an American citizen. (Applause.)

Mr. McClure — I desire to add only a word to those which have

been so well, so eloquently, so intelligently, said by the delegates who have spoken; and yet it seems to me that such occasions as the present bring with them something of a lesson which this Convention, I may be allowed to suggest, I hope, in perfect propriety, may take well to heart. I join in the expressions of detestation for the crime that was committed upon the person of President Carnot, with all my heart; and yet while that act of outrage reminds us that as individuals, the words of Edmund Burke, so well spoken, are appropriate, "What shadows we are, and what shadows we pursue," the event of President Carnot's death, and an event which preceded it by but a few weeks, are worthy, in my mind, of a moment's attention. The echoes of the cannon which announced the placing in my native village and county of the corner-stone of a monument which marked the consultations and conferences of the great general of this republic, George Washington, and the great French admiral who was to join with him in the great victory which decided the war of the revolution had hardly died away, when there comes to us the news of the death of the head of that great nation which had succored this feeble government in its hour of peril. The lesson, Mr. President, comes to my mind as one that, while we are, as individuals, to remember how unimportant, how fleeting our life is, we are also to remember that as a nation, we should not be too proud, or too conceited, and that we should remember what we owe to this great government, this great country, this great people of France, for being what we are. And there follows a suggestion, which comes with appropriateness just now when the atmosphere has been filled, for the last three months, with an illiberal and intolerant spirit, totally un-American. We should remember that but for the contributions of the peoples of foreign nations, of all degrees, of all nationalities, of all religions, this country would not be the great republic, possessing the grand institutions that it holds to-day. This is a government made up of all people. Its credit, its standing, its position, belong by right to no particular people, but are made up of a grandly magnificent citizenship gathered from all over the world. A part of this, we must remember, is due to the succor that came at Yorktown, the grand sortie, made on the British at Yorktown, led by La Fayette. We should remember in all our acts, particularly when we legislate for a people, that while we are to lay deep and sound the foundation stone so there shall be perfect protection and perfect safety, yet at the same time our action should be liberal, our actions should be tolerant, our actions should be such as to induce citizenship, such as has been given to this country by the people of all lands.

I cannot take my seat, sir, after having made these suggestions without saying that I had the pleasure once of meeting the distingushed gentleman who is no more. Reading a few nights ago something from an author of whom I am very fond and from whom I have just quoted, it seemed to me that the words that were applied by him to himself and of himself could well be applied not only to President Lincoln, who met his death in a horrible manner, but to President Carnot, and that was that his arts, if he had any, were manly arts; he went into public life a modest, unassuming official. He built himself up in the affections of his people and at the hour of his death he stood alone, the one man to whom the people of France looked for the preservation of republican government and the carrying on of the institutions which go with a republic. (Applause.)

The President pro tem. put the question on the adoption of the resolution and by a rising vote it was unanimously determined in the affirmative.

The President pro tem.— The next business in order is the presentation of memorials.

Mr. Powell presented the petition of Mrs. William J. Richardson and 1,259 others, women, 672, men, 587, of Kings county, in favor of woman suffrage.

Referred to the Committee on Suffrage.

Mr. Barhite (by request) presented the petition of T. F. Parker and other citizens of the town of Wheatland, Monroe county, favoring an amendmennt to the Constitution so as to protect the public school fund and prohibit all sectarian appropriations.

Referred to Committee on Education.

Mr. McArthur presented the petition of Typographical Union, No. 6, of Glens Falls, asking for the abolition of prison contract labor.

Referred to the Committee on State Officers.

The Vice-President presented the petition of John E. Agar and others of New York city, requiring that the selection of appointive officers of the State and of cities shall be based upon merit and competency.

Referred to the Select Committee on Civil Service.

Mr. Tucker presented the petition of Hon. W. H. Arnoux and ninety members of the National Christian league, of Brooklyn, in favor of woman suffrage.

Referred to the Committee on Suffrage.

Mr. Porter presented a communication in the form of a resolution

from the Medical society of the county of Erie favoring the proposed amendment to the Constitution relative to the qualifications of coroners.

Referred to the Committee on County, Town and Village Officers.

The President pro tem.— Communications from the Governor and other State officers. Notices, motions and resolutions to be called for by districts numerically.

The Secretary called the districts.

The President pro tem.— Proposed amendments to the Constitution are in order. The Secretary will call the districts.

The Secretary called the districts.

O. 256.— Mr. C. H. Truax offered a proposed amendment to article 14 of the Constitution by striking out all of said article except the thirteenth section, and by amending that section so that it shall read as follows: "This Constitution shall be in force from and including the 1st day of January, 1895."

Referred to the Committee on Constitutional Amendments.

O. 257.— Mr. Burr offered a proposed amendment to article 8 of the Constitution by adding a new section thereto which provides that combinations between corporation, co-partnerships or associations of persons for the purpose of creating or tending to create a monopoly to control the use or to regulate the charges for the use of telephones or telegraphs shall be illegal or void and further providing that the Legislature shall cause such investigations to be made and such laws to be passed as may be necessary to ascertain and establish just and reasonable maximum rates of charges to be paid for the use of telephone and telegraphs.

Referred to the committee on Railroads, Transportation and Electrical Transmission.

O. 258.— Mr. Lauterbach offered a proposed amendment to article 2 of the Constitution relative to suffrage.

Referred to the Committee on Suffrage.

O. 259.— Mr. Lauterbach also offered a proposed amendment to article — of section 6 creating a State Board of Charities.

Referred to the Committee on Charities.

O. 260.— Mr. Van Denberg offered a proposed amendment to section 13, article 6 of the Constitution, fixing the term of office and compensations of the justices of the Supreme Court and judges of the Court of Appeals.

Referred to the Committee on Judiciary.

O. 261.— Mr. Goodelle offered a proposed amendment to section 6, article 1 of the Constitution, by providing that in all criminal prosecutions the party accused shall be confronted with the witnesses against him.

The President pro tem.— Referred to the Committee on Preamble and Bill of Rights.

Mr. Hottenroth — Mr. President, I suggest that that also be sent to the Committee on Powers and Duties of the Legislature. There is an amendment that I proposed to the same section which I believe, is before that committee, and I suggest that Mr. Goodelle's amendment be sent to the same committee.

The President pro tem.— The Chair would inform the gentleman that it would seem to him that the proper direction has been given to the paper.

Mr. Hottenroth — I understand, Mr. President, that there is an amendment to that particular section before the Committee on Powers and Duties of the Legislature. It was, therefore, that I suggested that this be sent to the same committee.

The President pro tem.— The Chair would decide that, so far as he is concerned, it would be better to have that committee discharged and have the amendment sent to the appropriate committee.

Reports of standing committees are in order.

Mr. C. B. McLaughlin, from the Committee on County, Town and Village Government, reported in favor of the adoption of the following resolution:

"Resolved, That the Committee on County, Town and Village Government be discharged from the further consideration of proposed constitutional amendment No. 88, relating to suffrage, and that the same be referred to the Committee on Suffrage."

Mr. C. B. McLaughlin — Mr. President, it seems proper that this proposition should go to the Committee on Suffrage. There are several proposed constitutional amendments to confer upon women the right of suffrage, and this seems to have that end in view. That there may be no conflict in the workings of the two committees, this suggestion is made.

The President pro tem. put the question on the resolution and it was determined in the affirmative.

Mr. Kellogg — Mr. President, I move that we do now adjourn.

The President pro tem.— Before the motion to adjourn is put the Secretary will read the announcement of committee meetings.

The Secretary read the announcement of committee meetings.

The President pro tem. put the question on the motion to adjourn and it was determined in the affirmative, whereupon the Convention adjourned until to-morrow morning at ten o'clock.

Wednesday, June 27, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber at the Capitol, Wednesday, June 27, 1894, at ten o'clock A. M.

Vice-President Alvord in the Chair.

The Rev. J. H. Messenger offered prayer.

The Journal of Tuesday, June 26, was read and approved. The Vice-President announced the order of memorials and petitions.

Mr. Durfee presented the memorial of M. B. Adams and others of Wayne county, asking that the selection of appointive officers of the State and cities shall be based upon merit and competency.

Referred to the select Committee on Civil Service.

Mr. Durfee also presented a memorial from the Eastern Wayne Christian Endeavor Union in favor of an amendment prohibiting appropriations for sectarian purposes.

Referred to the Committee on Charities.

Mr. Lincoln presented the petition of James Low and 847 others, citizens of Cattaraugus county, 463 women and 384 men, praying that the word "male" be stricken from the Constitution.

Referred to the Committee on Suffrage.

Mr. Mereness presented the petition of Marietta S. Weller and 354 others, of Lewis county, 156 women and 198 men, praying that the word "male" be stricken from the Constitution.

Referred to the Committee on Suffrage.

Mr. Hirschberg presented the petition of Smith Ely and others, of Newburg, asking that the selection of appointive officers of the State and cities be based upon merit and competency.

Referred to the select Committee on Civil Service.

Mr. Hirschberg also presented the petition of William S. Galloway and others, of Hankins, N. Y., asking for an amendment to provide for the taxation of church property.

Referred to the Committee on Charities.

The Vice-President announced the order of motions and resolutions to be called for by districts numerically.

Mr. Meyenborg offered the following resolution:

R. 99.— Resolved, That the Superintendent of the Capitol be, and he hereby is, requested to have the water tank in the Convention chamber supplied with pure spring water at not to exceed two dollars per day, to be paid out of the contingent fund of the Convention.

Referred to the Committee on Contingent Expenses.

Mr. Cookinham called up his resolution in regard to the adjournment of the Convention over the week in which the Fourth of July occurs.

The Secretary read the resolution as follows:

R. 88.— Resolved, That when the Convention adjourns on Friday, June twenty-ninth, it be to meet on Monday, July ninth, at twelve o'clock noon.

Mr. Lincoln offered the following substitute:

Resolved, That when this Convention adjourns on Friday, the twenty-ninth instant, it be to meet on Thursday, July fifth, at ten o'clock A. M.

Mr. Goodelle — Mr. President, I move that this matter lie over until Friday morning. My object in making this motion at this time is that our attendance is very light this morning, and we should have nearly a full Convention to consider it. This is a matter of great moment, and it seems to me, so far as the Convention is concerned, it should not be decided hastily, as we should take into consideration the question as to how the matter will be viewed by our constituents. I therefore move that the matter lie over and be made a special order for Friday morning of this week.

Mr. Dickey — Mr. President, what promise or assurance is there that there will be a larger or better attendance on Friday than there is this morning? I think there is a good, fair attendance here, and it can be well disposed of now. Therefore, I hope that the motion of the gentleman from Syracuse will not be adopted.

Mr. Goodelle — Mr. President, in answer to the question raised by our friend, I desire to say that to-morrow there are special orders, which will evidently call a full Convention, and I know at this time, as most of the members do, that very many are absent necessarily to-day who will be here to-morrow and the next day. Being the week of college commencements, it has called away a large number who will be here to-morrow morning. Therefore, I think we shall lose nothing by getting a fair expression of this matter and make it a special order for Friday morning.

Mr. Durfee — Mr. President, it occurs to me that it may be desirable for gentlemen to know as speedily as possible what disposition is to be made of this resolution in view of making their own arrangements. Taking into consideration what the gentleman from Syracuse (Mr. Goodelle) has said of the probability of there being a full attendance to-morrow, I would suggest, instead of making it a special order for Friday, it be made a special order for to-morrow morning.

Mr. Vedder — Mr. President, I would suggest to the gentleman from Wayne (Mr. Durfee) to have it made a special order for to-morrow, immediately after the reading of the Journal, and then you will get it in ahead of the other special orders and have it disposed of.

Mr. Durfee — Mr. President, that will be quite acceptable to me, if it is to the mover of the resolution.

Mr. Goodelle — Mr. President, I will accept that amendment.

The Vice-President put the question on making the matter a special order for to-morrow morning, immediately after the reading of the Journal, and it was determined in the negative.

The Vice-President — The question recurs on the substitute offered by Mr. Lincoln.

Mr. Davis called for the ayes and noes.

Mr. Foote — Mr. President, I hope, sir, that this resolution will not prevail. We have already exhausted substantially half of the time at our disposal for the work we have in hand. We have left to us but about forty working days, if we proceed in the manner we have been proceeding, sitting on all the days of the week, except Monday and Saturday. Now, sir, in the present stage of the progress of the work of the Convention we have not any more time than is necessary to dispose of the work we have in hand. There is yet to be done before the committees of this Convention a great amount of work. That work can proceed as well during next week, with the exception of the holiday on the Fourth of July, as it has proceeded in the past. I think, sir, that we are in duty bound to sit here on all the days of next week, except one, the Fourth of July, and if in order, Mr. Chairman, I would move to amend the resolution as it stands before the Convention so that it shall read, when we adjourn on Friday it be to meet on Tuesday morning at the usual hour.

The Vice-President — That is the order of the House. There is no necessity for the motion of the gentleman, and the Chair, there-

fore, rules it out of order. The question is on the substitute offered by Mr. Lincoln, and on that Mr. Davies calls for the ayes and noes.

The ayes and noes were ordered.

The Vice-President put the question on Mr. Lincoln's substitute, and it was determined in the negative.

The Vice-President put the question on the resolution of Mr. Cookinham.

Mr. E. R. Brown — Mr. President, I would like to suggest that the time that this Convention has to do its work in is very brief, and that it stands in imminent danger when it finally adjourns of having it said that it was inefficient and that it did not perform its duties properly, on account of the short time in which it necessarily did its work. If we take this week off and do not sit here we will subject ourselves to that criticism. Now, Mr. President, it is customary with about one-third of this Convention, not necessarily the same gentlemen, but about one-third of the delegates, to take a vacation every day we sit here, and I do not think we should waste any more time. Mr. President, I am decidedly opposed to this resolution.

Mr. Vedder — Mr. President, I move you that this matter be made a special order for half-past ten o'clock to-morrow morning. I entirely agree with Mr. Goodelle, of Onondaga, that this matter ought to be considered by a full Convention, or so many of the Convention as we can reasonably get together. There are many now absent at their college commencements, and for other reasons, and they will be here to-morrow. It is a very important question. As the gentleman from Monroe has said, we ought to sit here and do the work that we have been elected by the people to do. We have no more right to squander the people's money without rendering an equivalent for it than any hired man has to quit work for which he is being paid. The people expect us to remain here and do the work for which we are being paid. I hope the Convention will see it in that light and not adjourn over the Fourth of July week, but work every day that week, except, perhaps, the Fourth of July. Therefore, I hope that this may be postponed until to-morrow and made a special order for half-past ten, so that we may have the voice and the vote of the full Convention.

Mr. McClure raised the point of order that the motion of the gentleman had already been acted upon by the Convention.

The Vice-President decided the point of order well taken.

Mr. McClure — Mr. President, I call the attention of the Chair to the fact that the reading of the Journal is generally at half-past

ten o'clock, and, therefore, the motion is the same as that which has already been voted down.

Mr. Cookinham — Mr. President and gentlemen, I offered the resolution without any particular desire to have it prevail in the Convention, but for the purpose of having it determined whether we should adjourn over the week or not. I am not frightened to have the Convention lose one day or two days. I do not believe, Mr. President, that the work of this Convention is going to be judged as to whether we adjourn over the Fourth of July or not. I believe, gentlemen, that the work of this Convention is to be determined or to be decided upon by the people whether we have done our work well or not. I do not believe in the cheap clap-trap of being afraid to adjourn over one day or two days of next week.

The Vice-President — The Chair is of the opinion that the remarks of the gentleman are not in order, as he is debating the main question, and the question now is on postponing the matter.

Mr. Cookinham — I understand what the question is, Mr. President. I hope the question will now be decided. I care but a trifle which way the matter is decided, but hope it will be now decided and not put over until to-morrow morning.

Mr. Lester — Mr. President, the Convention has adopted a set of rules, and among those rules is one which fixes the order of business, and in that order of business there is a place for special orders, and it seems to me, therefore, Mr. President, that any proposition to set down a matter as a general order out of that regular order of business, is not in order.

The Vice-President — The Chair will inform the gentleman from Saratoga that he is wrong. The question is on the motion of Mr. Vedder making it a special order for 10.30 o'clock to-morrow morning.

Mr. Davies called for the ayes and noes.

The resolution was lost by a vote of 37 ayes, 95 noes.

Ayes — Messrs. Alvord, Arnold, Baker, Barnum, Barrow, Brown, E. A., Brown, E. R., Cady, Carter, Church, Coleman, Davies, J. C., Durfee, Faber, Floyd, Foote, Francis, Fuller, C. A., Fuller, O. A., Gilbert, Goeller, Goodelle, Hedges, Lewis, C. H., Lyon, Marshall, McMillan, Powell, Riggs, Rogers, Smith, Steele, W. H., Truax, C. H., Van Denbergh, Vedder, Vogt, Wellington — 37.

Noes — Messrs. Acker, Ackerly, Banks, Barhite, Bigelow, Blake, Bowers, Burr, Bush, Campbell, Cassidy, Chipp, Jr., Clark, G. W., Clark, H. A., Cochran, Cookinham, Cornwell, Crosby, Curran,

Danforth, Davenport, Davis, G. A., Dean, Deyo, Dickey, Doty, Durnin, Emmet, Farrell, Fields, Fitzgerald, T. W., Forbes, Galinger, Gibney, Gilleran, Green, A. H., Green, J. I., Griswold, Herzberg, Hirschberg, Holls, Hotchkiss, Hottenroth, Jenks, Johnson, I. Sam, Johnson, J., Kellogg, Kimmey, Lauterbach, Lester, Lewis, M. E., Lincoln, Mantanye, Marks, Maybee, McArthur, McClure, McCurdy, McDonough, McLaughlin, C. B., Mereness, Meyenborg, Morton, Mullen, Mulqueen, Nichols, Nicoll, Ohmeis, Osborn, Parker, Parmenter, Peabody, Peck, Phipps, Platzek, Pool, Porter, Roche, Roderick, Spencer, Springweiler, Steele, A. B., Storm, Sullivan, Tibbetts, Titus, Towns, Truax, C. S., Tucker, Turner, Veeder, Whitmyer, Wiggins, Williams, Woodward — 95.

The Vice-President — The question is on the original proposition of Mr. Cookinham.

Mr. Francis called for the ayes and noes and they were ordered.

Mr. Gilbert — Mr. President, I desire to say one word upon the merits of this proposition. The members of this Convention are charged with the duty and the responsibility of deciding what we ought to do in this matter. Therefore, I am not disposed to appeal to anybody or to any consideration outside of this Convention, or other than a direct appeal to the sense of duty on the part of every member of this Convention. Now, for myself, without undertaking to speak for anybody else, and without undertaking to censure anybody who differs from me, I have no hesitation in saying that I for one feel it my duty to vote in favor of being on the ground next Tuesday morning at ten o'clock, unless some commanding personal reason, such as ordinarily influences us, shall prevent. Now, I desire to make just as strong an appeal as I am able to make to the conscience and judgment and business sense of this Convention. Is there, when I appeal to that sense, any good, substantial and sufficient reason why we should not be here next Tuesday morning? I unhesitatingly say, so far as I am concerned, that there is no such reason. Whatever the people may think about it, I am entirely willing to stand before them whenever I can stand before myself and have the approval of my own judgment. Now, that judgment is, that there cannot be any sufficient reason why we should not be in our places next Tuesday morning. What does the Fourth of July stand for? It is the great national day of a self-governing people. It represents the day when we said to the world: We are competent to govern ourselves; we have the intelligence and character necessary for it. I think that intelligence and

character call upon us to be in our places next Tuesday morning, and I hope that the resolution will not prevail.

Mr. Bowers — Mr. President, it seems to me that the only question for this Convention to determine is the manner in which it will best progress its work. The present resolution, which proposes to adjourn for an entire week, is a resolution which undoubtedly will be defeated by the Convention; but, on the other hand, it seems to me that if we attempt to bring back the delegates of this Convention on Tuesday for one day's session, with the undoubted wish on the part of most, if not all, the delegates to return to their homes on the Fourth of July, that you will have so small an attendance as to be unable to accomplish any business. I cannot see why we should not deal with the matter on the basis that will most accommodate the convenience of the delegates. While I heartily approve of sitting and working next week, I cannot see that we are to advance our work by meeting here Tuesday and going away Tuesday afternoon. Those delegates who come will be in a hurry to get away on early trains, and it will be very largely a lost day. Holding these views, and wishing to lose no time, and at the same time to be here when we can accomplish work, I offer as an amendment, that when this Convention adjourns on Friday next, it shall adjourn until Thursday, July 5, at 10 A. M., and that this Convention also sit on Saturday of next week.

Mr. Cookinham — Mr. President, I stated that I offered the resolution that it might be determined just what we should do next week. I concur with the gentleman from New York (Mr. Bowers) in his proposition, and, with the permission of the Convention, I will accept his views and make it my resolution.

The Vice-President — The Chair will say the gentleman cannot accept it, as the ayes and noes have been called for.

Mr. Cookinham — I suppose it can be accepted by unanimous consent?

The Vice-President — The Chair objects.

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

The President pro tem. put the question, and the previous question was ordered.

Mr. Mereness — Mr. President, I rise to a point of order. The amendment is out of order, inasmuch as it was offered after the ayes and noes had been ordered on the main question.

The Vice-President — The gentleman is entirely out of order.

The question recurs on the motion of the gentleman from New York (Mr. Bowers).

Mr. Davies called for the ayes and noes, and the ayes and noes were ordered.

The Secretary proceeded to call the roll.

Mr. Vedder — Mr. President, I ask to be excused from voting, and will briefly state my reasons. I agree with the gentleman from Franklin (Mr. Gilbert) that every delegate here should vote as his judgment and his conscience dictate. I believe it to be my duty, at least, to do all that I possibly can that this Convention may remain in session next week every day except, possibly, the Fourth of July. I do not believe that an honest, conscientious attempt, sanctioned by the good judgment of the members of this Convention, that we should sit here and execute the trust and perform the duties which we have been commissioned to perform, is clap-trap. I do not believe that the large number of delegates in this Convention who are opposed to adjourning over next week and who are opposed to the resolution of the gentleman from Oneida (Mr. Cookinham), are moved by clap-trap motives. I believe they are actuated by an endeavor to do their duty honestly and conscientiously, and that when they are doing that it is not clap-trap. I withdraw my request to be excused from voting and vote no.

Mr. McClure — I ask to be excused from voting and will briefly state my reasons. Mr. President, I believe that the business of this Convention would be furthered in its progress by an adjournment during the coming week. I do not believe that there would be so large an attendance that we should be justified in recommending to the people amendments which should be adopted under such circumstances. But I do not see that we will gain anything by the motion which is at present before the Convention. We do not save anything in point of time. It will be quite as inconvenient for delegates to be here on Saturday and return to their homes as it will be to come here on Tuesday. As I am not in favor of breaking in upon the rule which provides that we shall meet on Tuesdays, Wednesdays, Thursdays and Fridays, unless there is to be something particularly gained by it, I am not in favor of the resolution. I prefer that we should go on as the rules now provide. I am willing to come here and do my duty in the premises because it is my duty, and I will do it as well on Tuesday as I will on Saturday. I, therefore, am opposed to the present motion. I withdraw my request to be excused from voting and vote no.

Ayes — Messrs. Ackerly, Arnold, Baker, Banks, Barhite, Barnum, Bigelow, Blake, Bowers, Burr, Bush, Carter, Chipp, Jr., Clark, H. A., Cochran, Coleman, Cookinham, Crosby, Curran, Danforth, Davenport, Deyo, Durfee, Durnin, Emmet, Faber, Farrell, Fields, Floyd, Forbes, Fraser, Galinger, Gilleran, Goeller, Green, A. H., Griswold, Herzberg, Holls, Hotchkiss, Johnson, J., Kerwin, Kimmey, Lauterbach, Lincoln, Manley, Marshall, Maybee, McMillan, Meyenborg, Nichols, Nicoll, Ohmeis, Parker, Peabody, Peck, Platzek, Riggs, Roche, Roderick, Rogers, Smith, Storm, Tibbetts, Titus, Towns, Truax, C. H., Truax, C. S., Tucker, Veeder, Vogt, Williams, Woodward — 72.

Noes — Messrs. Alvord, Barrow, Brown, E. A., Brown, E. R., Cady, Campbell, Cassidy, Church, Cornwell, Davies, Davis, Dean, Dickey, Doty, Fitzgerald, T. W., Foote, Francis, Fuller, C. A., Fuller, O. A., Gibney, Gilbert, Goodelle, Green, J. I., Hedges, Hirschberg, M. H., Hottenroth, Jenks, Johnson, I. Sam, Kellogg, Lester, Lewis, C. H., Lewis, M. E., Lyon, Mantanye, Marks, McArthur, McClure, McCurdy, McDonough, McLaughlin, C. B., Mereness, Morton, Mullen, Mulqueen, Osborn, Phipps, Pool, Porter, Powell, Spencer, Springweiler, Steele, A. B., Steele, W. H., Sullivan, Turner, Van Denbergh, Vedder, Wellington, Whitmyer, Wiggins — 60.

The Secretary announced the vote to be seventy-two in the affirmative and sixty in the negative.

The Vice-President — The motion prevails, and the question recurs upon the proposition of the gentleman from Oneida (Mr. Cookinham).

Mr. Goodelle — I would like to ask of the President if that does not require a two-thirds vote?

The President pro tem.— The Chair would inform the gentleman that a two-thirds vote is not necessary in this case.

Mr. Goodelle — It was our standing rule, I supposed, that there should be no session on Saturday. This motion includes the proposition to hold a session on Saturday and, therefore, it seems to me to require a two-thirds vote.

The Vice-President — The Chair would inform the gentleman that he is not correct in his proposition. The question before the House now is on the proposition of Mr. Cookinham as amended.

Mr. Herzberg — Mr. President, I have just received a telegram notifying me of the sudden death of a brother-in-law of mine, and I wish to ask to be excused from attendance.

No objection being made, Mr. Herzberg was granted a leave of absence.

Mr. Cochran — The Chair stated the question to be on Mr. Cookinham's motion as amended. I raise the point of order that the motion that has just been disposed of disposes of the entire matter, including Mr. Cookinham's motion.

The Vice-President — The gentleman is entirely out of order.

Mr. Cochran — May I ask for information what the resolution is?

The Vice-President — The question is on the motion of Mr. Cookinham as amended.

Mr. Dickey — I move to amend by striking out the provision for a session on Saturday.

The President pro tem.— The Chair will inform the gentleman that we are under the previous question and no amendment is now in order. The Secretary will proceed to call the roll.

Mr. Dickey — I ask to be excused from voting and will briefly state my reasons. The rules established after long and earnest and serious deliberation provided that there should be no Saturday sessions, and many of us have accommodated ourselves to that and made our plans and engagements accordingly, and I am opposed to any Saturday session and to any change, and for the additional reason that having a session here on Saturday will necessitate some of the members of this Convention desecrating the Sabbath day by traveling to reach their homes. I withdraw my request to be excused from voting and vote in the negative.

Mr. Maybee — I desire to be excused from voting and will briefly state my reasons. I think a session on Saturday will be a hollow mockery. There will not be enough members here to constitute a quorum. At the same time, Mr. President, I am willing to sit here any number of days that are necessary to transact the business of this Convention. Sixty-three days have elapsed since this Convention first began its work and we have only been in session about twenty days. The members of the Convention have drawn pay for three times as many days as they have been present and performed the work which they were elected to perform. I am in favor of sitting the whole of next week, except on the Fourth of July, but not including Saturday, because I do not think a session on that day will call out a sufficient attendance to transact business. I, therefore, withdraw my request to be excused from voting and vote no.

Ayes — Messrs. Ackerly, Arnold, Baker, Banks, Barhite, Bigelow, Blake, Bowers, Brown, E. R., Burr, Bush, Carter, Clark, G. W., Clark, H. A., Cochran, Coleman, Cookinham, Cornwell, Crosby, Curran, Danforth, Davenport, Deyo, Durnin, Emmet, Faber, Farrell, Fields, Forbes, Francis, Galinger, Gilleran, Goeller, Holls, Hotchkiss, Johnson, J., Kellogg, Kerwin, Kimmey, Lauterbach, Lincoln, Manley, Marshall, McMillan, Meyenborg, Nichols, Nicoll, Ohmeis, Parmenter, Peck, Platzek, Riggs, Roche, Roderick, Rogers, Smith, Tibbetts, Titus, Truax, C. H., Truax, C. S., Tucker, Veeder, Vogt, Williams, Woodward — 65.

Noes — Messrs. Alvord, Barnum, Barrow, Brown, E. A., Cady, Campbell, Cassidy, Church, Davies, Davis, Dean, Dickey, Doty, Durfee, Fitzgerald, T. W., Floyd, Foote, Fraser, Fuller, C. A., Fuller, O. A., Gibney, Gilbert, Goodelle, Green, A. H., Green, J. I., Griswold, Hedges, Hirschberg, Hottenroth, Jenks, Johnson, I. Sam, Lewis, C. H., Lewis, M. E., Lyon, Mantanye, Marks, Maybee, McArthur, McClure, McCurdy, McDonough, McLaughlin, C. B., Mereness, Morton, Mullen, Mulqueen, Osborn, Parker, Peabody, Phipps, Pool, Porter, Powell, Spencer, Springweiler, Steele, A. B., Steele, W. H., Storm, Sullivan, Towns, Turner, Van Denbergh, Vedder, Wellington, Whitmyer, Wiggins — 66.

The resolution was lost. Ayes, sixty-five; noes, sixty-six.

Mr. Doty offered the following resolution:

R. 100.— Resolved, That the Sergeant-at-Arms be directed immediately to place in the Assembly corridor a blackboard, designating thereon the names of the several standing and select committees, places of meeting and time of regular meetings, and a daily announcement of special meetings.

The Vice-President — The Chair would inform the gentleman that the resolution must be referred to the Committee on Contingent Expenses.

Mr. Doty — I ask unanimous consent that the resolution be now considered.

There being no objection, the President pro tem. put the question on the adoption of the resolution and it was determined in the affirmative.

The Vice-President announced the order of introduction of propositions for constitutional amendments.

O. 262.— Mr. Goeller offered a constitutional amendment proposing a new article to protect innocent purchasers of real estate, prevent fraud and limit the time in which to invoke remedies.

Referred to the Committee on Preamble and Bill of Rights.

O. 263.— Mr. Tucker offered a proposed amendment to article 1 of the Constitution, relating to the committal of arrested persons.

Referred to the Committee on Preamble and Bill of Rights.

O. 264.— Also, a proposed amendment to same article, relating to the punishment of inmates of State prisons, asylums, alms-houses, etc.

Referred to the Committee on Preamble and Bill of Rights.

O. 265.— Mr. Cady offered a proposed constitutional amendment to article 8 of the Constitution, in order to secure uniformity and stability of laws for the organization of cities.

Referred to the Committee on Cities.

O. 266.— Mr. Parmenter offered a proposed constitutional amendment to sections 2 and 21 of article 6 of the Constitution, relating to the number of judges of the Court of Appeals and the tenure of their office, and to prohibit certain judicial officers from practicing as attorney or counselor in any court of record or acting as referee.

Referred to the Committee on Judiciary.

O. 267.— Mr. A. B. Steele offered a proposed constitutional amendment amending article 6 by adding a new section at the beginning and amending sections 15, 16, 17 and 18, relating to County, Surrogate, District and Justice's Courts.

Referred to the Committee on Judiciary.

O. 268.— Mr. Cornwell offered a proposed constitutional amendment to article 8 of the Constitution, to protect the free common schools, and to prohibit all sectarian appropriations.

Referred to the Committees on Charities and Education.

O. 269.— Mr. Vedder offered a proposed constitutional amendment to section 7 of article 4, in relation to official succession.

Referred to the Committee on Legislative Powers.

The Vice-President announced the order of the reports of standing committees.

Mr. Marshall, from the Committee on Judiciary, to which was referred the presentment by the grand jury of New York county, in relation to the coroner's office, reported that they had considered the same and returned it to the Convention with the recommendation that it be referred to the Committee on County, Town and Village Officers, which committee has under consideration the proposed amendment relating to the office of coroner.

The report of the committee was agreed to and the matter was referred to the Committee on County, Town and Village Officers.

Mr. Vedder, from the Committee on Powers and Duties of the Legislature, to which was referred the overture introduced by Mr. McMillan, entitled, "No. 11. Proposed constitutional amendment to amend section 16 of article 3 of the Constitution of the State of New York, relating to legislation," reported in favor of the passage of the same; which report was agreed to and the said proposed amendment was committed to the Committee of the Whole.

Mr. Davis, from the Committee on Banking and Insurance, to which was referred the resolution (No. 89) introduced by Mr. Kellogg, on Thursday, June 21, reported in favor of the passage of the same without amendment.

The Vice-President put the question on the adoption of the resolution, and it was determined in the affirmative.

The Secretary read the announcement of committee meetings.

On motion of Mr. Banks, the Convention adjourned until Thursday morning, June 28, at ten o'clock.

Thursday, June 28, 1894.

The Constitutional Convention of the State of New York met at the Assembly Chamber in Albany, June 28, 1894, at ten o'clock A. M.

President Choate called the Convention to order.

The Rev. A. Kennedy Duff offered prayer.

The Journal of June 27th was read and approved.

The President — The Chair has received a number of memorials, one asking for a provision directing a tax to be laid on the liquor business, which was referred to the Committee on Powers and Duties of the Legislature.

Also, several in respect to the civil service, which are referred to the special committee.

Also, a memorial from the New York Committee for the Prevention of State Regulations of Vice, asking for an amendment prohibiting the Legislature from regulating social vice.

Referred to the Committee on Powers and Duties of the Legislature.

A communication from the Dobbs Ferry Republican club in respect to apportionment.

Referred to the Committee on Legislative Organization.

The next business in order is the presentation of communications

from State officers. A communication from the Comptroller's office will be read by the Secretary.

The Secretary read the following communication:

Comptroller's Office, Albany, N. Y., June 26, 1894. Communication No. 8, document No. 14.

To the Constitutional Convention, Albany, N. Y.:

GENTLEMEN.— I have the honor to transmit herewith a statement of the total amount of collateral inheritance tax collected in each of the counties in this State; also the amount of fees paid to each of the county treasurers and the amount of money paid in fees to the appraisers appointed by the several surrogates in conformity to the resolution of your honorable body passed June 22, 1894.

Very respectfully yours,

JAMES A. ROBERTS,

Comptroller.

Mr. A. H. Green — Mr. President, I move that the communication be printed.

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

The President — The communication will be referred to the Committee on State Finances and Taxation. Notices, motions and resolutions are in order.

Mr. Storm — Mr. President, I desire to move to reconsider the vote taken yesterday upon the resolution, having for its object the adjournment of this Convention from Friday, June 29th, until Thursday, July 5th, including a session on Saturday. Not so much that I favor the resolution, but judging from the vote taken yesterday morning the impression seems to prevail that a quorum would not be present on Tuesday next. There is a larger number present this morning, and it seems to me eminently proper that this matter should again come before the Convention. The vote taken yesterday morning indicated plainly that the majority were in favor of adjournment, but the question was defeated by an objectionable clause in the resolution. The further object of my motion is to offer an amendment to overcome the objection.

Mr. Durfee — Mr. President, inasmuch as very many gentlemen are present this morning who were not here yesterday, and who cannot be fully advised in regard to the action that was taken, it occurs to me that it would be proper for the Chair or the Secretary

to state the action then taken and the present situation of the question.

The President — The Secretary will read again, for the information of the house, the action taken yesterday from the introduction of Mr. Cookinham's resolution.

The Secretary read the portion of yesterday's Journal referred to.

Mr. Dickey — Mr. President, I would like to inquire how the member who made the motion voted yesterday; whether he voted with the majority or not.

Mr. Storm stated that he voted with the majority.

Mr. Dickey — Mr. President, I hope this motion to reconsider will not prevail. Practically all we did yesterday was to debate and decide this question. Now we start in again where we decided to leave off yesterday. It seems to me that when we succeed in accomplishing something we should allow the action to remain, instead of doing something one day and reconsidering it the next.

Mr. Moore — Mr. President, I hope the members will see fit to reconsider this motion, for this reason: The vote plainly shows that some of the members did not understand yesterday exactly what they were voting upon. We have here the singular phenomenon of an amendment to a motion being made, and then we have the motion put upon the question as carried and amended, defeated. Now, it seems to me that those two things are not compatible, and I, therefore, certainly hope that the members who were here yesterday and the members who are here to-day will take up this subject in all fairness and give it a reconsideration.

Mr. Maybee — Mr. President, I move to lay the motion on the table.

The President put the question on Mr. Maybee's motion and it was determined in the negative, ayes, 55; noes, 53.

Mr. Hirschberg — Mr. President, I would like to ask the Secretary under what order of business Mr. Cookinham's resolution was considered yesterday.

The President — The same order of business; notices, motions and resolutions. It seems to be in order.

Mr. Dickey — Mr. President, I ask for the ayes and noes on the motion to reconsider.

The President — The question is on the motion to reconsider.

Mr. Bowers — Mr. President, I hope this motion to reconsider

will prevail. I understand that it is to be followed by a proposition to strike out that part of the motion requiring the Convention to sit next Saturday. I shall accept such an amendment if made. That will leave us to adjourn from Friday of this week until Thursday of next week. I do not believe that there will be a quorum here next Tuesday. I do not believe one can be got in this Convention next Tuesday, and I am inclined to think that the members of this Convention who insist upon sitting here next Tuesday do so under a mistaken view as to public opinion. The public expect us to come here and do our work. They do not expect us to make a pretense of work. We won't do any work next Tuesday. A very large number of the Convention cannot come here without great inconvenience. We ought to be permitted to go to our homes on the Fourth of July. I do not believe in assuming to maintain a half way sort of a position before the public, a pretense at work, when we will not do it. If we are to insist upon coming here on Tuesday, let us find out what is going to be done that day. If we are going to come back here on Tuesday morning, let us be ready to proceed with our work as the most of us have been ready to do from the outset.

Mr. Storm — Mr. President, may I have the privilege of making a short statement of the proceedings and vote taken yesterday, in order to answer Mr. Moore? The amendment was adopted by a large majority and, after the main question was put, the question was raised in regard to Saturday's sitting, which was contrary to the rules as adopted, and for that reason, by a slender majority, it was beaten. Hence the discrepancy in the vote.

Mr. Mantanye — Mr. President, it seems to me that this matter was thoroughly gone over yesterday, and there is no use in going over it to-day. I am, therefore, very much opposed to the idea of reconsidering at this time. All this talk about the members of the Convention desiring to be home the Fourth of July is nonsensical and impractical. I do not think any of them would be at home. Certainly those who are to be here on Thursday morning would have to spend the greater part of the Fourth of July, the day before, in getting here, so that they could not be at their homes at all. There does not seem to me to be any use in further considering this matter, and we had better get down to the regular business of the Convention.

Mr. Kellogg moved the previous question, which was ordered.

The Secretary proceeded to call the roll on the motion to reconsider.

Mr. Becker — Mr. President, I ask to be excused from voting and desire to explain my reason. I would like, personally, very much to accommodate the gentlemen who desire to remain away from this Convention next week. Personally, I would enjoy it above all things, but I believe the people of this State are now looking at this Convention with a considerable degree of critical glance. They think it is a serious question whether we are earning the stipend which the State allowed us. In these hard times ten dollars a day seems a large sum to them, and if this motion was coupled with a motion that during the time this Convention should adjourn the pay should cease, I should feel different about this matter; but I believe it will be a serious mistake if we adjourn any way different from what we did during the week in which Decoration Day occurred. Mr. President, I withdraw my request to be excused from voting and vote no.

Mr. Platzek — Mr. President, I desire to be excused from voting and wish to give my reason. I remained here on Decoration Day in order to be present in the Convention the following day. Many of the gentlemen who then voted for an adjournment which would necessitate their coming here on that day were not present in their seats, discharging their duty, and I was. We did not have a quorum upon that day. Many of the gentlemen who have to-day voted against adjourning over until Thursday are delegates who have not been regular in their attendance in this body. I have been, and I do not believe, sir, that we will have a working quorum here on next Tuesday. I believe it is a fair statement to make that those of us who come here for the purpose of discharging our business will insist that business shall not be done unless there is a working quorum. I withdraw my request to be excused and vote aye.

Mr. W. H. Steele — Mr. President, I desire to be excused from voting and will briefly state my reasons. Mr. President, I see that this Convention is about evenly divided on the question of adjourning over the Fourth of July. There are grave and serious reasons on both sides. I have my doubts whether, if we choose to remain here in session, there will be a quorum on Tuesday or on Thursday. I have seen much of this matter of voting to adjourn for the sake of getting home, for the sake of having a vacation, and voting not to adjourn for the sake of carrying out the duties which we are deputed by the people of this State to perform. But, Mr. President, my request to be excused from voting is sincere. I am compelled to stay here in this city in any event, whether we adjourn, or whether the Convention sees fit to remain here. Therefore, I think it would

be scarcely fair for me to vote one way or the other, and for the purpose of getting the sense of the house, I desire the question to be put to the Convention whether I shall be excused or not.

The President put the question on excusing Mr. Steele and it was determined in the affirmative.

Mr. Storm — Mr. President, I decline to vote without stating my reasons. Although I am the mover of this motion I am opposed to it. As I stated at the outset, it was for the purpose of having some assurance, if we desire to remain, that we will have a working majority. I, therefore, withdraw my request to be excused and vote no.

Mr. Tekulsky — Mr. President, I desire to be excused from voting and I will state very briefly my reasons. I was the original mover of the motion to adjourn over Decoration Day, and I was under the impression, and stated so on the floor, that we would not have a voting majority, that we would not have a quorum here on the following Tuesday, but I found that I was very much mistaken when I got here on Tuesday, prior to Decoration Day. I found that we had a working majority and we did a great deal of good hard work that day. (Applause.) I do not understand why the delegates here desire to adjourn for next week when we have passed now seven weeks of our time and have really done nothing, and every day at this time counts. I, therefore, Mr. President, beg to withdraw my excuse and vote no. (Applause.)

Mr. C. H. Truax — Mr. President, I would like to be excused from voting and I will state my reasons. As near as I can make out this Convention is divided about equally in two parts: Those who have been invited to deliver Fourth of July addresses and those who have not. (Laughter.) I have not been invited to deliver a Fourth of July address but I have been invited to listen to one, and the only way I can escape that infliction is by having this Convention meet here next Wednesday. Therefore, selfishly, I am in favor, I don't know now just which one of these motions I am in favor of. (Laughter.)

The President — The question is on the motion to reconsider.

Mr. Truax — I am in favor of withdrawing my request to be excused and vote no. (Laughter.)

Mr. Vedder — Mr. President, I ask to be excused from voting and will briefly state my reasons. I sat in this chamber last evening with the chairman of the Committee on Industries until twelve o'clock, and listened to the eloquent and able argument of the repre-

sentatives of the great industrial army of this State, and I was convinced, at least almost convinced, that strikes sometimes are justifiable. I have thought somewhat since last evening of the contract between the people of the State and the delegates of this Convention. On the part of the people the consideration was faith in our capacity to do the work for which we were elected and ten dollars a day, money of the realm. I believe, therefore, that there has been no act on the part of our employers sufficient to justify us in striking and violating the contract that we made with them. I am opposed, therefore, to this Convention ordering a strike for next week. I, therefore, withdraw my request to be excused, and vote no.

The motion to reconsider was adopted by a vote of eighty in the affirmative and sixty-seven in the negative.

Ayes — Messrs. Ackerly, Banks, Blake, Bowers, Burr, Bush, Campbell, Carter, Clark, G. W., Clark, H. A., Cochran, Coleman, Cookinham, Countryman, Crosby, Curran, Danforth, Davenport, Deady, Deyo, Doty, Durnin, Emmet, Faber, Forbes, Frank, Andrew, Fraser, Galinger, Gibney, Gilleran, Goeller, Green, A. H., Griswold, Hecker, Hottenroth, Jacobs, Jenks, Johnston, R. M., Kellogg, Kerwin, Kimmey, Lauterbach, Lester, Lincoln, Marks, Marshall, McClure, McIntyre, McKinstry, McLaughlin, C. B., Meyenborg, Moore, Mullen, Mulqueen, Nichols, Ohmeis, Osborn, Parker, Parmenter, Peabody, Phipps, Platzek, Porter, Redman, Riggs, Roche, Roderick, Rogers, Rowley, Smith, Speer, Springweiler, Tibbetts, Towns, Truax, C. S., Tucker, Turner, Veeder, Williams, Woodward — 80.

Noes — Messrs. Alvord, Arnold, Baker, Barhite, Barnum, Barrow, Becker, Bigelow, Brown, E. A., Brown, E. R., Cady, Cassidy, Chipp, Jr., Church, Cornwell, Davis, Dean, Dickey, Durfee, Farrell, Floyd, Foote, Francis, Fuller, C. A., Fuller, O. A., Gilbert, Goodelle, Hamlin, Hawley, Hedges, Hill, Hirschberg, Holls, Johnson, I. Sam; Johnson, J.; Lewis, C. H.; Lewis, M. E.; Lyon, Manley, Mantanye, Maybee, McArthur, McCurdy, McDonough, McMillan, Mereness, Morton, O'Brien, Parkhurst, Peck, Pool, Powell, Pratt, Root, Spencer, Steele, A. B., Storm, Sullivan, Tekulsky, Truax, C. H., Van Denbergh, Vedder, Vogt, Wellington, Whitmyer, Wiggins, President — 67.

The President — Gentlemen will understand that the question now is on Mr. Cookinham's resolution as it stands amended, which was that when we adjourn on Friday, the 29th, it be to meet on Thursday morning the 5th of July, and that we do not sit on Saturday of next week.

Mr. Storm — Mr. President, I now offer an amendment to strike out the portion relating to Saturday and also making the hour 11 A. M.

The President — Eleven A. M. on Thursday?

Mr. Storm — Eleven A. M. on Thursday and striking out the part relating to a session on Saturday. The object of that is to overcome the objection made on the final vote of the resolution, and the hour of 11 A. M. is substituted for the purpose of allowing some of the members to leave their homes that morning, and those of us, of which I am one, who are obliged to leave the night before, have no reason to complain of the long vacation.

Mr. Alvord — Mr. President, I rise to a point of order. My point of order is that the previous question has been moved. It goes to the whole subject, and it cannot now be amended.

Mr. Bowers — The previous question was not moved on this proposition.

Mr. Alvord — It was moved on the whole matter.

The President — The Chair did not hear any previous question moved on this motion.

Mr. Bowers — I accept the amendments if I understood them right. They are that we meet on Thursday at 11 A. M.

The President — The Chair is of the opinion that Mr. Bowers cannot accept the amendment, because it is Mr. Cookinham's resolution and is under his control. Does Mr. Cookinham accept?

Mr. Cookinham — I accept, Mr. President.

The President — The question now is that when the Convention adjourns on Friday, the 29th, it adjourn to meet on Thursday, the 5th of July, at eleven o'clock, and do not sit on the Saturday following, namely, the 7th.

Mr. Tekulsky — Mr. President, if I understand the rules, if there is an objection to the acceptance of any amendment to the original motion or to the amendment, the acceptance must be first put to the house. I object to the striking out of Saturday.

Mr. Mullen — Mr. President, I rise to a point of order. I claim that the effect of this motion to sit on Saturday would be to amend our rules or suspend them. Under the rules we are entitled to twenty-four hours' notice.

The President — The motion is not to sit on Saturday.

Mr. Mullen — There is a motion here that the provision requiring us to sit on Saturday be stricken out.

The President — The motion is when we adjourn on Friday, the 29th, it be to meet on Thursday, July 5th, at eleven o'clock, and that the Convention do not sit on Saturday.

Mr. Mullen moved the previous question which was ordered.

The President put the question on Mr. Storm's motion that when the Convention adjourns on Friday, the 29th, it adjourns to meet on Thursday, the 5th of July at eleven o'clock, and that the Convention do not sit on Saturday, the 7th.

Mr. Maybee called for the ayes and noes and they were ordered.

The Secretary proceeded to call the roll.

Mr. McClure — Mr. President, I ask to be excused from voting and will state my reasons. Yesterday I voted against the resolution to adjourn over until Thursday and that we sit on Saturday for the reason that I believed there would be no quorum on Saturday. I believe there will be no quorum on Tuesday. Yesterday and the day before very important committees of this body were unable to gather a quorum. I sat in one committee with six other gentlemen, a committee of seventeen, and we could not gather a quorum. A little matter of college commencements called them away. A little matter of Fourth of July will call them away Tuesday. Believing that no business will be done on Tuesday, and wishing to vote in favor of the resolution, I desire to withdraw my request to be excused from voting and vote in the affirmative.

Mr. A. H. Green — Mr. President, I desire to say that I think we are wasting a great deal of time this week for the sake of saving it next week. I vote in the affirmative.

Mr. Storm's motion was carried by a vote of eighty-six in the affirmative, sixty-three in the negative.

Ayes — Messrs. Ackerly, Banks, Bigelow, Blake, Bowers, Burr, Bush, Campbell, Carter, Chipp, Jr., Clark, G. W., Clark, H. A., Cochran, Coleman, Cookinham, Cornwell, Countryman, Curran, Danforth, Davenport, Deady, Deyo, Dickey, Doty, Durnin, Emmet, Faber, Farrell, Forbes, Frank, Andrew, Fraser, Gibney, Gilleran, Goeller, Green, A. H., Griswold, Hecker, Hottenroth, Jacobs, Jenks, Johnston, R. M., Kellogg, Kerwin, Kimmey, Lauterbach, Lester, Lincoln, Marks, Marshall, McClure, McKinstry, McLaughlin, C. B., Meyenborg, Moore, Mullen, Mulqueen, Ohmeis, Osborn, Parker, Parmenter, Peabody, Phipps, Platzek, Porter, Pratt, Redman, Riggs, Roche, Roderick, Rogers, Rowley, Smith, Speer, Springweiler, Storm, Tibbetts, Titus, Towns,

Truax, C. H., Truax, C. S., Tucker, Turner, Veeder, Vogt, Williams, Woodward — 86.

Noes — Messrs. Abbott, Alvord, Arnold, Baker, Barhite, Barnum, Barrow, Becker, Brown, E. A., Brown, E. R., Cady, Cassidy, Church, Crosby, Davis, Dean, Durfee, Floyd, Foote, Francis, Fuller, C. A., Fuller, O. A., Galinger, Gilbert, Goodelle, Hamlin, Hawley, Hedges, Hill, Hirschberg, Holls, Johnson, I. Sam, Johnson, J., Lewis, C. H., Lewis, M. E., Lyon, Manley, Mantanye, Maybee, McArthur, McCurdy, McDonough, McIntyre, McMillan, Mereness, Morton, Nichols, O'Brien, Parkhurst, Peck, Pool, Powell, Root, Spencer, Steele, A. B., Sullivan, Tekulsky, Van Denbergh, Vedder, Wellington, Whitmyer, Wiggins, President — 63.

Mr. McDonough — Mr. President, are petitions in order?

The President — It is a little out of order, but yours is so large that it will be received at this time, if there are no objections.

Mr. McDonough — Mr. President, this is an extraordinary occasion. At the request of the Women's Christian Temperance Union of the State of New York I present a petition a third of a mile long, containing the names of 73,000 women of this State, praying for the passage of an amendment to the Constitution in favor of the full enfranchisement of women, and in favor of an amendment to the Constitution prohibiting the traffic in intoxicating liquors.

Referred to the Committee on Suffrage and to the Committee on the Powers and Duties of the Legislature.

Mr. C. B. McLaughlin offered the following resolution:

R. 101.— Resolved, That the clerk of the Court of Appeals be requested to furnish to this Convention, on or before July 9, a statement as to the time when the present calendar of the Court of Appeals was made up; the number of causes then placed thereon; the number of causes since added thereto, the causes since argued and disposed of, and the number of causes now remaining on said calendar undisposed of, that said clerk also furnish a statement of the number of appeals taken to and filed in said court since said calendar was made up and not now on said calendar.

Referred to the Judiciary Committee under the rules for report.

Mr. Hamlin offered the following resolution:

R. 102.— Resolved, That the Secretary be directed to have printed three hundred copies of the following proposed amendments: 14, 23, 24, 27, 34, 40, 47, 49, 52, 70, 71, 84 and 95, the Sergeant-at-Arms being unable to fill the file boards of reporters as directed.

Mr. Hamlin — Mr. President, I ask for the immediate consideration of this resolution.

The President — It is entitled to immediate consideration.

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

Mr. Becker offered the following resolution:

R. 103.— Resolved, That the Committee on Rules report to-morrow morning a rule providing a fine for non-attendance of members of this Convention on and after July 5, when such absence occurs without the consent of the Convention.

The President — Does anyone wish to debate this resolution?

Several members rose to debate the resolution and it went over until to-morrow under the rules.

The President announced the next order of business to be propositions for amendment to the Constitution.

O. 270.— Mr. Phipps offered a proposed amendment to article 9 of the Constitution, relating to common school funds.

Referred to the Committee on Education.

O. 271.— Mr. Smith offered a proposed amendment to article 6 of the Constitution, in relation to the judiciary.

Referred to the Committee on Judiciary.

O. 272.— Mr. A. H. Green (by request) offered a proposed amendment to article 6, section 21, of the Constitution, forbidding certain judicial officers from practicing law.

Referred to the Committee on Judiciary.

O. 273.— Mr. Mantanye offered a proposed amendment to section 1 of article 4 of the Constitution, relating to the election and term of office of the Governor and Lieutenant-Governor, and to render the Governor ineligible to re-election.

Referred to the Committee on Governor and State Officers.

The President announced the next order of business to be reports of standing committees, and the Secretary called the list of committees.

Mr. Hirschberg — Mr. President, I offer an unanimous report of the Committee on Privileges and Elections in the case of Charles L. Halberstadt, claiming to be elected a delegate to this Convention from the Eighth Senatorial District.

The President — The Secretary will read the report of the Committee on Privileges and Elections.

The Secretary read the report as follows:

Report of the Committee on Privileges and Elections relative to the petition of Charles L. Halberstadt claiming a seat in the Constitutional Convention from the Eighth Senatorial District.

To the Constitutional Convention of the State of New York:

The Committee on Privileges and Elections, to whom was referred the petition of Charles L. Halberstadt, claiming he was duly elected a member of the Constitutional Convention from the Eighth Senatorial District, respectively report: That they considered the case presented by said petitioner on June 12; that no evidence was offered, the questions presented being all matters of law; and that an argument, both oral and in writing, was made and filed by the petitioner at that time.

The committee thereafter, and on June 27, unanimously decided that the petitioner's claim is wholly unfounded.

They, therefore, recommend the adoption of the following resolution:

Resolved, That the petition of Charles L. Halberstadt, claiming that said petitioner is a duly elected delegate to this Convention from the Eighth Senatorial District, be, and the same is hereby dismissed.

M. H. HIRSCHBERG,
Chairman.

Mr. Hirschberg — Mr. President, the petition in this case presented nothing but a question of law. It related wholly to the alleged disqualification of the sitting member to his seat. As such a question, however decided, would not entitle the contestant to a seat in the Convention, I move the adoption of the resolution now.

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

Mr. Hamlin — Mr. President, I would like to call from the table the report of the Committee on Printing.

The President — The report referred to is a special order and there are other special orders which have precedence of it.

The next business in order is special orders. The first matter of business on that list is the resolution offered by Mr. Lester regarding the removal of the Convention to Saratoga under certain circumstances. The Secretary will read the resolution.

The Secretary read the resolution as follows:

R. 87.— Resolved, That as soon as practicable after the Fourth

of July the Convention adjourn to the Village Hall at Saratoga Springs, there to continue its sessions during the warm weather of July and August, providing arrangements for the accommodation of this Convention can be made, and that the Chair appoint a committee of five to investigate the accommodations offered and to report upon their character and sufficiency and to recommend a date for such adjournment.

Mr. Lester — Mr. President, in moving the adoption of this resolution, I desire to say a few words in its support. The few days of warm weather which have been experienced have foreshadowed plainly the discomfort to which the Convention will be exposed, if it persists in remaining in the capital city during the months of July and August. They have illustrated the wisdom of seeking cooler quarters in Saratoga, as the Senate did some years ago when sitting as a court for the trial of impeachment, and as the Court of Appeals does every year upon the approach of summer temperatures. Saratoga, which is doubtless, in an important sense, the birthplace of the American republic, justly entertains a desire that the representatives of the people of this State shall spend some of the time devoted to the work of relaying the foundations of popular government amid her cool retreats, sanctified as they are by the original sacrifice to the cause of popular rights and liberties. Perhaps it will not do for me, Mr. President, to say much in respect to the natural attractions of Saratoga; for when I get well started upon that theme I hardly know where to stop. Situated upon the eastern spur of the Adirondacks, hundreds of feet above Montreal, Lake Champlain and the valley of the Hudson, above the level of fogs and dampness, Saratoga is fairly within the shade of the Adirondack forests, whose lofty pines tower above its cottages and breathe their resinous perfume upon the air. While the sea-board cities and towns of lower altitudes are sweltering in the heat of midsummer, Saratoga is swept by cool mountain breezes. The insoluble character of the rocks of this region imparts a peculiar clearness to its waters, and even the pools by the roadside are of crystal clearness, and the atmosphere is transparent and brilliant.

Saratoga extends a cordial invitation to this Convention to come and hold its deliberations there. She promises that every arrangement will be made and every convenience provided for the use of this Convention. I have been asked many questions as to the ability of Saratoga to furnish the necessary equipment. In reply to all those questions I will say that the municipal government of Saratoga is ready, at its own expense, to furnish the best possible accommodations for the Convention. The Convention Hall at

Saratoga was specially designed, and is admirably adapted, to use in hot weather. There are within that building a number of excellent committee rooms, and a sufficient number of others, well arranged and accessible, can be supplied to meet all the requirements of the Convention. The members can find better accommodations in Saratoga, and at more reasonable prices, than at any other place in the United States. The great capacity of Saratoga for the entertainment of guests is a guarantee of this, and it will be found a fact by anyone who takes the trouble to investigate.

The Convention will have the use of the law library of the Fourth Judicial District, which has been amplified to meet the needs of the Court of Appeals, and it is believed that this will be found adequate for all the ordinary necessities of the Convention. But, sir, if special volumes are occasionally required, they can be easily obtained from the State library. The records which it would be necessary to bring to Saratoga are no more voluminous nor difficult of transportation than those which the clerk of the Court of Appeals brings with him every June. They can all be packed in a few boxes, and the expense of their transportation would be trivial. But the resolution I have offered casts upon Saratoga the burden of satisfying the committee which the Chair shall appoint in respect to all matters of detail, and I have no fear for the result. I am confident of the ability of Saratoga to meet every requirement of the committee, and of this Convention. But, sir, should she fail, then Saratoga will submit to a rejection of her invitation with the best possible grace; and, sir, Saratoga can summon a very good grace, indeed, although she is not often called upon to exercise it on account of any failure in such matters as these.

It has been suggested by way of objection to this proposition that Saratoga has so many and such powerful allurements to entice from duty, to which it would be unsafe to subject the members of this Convention. The lower branch of the last Legislature first made this discovery. That those vigilant custodians of official propriety and duty should have discovered the peril to which the neophites of this Convention would be exposed, was to be expected, and the disposition they made of the bill introduced by Senator Lexow, which contained an express permission to the Convention to adjourn to any other place in the State, shows the tender regard they had for the good name of the Convention. I appeared several times last winter before legislative committees, and I resented with some warmth the proposition that this Convention was unable to take care of its own business. The Senate, in a measure, concurred with me, but the Assembly evidently did not. If now, sir, this Conven-

tion expresses a contemptible opinion of its own self-restraint, I shall consider myself excused from its further championship, and the public, sir, will not be likely to estimate the Convention more highly than the Convention estimates itself. But, sir, I am not disposed to abandon my faith in the Convention. I would trust the honored President of this Convention amid the allurements and frivolities of a much more frivolous resort than Saratoga without fearing any impairment in the dignity and propriety of his demeanor. And, sir, I would feel as little solicitude for the honorable gentleman from Onondaga, who, as First Vice-President, shares the honors of the Convention; believing that if the frivolities of Saratoga did work any mitigation in the austerity of his bearing it would only serve to commend him still further to the Convention. (Laughter.) And, sir, I might thus go through the whole roll of delegates without having my fears for the result of the experiment aroused. But I believe that the influences of Saratoga in this respect have been exaggerated; I do not know how it has gone abroad that Saratoga is a place wholly given up to folly. I am at a loss to understand by what process of ratiocination such a conclusion has been reached. Folly, frivolity and vice can be found almost anywhere by those who seek it; and I am told that even in this staid old city the monster of horrid mien is not unfrequently decked out in holiday attire.

But, sir, can the sons of New York forget that it was in Saratoga, before the adoption of the present Constitution, that the Court of Chancery built up a great part of the fabric of the equity jurisprudence of the State? Here lived and labored such men as Walworth, Cowen, Willard, Nicholas Hill, Jr., John K. Porter and others, whose illustrious names I have not the time to mention. Here were accustomed to assemble such men as DeWitt Clinton, Martin Van Buren and his gallant son, Prince John, Silas Wright, Daniel D. Tompkins, William H. Seward, Chancellor Kent, Judge Story. In the cool summer mornings at the springs and in the parks of Saratoga, were exchanged those passages at arms and sallies of wit that have come down to us in the present day. And, sir, Saratoga says to the members of this Convention, come and drink of the same fountain from which these men of the past imbibed the intellectual and moral vigor which makes you look back to them and wonder if the present generation can produce such men as they.

The character of Saratoga has been preserved in a remarkable manner. The governing bodies of many of the great religious denominations of the country habitually meet there to act in respect to the administration of ecclesiasticai affairs. The great cause of

education is the subject of earnest discussion by gatherings of professional educators from all parts of the country every year in Saratoga. At Saratoga the American Bar Association annually assembles to critically examine and discuss the very propositions which now concern this Convention; and the American Social Science Association brings there every year the most advanced thinkers in every line of social progress and reform. The very atmosphere of Saratoga is charged with the subtle influences of great thoughts in reference to the comprehensive subjects of which this Convention ought to be the authoritative exponent. Those who fail to feel these influences, who leave Saratoga carrying with them only an impression of frivolity and folly, must be devoid of the ability to entertain or be influenced by great thoughts.

But, sir, I do not wish to weary the Convention. I have been told that some of the influential members of the Convention have thought it their duty to cultivate a sentiment in opposition to the proposition embodied in my resolution. If so, it is not because I have labored to create a sentiment in its favor. It is a tribute to the inherent merit of the proposition itself; and it is to the inherent merit of the proposition alone that I look for a favorable determination of the question.

Mr. McDonough — Mr. President, I take great pleasure in saying kindly words for Saratoga. If Proctor Knott had ever seen Saratoga, he never would have made Duluth famous as the zenith city of the unsalted sea. It is not in it with Saratoga. Saratoga is a village in the winter and a magnificent city in the summer. There is nothing like it on the continent. Its population, I learn from a circular sent out by one of the grandest hotels in the United States, the Grand Union, is 12,000 in the winter and over 50,000 in the summer. This great increase in the summer means that Saratoga must be very attractive for a great many people of this country. I learn that its cottage life is unsurpassed. It has magnificent villas, surrounded by trees, and piazzas with swinging hammocks, and people enjoying themselves as they enjoy themselves nowhere else in the United States. Its hotel life is unsurpassed. Their broad piazzas, their beautiful gardens, their exquisite music — they make a man forget all about work. They make him think simply of the joy of the present and the joy of the future. Among the illustrations in this circular I find a magnificent picture of a place called the Cathedral Arch. I judge from its appearance that it is a cathedral without religion, and I am sure that our Committee on Education, our Committee on Charities and our Committee on Powers of the Legislature could all meet there and forget all about

sectarianism. (Laughter.) I find that the hotels are so fine that Mr. Pope had them in mind when he wrote these lines:

"Its growing towers like exhalations rise,
And mighty columns heave it toward the skies."

And Saratoga has appropriated and adopted it. I find that there are no vulgar people there. There are no workshops. There are no factories nor bustling industries to disturb the visitor seeking rest and recreation from business cares. The residential qualities of the village are eminently desirable. My friend forgot, when he was describing the climate, and its being under the shadow of the Adirondacks, that it is also under the shadow of the Catskills, eighty miles away. The club life, I am told by those who know, is very charming. I do not know what those clubs are, but they tell me that they are very enticing; that Saratoga is noted for having some of the finest in the country. I hear that the races are going to be better than usual this year. There are sweepstakes and handicaps and hurdle races, and I don't know how many other kinds of races. They have grandstands, and they have something they call pools, where our ten dollars a day may disappear very readily; and these are attended by the most fashionable people in the country, amongst them, of course, the people represented when I presented my petition this morning.

No man should go without drinking the waters of Saratoga. There are twenty-seven distinct and different springs, and each spring has a different taste and a different effect. Some are laxative, more are purgative, and, in the language of the lawyer, some are punitive and some are remedial. (Laughter.) Shakespeare, speaking of Saratoga, said:

"Sir, you are welcome to our house;
It must appear in other ways than words,
Therefore I scant this breathing courtesy."

There is another matter in connection with Saratoga that my friend forgot to mention, and that is that it is the resort of the most beautiful women in the country. I wondered my friend Holls was so anxious to go to Saratoga. I wonder no more. (Renewed laughter.)

Our other friend, Tom Moore, who was so near Saratoga that he reached Cohoes Falls, said in regard to it:

"They may rail at this life — from the hour I began it
I've found it a life full of kindness and bliss;
And until they can show me some happier planet,
More social and bright, I'll content me with this."

And again:

"Here feminine beauty is seen in its most gracious character. Allied to the delights of the music and the attractive entourage, the result is simply unique and most charming, and dwells in the memory of visitors among the most pleasant recollections of Saratoga."

Now, there is a place called Moon's. Every man ought to go to Moon's; and there is a place called Crum's, and if the gentlemen eat a fish dinner at Crum's they will never eat meat again. Of course, the great men of the past all visited Saratoga; but they are all past. Not a word is said about the great men of to-day. Did David B. Hill ever visit Saratoga? Who ever heard of Mr. Cleveland going to Saratoga? I don't know that our own Governor ever went to Saratoga, and I am sure Tom Reed was never there.

Now, Mr. President, if we want pleasure, if we are here to enjoy the beauties of nature, and to enjoy all these things I have mentioned, let us go to Saratoga by all means. But if we are here for business, if we are here to work, if we are here to do the people's bidding, let us stay right where we are and do our work as we ought to do it. (Applause.) Albany is cool enough for us. Why, my friend comes down from Saratoga dressed as if it was the torrid zone, whereas I have sent for my overcoat. (Laughter.)

A story that I have heard is quite applicable. There was a revival at Kinderhook in the colored church. The old dominie requested all that wanted to go to heaven to stand up. All stood up except one old gentleman. They turned and looked at him, and he did not move. Now, all who want to go to hell, stand up, said the dominie. The old fellow still sat there. The dominie said, Do you want to go to heaven, Brother Johnson? No, sir. Do you want to go to hell? No, sir; Kinderhook is good enough for me. (Laughter.)

Albany is good enough for me, Mr. President.

Mr. Alvord — Mr. President, I am rather sorry that the Chair recognized the gentleman from Albany before he did me, for I desired to have the full force of the eloquent remarks of my friend from Saratoga have its effect upon the entire of this assembly. Under the circumstances, sir, feeling that any further discussion of the matter will weaken that force still more, I ask leave to move the previous question.

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

The President stated that the question was now upon Mr. Lester's resolution.

Mr. Kerwin called for the ayes and noes, and the Secretary called the roll.

Mr. Maybee — Mr. President, I ask to be excused from voting and will briefly state my reasons. I have no doubt that the encomiums that have been heaped upon Saratoga are well deserved, but it is not necessary that the delegates of this Convention should go to a place where the ear will be filled with the whisperings of the winds through the pines of the Adirondacks, or with the thunder of the waters of Niagara as they flow over their adamantine barriers, or where the salt breezes of the sea blow upon the coast of Coney Island. We are not here for summer recreation. We are here to perform the work to which we have been called by our constituents. I withdraw my request to be excused from voting and vote no.

Mr. McClure — Mr. President, I ask to be excused from voting and I will state my reasons briefly. I regret, sir, that the invitation, formally received, put over to be acted upon and brought up in a formal, dignified manner, was not allowed better treatment, and that the undue haste and desire to put the previous question in operation did not allow more fair treatment of the subject than it has received. I would have been glad to call attention to the fact that as compared with the waters of Saratoga, the waters of Albany, in the language of the street, "are not in it." The waters of Albany, as I understand from Albanians, are so foul and unfit to drink that the residents of Albany in particular, professional gentlemen included, are entirely unfamiliar with the taste of water. I would also have liked to recount the fact that a very distinguished lawyer of New York city, a judge of one of its highest courts, being about to prepare an oration upon the death of another distinguished gentleman, said that in order to get himself into the proper mournful, deathlike condition of mind, he went to Albany.

Now, sir, I have no desire one way or the other as to how this Convention decides this question. In fact, I suggested to the mover of the resolution that this was a forlorn hope, for this reason, that I understand there is in existence in this body a superior body, a body that might be and was very wittily and appropriately designated by a gentleman connected with this Convention, as the House of Lords; and at a recent meeting the fiat went forth that Saratoga should not have the Convention. Once that happened I can quite understand how the seventeen gentlemen forming the high body in question should dispose of the matter; and I suggested to my friend,

Mr. Lester, that perhaps it had better be dropped. I think, sir, that what is dignified for the Court of Appeals would be dignified for this body of men, who are not judges even if we are lawyers; and I think we could with perfect safety have entrusted the dignity of the Convention to that spot.

I withdraw my request to be excused from voting and vote aye.

Mr. Root — Mr. President, I beg to be excused from voting, and will briefly state my reasons. If, as appears to be the case with the gentleman from New York (Mr. McClure), it was my wish to frustrate the work of this Convention, to sow dissension among its members, to prevent every effort at intelligent consideration and conference in regard to its work, whether on or off the floor of the Convention, I should vote to leave the scene of our labors, as he did, and go to a summer resort where people gather for pleasure. But as I hope that this Convention will be a success in the accomplishment of a great work for the people of the State, I withdraw my request to be excused from voting and vote no.

Mr. A. B. Steele was excused from voting on the ground that he was paired with Mr. Holcomb, who was unable to be present.

Mr. Vedder — Mr. President, I regret exceedingly that the distinguished gentleman from New York (Mr. McClure), should have adopted the suggestion of some partisan newspaper as to these chairmen of committees. It is true, Mr. President, that a few chairmen, perhaps a majority of the chairmen of the committees of this house, did meet at the house of the President of this Convention. And for what purpose? Simply and only upon the invitation of the President to ascertain the condition of the work before those committees, and to see if some means could not be devised for expediting and systematizing their work. It is well known to the members of this Convention that there are already offered and before this Convention nearly twice as many proposed amendments as there are articles and sections in the Constitution. Many of them are upon the same subject, but were necessarily referred to different committees. It was to get the judgment, and not only the judgment but the actual knowledge of the chairmen of those committees upon the question as to whether bills that had been referred to one committee might not be referred to another, and get the same subject-matters together that this meeting was had. In my judgment it was the farthest thought possible from the mind of the President of this Convention, or any chairman who met there, to resolve themselves into a House of Lords or any other house for the purpose of controlling the action of this Convention in any particular whatever, or

for any other purpose than the purpose to which I have alluded and which was stated by the President when he gave the invitation. It is almost impossible, with the 160 members who meet here habitually, to get that large body together, and the idea was that by getting the chairmen of committees who ought to know the condition of proposed amendments before their committees, together, we might facilitate the work of the Convention. There was no other object or reason on earth, and I believe the second, sober thought, the honest, candid, manly reflection of every delegate to this Convention will lead to this conclusion that there was no harm in that, but that great good would necessarily flow from it, as I believe it will. I withdraw my request to be excused from voting and vote no.

Mr. Becker — I desire to say, Mr. President, that in voting aye I do it for the purpose of moving a reconsideration if necessary.

The Secretary announced that the resolution of Mr. Lester was lost by a vote of 109 to 29.

Ayes — Messrs. Becker, Campbell, Cookinham, Curran, Davis, Deyo, Durfee, Farrell, Francis, Fraser, Gilleran, Jenks, Johnston, R. M., Lester, McArthur, McClure, McLaughlin, C. B., Mereness, Meyenborg, Moore, Mullen, Ohmeis, Riggs, Roche, Spencer, Titus, Truax, C. H., Whitmyer, Wiggins — 29.

Noes — Messrs. Abbott, Ackerly, Alvord, Arnold, Baker, Banks, Barhite, Barrow, Bigelow, Blake, Bowers, Bush, Cady, Carter, Cassidy, Chipp, Jr., Church, Clark, G. W., Clark, H. A., Cochran, Cornwell, Countryman, Crosby, Danforth, Davenport, Deady, Dean, Dickey, Doty, Durnin, Emmet, Faber, Floyd, Foote, Forbes, Frank, Andrew, Fuller, C. A., Fuller, O. A., Galinger, Gibney, Gilbert, Goeller, Green, A. H., Griswold, Hamlin, Hawley, Hecker, Hedges, Hill, Hirschberg, Holls, Hottenroth, Jacobs, Johnson, I. Sam, Kellogg, Kerwin, Kimmey, Lauterbach, Lewis, C. H., Lewis, M. E., Lincoln, Lyon, Manley, Marks, Marshall, Maybee, McCurdy, McDonough, McIntyre, McKinstry, McMillan, Morton, Mulqueen, O'Brien, Osborn, Parker, Parkhurst, Parmenter, Peabody, Peck, Phipps, Platzek, Pool, Porter, Powell, Pratt, Redman, Roderick, Rogers, Root, Smith, Speer, Springweiler, Steele, W. H., Storm, Sullivan, Tekulsky, Towns, Truax, C. S., Tucker, Turner, Van Denbergh, Veeder, Vedder, Vogt, Wellington, Woodward, President — 109.

The President — The next business in order is the matter of the report of the Committee on Privileges and Elections.

Mr. McClure — Mr. President, I rise to say that the remark that has proceeded from the gentleman from New York (Mr. Root),

that in my action I have sought to sow dissension on the floor of this Convention, I resent.

Mr. Root — Mr. President, I rise to a point of order, that the gentleman is not stating a question of privilege.

The President — The Chair did not hear the gentleman's remark.

Mr. McClure — The statement made in reference to my action was made at a time when, in the calling of the roll, there would be no opportunity for me to make any suggestion by way of reply. I only desire to say, in reference to the statement made by me as to the House of Lords, that whether it was put in the proper way or not, it was intended that there was a suggestion of humor in it, that perhaps the gentleman from New York could not appreciate, because I find that neither of the gentlemen from New York (Mr. Root), nor the gentleman from Cattaraugus (Mr. Vedder), has denied that at the meeting in question the subject of going to Saratoga was under consideration. I only want to say, sir, that I think Mr. Root, in the hurry of the moment, forgot that I have given to this Convention quite as much attention, not in as exalted a position as he occupies, not with the power massed behind him that indorses by its vote every word he says; but that, as part of a minority, I have contributed as best I could to the furtherance of the object of this Convention, and no college commencement, or anything else, but the most important obligation of professional business, has deterred me from attending its sittings.

Mr. Vedder — Mr. President, before the special order is called, I desire to ask that the privileges of the floor be granted to Hon. J. T. Williams of Dunkirk, New York, during his stay in Albany.

By unanimous consent, the privileges of the floor were granted as requested.

Mr. Hirschberg — Mr. President, the arguments of the respective counsel in the matter of the petitions relative to the claims for seats in the Convention in the Thirtieth Senatorial District, having been printed and on the files of the members of the Convention, a sufficient length of time, I think, to acquaint every one with the merits of the controversy involved, I do not propose to occupy the attention of the Convention beyond the time necessary to make a formal motion that the resolution recommended by the Committee on Privileges and Elections be now adopted.

The President — The Secretary will read the resolution recommended in the report of the Committee on Privileges and Elections in regard to the contested seats from Erie, as follows:

First. Resolved, That Herman F. Trapper and Charles Beckwith are not entitled, as delegates from the Thirtieth District, to the seats now occupied by them in this Convention.

Second. Resolved, That Harvey W. Putnam and Thomas A. Sullivan are duly elected delegates from the Thirtieth Senatorial District, and are entitled to the seats in this Convention now occupied by Herman F. Trapper and Charles Beckwith.

Mr. Blake — Mr. President, in one of its aspects, it is not a very pleasing duty that I arise to perform. As I have hitherto refrained from occupying the time of this Convention, I trust I may crave its indulgence for a few moments. I shall endeavor to be as brief as possible.

The Committee on Privileges and Elections has agreed without a dissenting voice, that Messrs. Trapper and Beckwith are not entitled to the seats now occupied by them in this Convention, and that the contestants are duly elected members of this body, and are entitled to the seats in question. After a careful examination of the report and the contestees' brief, I find myself, sir, unable to concur in that verdict. I do not question or impugn the motives of the committee or any of its members. For their intelligence and their integrity I have the most profound respect. But, sir, upon a given state of facts different minds will sometimes and ofttimes honestly differ. I believe the committee or some of its members have been misled and deceived, unconsciously perhaps, by the nature and character of this evidence. Trifling circumstances have been magnified. Trifles have been exaggerated into very great abuses. Slight disturbances at the polls, such as are not unusual in every municipal election in every city throughout this State, where party feeling runs high and where the contests are fierce and bitter, are paraded here as outrages upon the citizens. The conduct of officers and officials which ordinarily, and under other circumstances, would commend itself to the approval of every lover of law and order, are characterized as wrongful and oppressive, and so, by inference, by innuendo and by misconstruction the color of right and justice is sought to be given to the contention of the contestants.

Now, sir, I concede that no man can be a good citizen who does not desire that every ballot that shall drop into the freeman's ballot-box shall be an honest ballot, and who does not wish that such ballot shall be honestly counted and honestly returned. I believe, as we all believe, that the ballot is the foundation of free government, and if the foundation becomes impaired or undermined, then before long this fair and splendid fabric of government of ours will dis-

solve in turn and topple headlong to ruin. But, sir, it is quite as essential to the freedom of government, to the maintenance and perpetuity of popular government and to the integrity of the ballot also, that every honest ballot should be counted as that every fraudulent and corrupt and dishonest ballot should be rejected. And if you shall deprive a citizen of his rights, if you shall cast out his ballot after he has honestly and lawfully deposited it in the box, if you shall go a step beyond this and shall disfranchise a whole community, a whole election district, by invalidating the vote of its population for inadequate cause, I care not whether the motive be partisan or whether it be the highest and noblest which actuates the heart of man, you none the less surely and certainly deal a mortal blow at the root of free government.

I have, sir, in considering this great question, sought to lift myself above the atmosphere of partisanship. I do not know these gentlemen, the sitting members. I have never met them in my life, to my knowledge, and I would not know them if they stood before me face to face. I care nothing about their politics. From a political view, it matters not whether they shall continue to sit as members of this body, or whether they shall yield their places up to their opponents. It cannot affect, in the slightest, any interest here, except it be their own interest. It cannot alter the political complexion of this body, and I care nothing about all this. But I do hold, sir, that they are here by virtue of credentials of equal force and authority to those of any other gentleman in this Convention. They are here in obedience to the behests, the high mandate of the people of the Thirtieth District. All the rightful agencies created by our laws have declared them elected. These agencies are established for the ascertainment and decision of that question, and I insist upon it, gentlemen of the Convention, that before you shall reverse this decision, the proof that error was committed and that these gentlemen are not entitled to their seats must be of such a character as to leave behind it no moral doubt of the fact. It will not do to tell me that, possibly or probably, fraud was committed. For my part, I want proofs satisfactory and convincing.

Now, sir, this body passed a resolution that the evidence should not be printed, that the briefs and reports should be printed and placed upon our desks. We, are therefore, confined to the proof contained in those documents, and for the purpose of the discussion and the deliberation of this body, it is ample. I have not seen the contestants' brief, if there be any. I suppose the committee's report contains the material and salient features of the testimony and the circumstances from which fraud is inferred, fraud in the Fourth

Election District of the First Ward in Buffalo on the seventh day of November last, and upon which is predicated the finding of the committee. If there be anything of a more serious character that might operate to vitiate the result of this election, and upon which might be predicated their conclusion, it undoubtedly would have been incorporated in the report of the committee. Now, sir, what are the charges? Let us glance at the situation, as it existed on the seventh day of November last, in that election district. For some sixteen years a gentleman by the name of White, of the Republican faith, had represented, in the Board of Aldermen, the aldermanic district of which this election district constituted a part. Nevertheless, it is claimed that the district had a normal Democratic majority. White was again a candidate. The Democrats had resolved to redeem the district, and with that end in view they nominated a gentleman by the name of Sheehan, and a very vigorous and enthusiastic campaign for the election of their candidate ensued. A fierce and bitter contest followed, almost to the point of engendering bad blood. As the day of election approached, the excitement rose to fever heat, and the sheriff appointed a large number of deputy sheriffs, 112 in number. Exception has been taken in the report of the committee to five of these deputies, five out of the 112, and they have been pointed out. I think their names are Marks and Strauss and Farrell and Baker, and they have been characterized as prize-fighters, and another gentleman by the name of O'Shea has been designated as a dog-catcher. Well, sir, I am not versed in the history of fistiana. I do not know the names of all those persons who have been distinguishing themselves in later years upon that field, but if those four gentlemen whose names I mentioned are prize-fighters, their names are unknown outside the confines of Erie county. I think I am safe to say, and I think it is safe to say, that they are indebted to the committee and its report for the very questionable distinction which they now enjoy. However that was, they were citizens, and I have yet to learn that any of them had been convicted of crime of any kind. Why, sir, thieves and thugs of the most disreputable character, and I do not say this to offend any sensibilities here, because it is ancient history, but I say it again, thieves and thugs of the most infamous and disreputable character have been appointed during the last twenty years and more in the city and county of New York, deputy supervisors under John I. Davenport, and the most infamous outrages were committed on the citizens; yet we endured that. Scores and hundreds of men were deprived of their rights on election day, and yet we did not think it right on that account to disfranchise the whole election district. I assume that

the dog-catcher was duly and lawfully elected to the office. I know, sir, it is not an office of proud distinction, but it is one created by our laws. Does the committee mean to say that a dog-catcher may not be a man of reputable character and wholly competent to discharge the duties of a deputy sheriff? It will not do on the grounds thus alleged, Mr. President, to reverse the popular will. I believe boxers, and I say boxers because I think prize-fighting has been stripped of its barbarity in these latter years, I think boxers and dog-catchers may be reputable men. But it has been said violence was committed at the polls on that day. It is freeely, and I think fearlessly affirmed in the brief of the contestants that not a solitary man who suffered violence, who was hustled about or pushed that day, was a resident of the district. Presumably, therefore, these persons, if they had been minding their own business, would not have been interfered with. But, however, that may be, I understand there is not a scintilla of proof here in the committee's report, there is not a scintilla of proof that, notwithstanding all these disturbances that may have occurred in that day, whether the number be more or less or whatever their character, there was a single elector who desired to vote who was prevented from depositing his ballot. It is true that one James Kennedy exercised some authority or pretended to give some orders, without right or license, and it is alleged that some persons having no right there, entered the compartments. These persons, by that act, made themselves criminally amenable to the law. Does that invalidate the election? Does it legalize any ballots cast, or folded in the presence of an elector not responsible for their presence? Is he to be deprived of the right to have his vote honestly counted as honestly cast, because of this irregular and unlawful act? Not a solitary man came forward and swore that he was deprived of the right to cast his ballot. Two persons, I believe, were interfered with for a time, but finally they cast their votes before the close of the polls.

Now, we are told by the committee's report, that fifty-four persons, mostly Italians, supporters of White, the Republican candidate, came to the polls at three o'clock in the morning and remained there until the opening of the polls. I ask, is there a gentleman in this Convention who ever heard of such a proceeding before in his whole life? And of that the committee's report is absolutely silent, does not vouchsafe any explanation of this extraordinary circumstance. What were they there for at that early hour in the morning? Is there a man here who does not know that that was a corrupt vote; that that was like a herd of cattle marched to the shambles, a purchased vote? That circumstance is enough of itself to damn

with suspicion this claim of the contestants. If these fifty-four persons had been supporters of Sheehan, I could well believe that it was a suspicious circumstance, and the contestants might say with some color of truth that the Sheehanites had taken possession of the polls at three o'clock in the morning and remained in possession. I think it would be difficult to convince any fair-minded man that these people were there thus early at that unusual hour for any lawful or for any proper purpose. Not a Republican swore that he was deprived of his rights on that occasion.

Now, sir, Messrs. Beckwith and Trapper are here. The official returns declare that they are lawfully and rightfully here. The contestants have selected a district shrewdly. It is one which if thrown out will give them the election. They have selected a district in which there were, unfortunately, some few disturbances and some irregularities, but not of sufficient dignity or importance to invalidate the election. They ask us to disfranchise so many voters in the Thirtieth District as will give them these seats. Mr. President, without the affirmative and positive proof, leaving no moral doubt of the fact of fraud, it will be a crime, sir, to unseat these gentlemen. It would be a crime infinitely greater than the crime alleged in the indictment which constitutes the committee's report; it would be, sir, revolution. It would be a subversion of the people's will and a blow aimed at the very root of free government. I suppose, sir, it is predetermined that this report shall be adopted. Be it so. I have arisen here in obedience to the dictates of my conscience and my judgment, and as I have given my voice, I shall give my vote. And even at this eleventh hour, I call upon the gentlemen of this Convention to pause, to consider calmly and dispassionately the facts in the case. Do not put this humiliation upon these gentlemen who have been sitting for all these weeks unless the proof is beyond all question, such as will satisfy your consciences and your judgment beyond all reasonable doubt. It will be an injustice and a stigma upon them to kick them out of this body.

Now, sir, I know I have trespassed upon the time and patience of the Convention, and I feel grateful for the attention afforded me. I have expressed, possibly, all the views I have now to offer upon this subject. Mr. President, I say it would be a very grievous wrong to unseat these gentlemen upon the testimony before us. Therefore, with these views, and with others which I will not take time to urge, I will certainly vote against the adoption of the report and the resolution. (Applause.)

Mr. Titus — Mr. President and gentlemen of the Convention, I listened with a great deal of pleasure to the words of our President

on the day we convened in this chamber. I was more than pleased with the remarks that we should be above partisanship and not be politicians; that we were servants of the people, and as a servant of the people, I wish to give expression to my thoughts upon the report of this committee. The gentlemen who have joined in this report, many of them are my warmest friends. I do not doubt for a moment that in signing that report they thought they were doing what was right. But had they waited and had all the evidence presented to them, and the lights and shades thrown properly on that picture of what took place on election morning, their report would not be what it is to-day. I can understand, if the report which was presented by the chairman of the committee two weeks ago was read over to the gentleman who made the report, I can understand why they all concurred in it. Listen to it. Nearly every other line it says, "these prize-fighters," "this dog-catcher." We hear so much about the dog-catching that you may almost have ringing in your ears the yelp of the poor mongrel who was taken off and slaughtered by the dog-catcher.

Gentlemen, I say to you, pause before you act in this matter. Consider well what your act means, in taking these two gentlemen and throwing them from your midst. Your committee, in their report, admit that the sitting members were not responsible for any violation of law that may have taken place in that election district. The report of the committee recites certain things which took place the day before election, or the night before election, but in not one word do they charge any fraud on that election morning.

Now, gentlemen of the Convention, like the gentleman who preceded me, I do not know the sitting members, Messrs. Trapper and Beckwith. I do not know where they are seated in this hall. I have never spoken to either of them. But I know that they were indorsed, that they were recommended by, and that they represent the bone and sinew of our State, the working people. It was the intent of the Legislature of 1892 that the working people should have a large representation in this Convention, but the bill was so drawn, and its phraseology such that it was declared unconstitutional. Now, gentlemen, pause and consider this question well. I ask you, in all fairness and in all candor, upon the evidence presented here, were you sitting upon a jury and trying a man for a crime, would you convict him? You cannot act in this matter otherwise than as if you were sitting on a jury. If your verdict be guilty, and you stamp fraud upon the brow of these gentlemen, it will be a blot upon the escutcheon of this Convention that time will never erase. Many think it will only be a ten days' talk, but that blot will be

there when many of us are gone to seek our kindred dust. If you disfranchise the people of that district, if you declare their votes void, and throw them out, the working people of this State, from Montauk Point to Lake Erie, will rebuke the outrage, and by an avalanche of votes will bury the responsible party.

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

The President — The question is, shall the main question be put?

Mr. Marks — I raise the point of order that the gentleman's motion has not been seconded.

Mr. Moore — Mr. President, I withdraw the motion for the previous question.

Mr. Griswold — Mr. President, we have the report of this committee, and nothing that I may say is intended to cast any invidious reflection upon the opinion of that committee, or upon any member of it. We have our prejudices, all of us. They are scarcely to be removed, our individual and our party prejudices. It is about as difficult to remove them as it is, by argument, to remove one of the members of your physical frame. Although so many men have joined in the opinion that these contesting delegates are entitled to their seats upon the evidence, yet it is not a new thing for persons to differ upon the force or effect of evidence. A memorable case that is well known, is that where the judges of our Supreme Court, the Chancellor and the Senators differed, and it is a matter of history that they differed upon strict party lines. We have another memorable case lately of the judges of the highest court of our nation ranging themselves upon party lines in their decision. Now, this committee have reported, and the main, substantial thing that they do report is that there was an illegal election in that contested election district. I take direct and distinct issue, and say that there was a legal election in that district according to the evidence in the case. It is shown that the chairman of the board left the board and somebody else was put in his place. Does that make the board illegal, as it was sitting? It is distinctly determined by the highest court in our State that that does not make the election illegal, because one member is not sworn. It goes further and holds that there may be a majority of the members of the board that were not officers at all, yet being *de facto* officers, the legal voters cannot be deprived of their suffrages, and that the acts of these *de facto* officers are as valid as if every member was sworn, every member duly elected. As between others, as between third parties, they are like other officers, like a man who is elected a judge, not having a majority, or without being sworn. Such a judge may try a case,

a murder case, if you will, and a conviction of the criminal, under such circumstances, is as legal and as valid as if the person acting as judge had been a proper officer and duly elected. As between third parties he is an officer, in fact. And so it is with this election board, so held by the highest court of our State, in the case of the People against Cook, in the fourth of Denio.

There is another consideration. We start in the first place with the certificate that is *prima facie* evidence of what it states, that the sitting members were elected. There is another consideration where the suit was formerly brought in the nature of a writ of *quo warranto.* In England the king was supposed to have control of the officers, and such proceedings were necessary to unseat the officer holding the office that it devolved upon that officer to show his title. So, in this country, the same rule has been adopted, that where there is a pure writ of *quo warranto* simply to oust the incumbent and compel him to show by what right he holds it, it devolves upon him to show it. But when an action is brought by a relator on behalf of himself as a contestant, he must show his right precisely as any plaintiff in an action must show his right, and not rest upon the defendant to show that he is not entitled to it. So it is here, and it stands exactly in that position. These contestants stand in the position of a relator and therefore they assume the burden of proof to show themselves entitled to their seats. Thus upon two grounds these sitting members are holding their titles properly, and upon two grounds the burden of proof is thrown upon the contestants. It is a presumption of law and the applicant, or contestant, or plaintiff, must show his right better than the sitting member. Second, upon the ground that the sitting members hold the official certificates in their hands as valid, as fair as that of any member of this Convention and presumptably as good. So, when they say there was no legal election, we say there was a legal election. There was a board. There was no question but that the votes were properly counted. It cannot be gainsaid that there was a legal election. It strikes me that this committee have taken a short cut, a cross-lot cut, to arrive quickly at their conclusion. They have selected a district which had votes enough to elect the sitting members, but, when that district is thrown out, it elects the contestants. That is a short course, but being a legal election, as I claim and maintain, it devolves upon these contestants to show that the sitting members did not receive the requisite number of votes and that they, the contestants, received the greater number. Now, how do they go to work to make this out? The only thing that I see, and it comes with considerable force, is that in 1893 there were 300 more votes polled in that dis-

trict, or about that number, than there were polled in that district in 1891 and in 1892. Now, there being a legal election, a legal board which counted the votes properly, and there is no question about that, then they should have gone further, and should have shown that legal votes were excluded from the ballot-box. They do not pretend to show it. There may be one or two, but substantially they do not attempt to show any such thing. The next question is, were illegal votes allowed and counted in those ballots? If there were, this committee should have done more work, and the contestants should have done more work, and they should have shown who it was and how many there were illegal. They did not show a thing. They did not show a man who voted there illegally, as I understand it, except as they have found the 300 additional votes in that district. That district, as is seen from the testimony, was composed of a class of workingmen and people down near the docks, liable to be shifted and changed about by contractors having under them a large number of men. There were two large contractors, it appears, having something like one or two thousand men in their employ, and they might even properly have changed the locality of their men to the number of 300 or more. Supposing they did, and supposing they fixed the residence in this particular district for the purpose of making them voters? Wouldn't they be voters? Does the statute require anything further than that a man shall be a resident of a district the proper length of time before he offers his vote? Is there anything in the statute that says he shall not take his residence there for the purpose of voting? No. Therefore, it is that I say, that it has been left by the committee and these contestants in the fog whether those men were legal voters, and they fail to show a cure as against the official certificate, and as against the rule of law that compelled the contestants to show that these votes were illegal.

Now, how does it appear on the other side, the political party and the men in behalf of these contestants on that occasion. We find them at midnight with a band of "Dagoes," fifty-four in number, and an armed chief at their head forcing their way and blocking up the entrance of the street. They closed the end of the street and made it a sort of *cul de sac* where the voters from different directions were shut out. They came there and they voted. What more? Let us see whether this man White and his partisans were of that immaculate purity represented here on the part of the signers of this report. We find that all the alleged illegal voters had been registered there about one month before the day of election. They were registered in the first part of October, with every opportunity in the

world for the opposing party to have searched them out and challenged them at the polls, at any rate, and make their arrest in advance. And what did they do? They did nothing. They waited until the night before election and then they had 129 warrants issued for those men. You see there are two sides to this question. I am not satisfied, considering the burden of proof that is required on the part of these contestants, that they have produced sufficient proof against this certificate. I cannot see my way clear to set aside that certificate and unseat the sitting members, and, therefore, vote no.

Mr. Chipp — Mr. President, it seems very much to be regretted that in a body of this kind where all conceded partisanship should be excluded, that the first show of partisanship should come from the minority party. It seems to me that the gentlemen who have spoken must perforce be influenced by partisanship or they cannot on a faithful and intelligent consideration of this testimony and of the briefs of the parties, have failed to be convinced of the justice and correctness of this report. The gentleman from New York (Mr. Blake), states that he has not read the brief of the contestants. I believe from his argument that that statement is true and that he has not read with any care the evidence in the case. I acknowledge the kindness with which my friend, Mr. Titus, spoke of the members of the committee, and thank him for his forbearance in regard to the committee, and especially the minority members. As to my friend and colleague from Greene (Mr. Griswold), I think that while he is actuated, as he always is, by a sincere desire to do right, he has been misled, perhaps, somewhat in viewing the legal aspects of the case.

As far as the question presented to this committee is concerned, it ought to be, and it is, in point of fact, free from any partisan advantage. On the one hand, we have a Republican majority so strong as to accomplish almost any purpose. The Republican majority can be aided in no way by the accession of two members. On the other hand, the powerlessness of the minority can be in no way diminished by the rejection of two members. There is no partisan question here, and the committee has not treated it in any partisan spirit. I may, sir, have misconceived my duty as a member of that committee. My Republican colleagues may have misconceived their duty. But our conception of that duty was that we were to try this case in a judicial manner, by the application of judicial methods to the testimony. That is the frame of mind in which the committee approached its task. I may say, if there had existed the slightest doubt arising on the evidence as to what ought to be done here; if

I had thought there was the slightest reason for saying that these sitting members might have been elected, I would never have signed this report. I think I may truthfully make that same statement in behalf of my fellow-members of the committee. I do not think there was the slightest desire on the part of any member of the committee to disturb the *status quo* here; that if there had been any doubt upon the evidence in regard to the election of these contestants that the committee would have gladly refrained from unseating these gentlemen who come here with the certificate. But, sir, unfortunately, perhaps, there is no doubt on the evidence.

Now, we have been greatly aided by the fact that the counsel for both the contestants and the sitting members substantially agreed upon the law of the case. I desire to read a paragraph or two from the brief of Mr. Cuddeback, counsel for the contestees, which I understand to be concurred in by Mr. Simons, counsel for the contestants, as stating the law applicable to this class of cases:

"The rule of law applicable to the case, as the same is laid down by the Court of Appeals in People v. Thacher (55 N. Y., 525), cited by the contestants' counsel, is that the election return is *prima facie* evidence of election to public office, but the return is open to inquiry, and will be corrected or set aside if erroneous, and will not be received if proved to be so uncertain and unreliable that its value as evidence is destroyed and justice requires its rejection. The rule governing legislative bodies in their inquiries in similar cases is the same. (American and English Encyclopedia of Law, title, Elections.) Upon an examination of the authorities it will be found that the cases in which the election returns have been disregarded fall within one of the three following cases:

"First. Where the return is erroneous in that it does not correctly state the result of the election, as where the ballots were not properly counted, or their number was not properly returned.

"Second. Where some mandatory provision of the statute has been disregarded by the election officers, and the result of the election was affected thereby.

"Third. Where fraudulent votes were cast or the circumstances were such that fraudulent votes could have been cast, and it was probable that they were cast; and where lawful voters were not allowed to vote or were intimidated and did not vote."

Taking the law of the case from the contestees' counsel, let us apply that law to these facts and see what result we reach. Counsel says his case does not come within the second class. I disagree with him there. "Where some mandatory provision of the statute has been disregarded by the election officers." Let us see whether any

mandatory provisions of the statute were disregarded in this case by the election officers. In the first place, the law provides that elections shall be conducted under the charge of certain sworn officers. This election was conducted under the charge of one Kennedy who was not an election officer. The law says that the chairman shall be sworn. In this case, the chairman left the polls before the voting commenced, and assumed to name another party as chairman, who went in and discharged the duties of chairman without being sworn. Another important provision of the law is that elections shall be conducted under the observation of watchers to be appointed by the different parties. In this case one watcher of the Republican party, a Mr. Martin, endeavored to get into the polls, and was unable to get in, was excluded from the booth from its opening to about eleven o'clock when he was finally admitted, at which time most of the vote had been polled. Another watcher, Mr. Chapin, was unable to get into the poll, although duly accredited and his credentials presented to the proper officers, and he could only get into the polls by application to the police after the voting had proceeded to a considerable extent. Another watcher, Williams, was unable to get into the polls. According to the undisputed testimony the requisite number of watchers was not there during the time that the greater number of votes were cast, and in that respect, this important and mandatory provision of the election law was utterly nullified. Again, another watcher, duly accredited, was ejected for the crime of taking notes of the doings of these election officers and others. He was a member of the bar, a man apparently of the highest standing, a man whose every act and whose every word gave indication of the gentleman. He was ignominiously and at the behest of this man, Kennedy, led out of the poll by Dog-catcher Shea. These were the things, sir, that were done at these polls. A duly accredited watcher actually ejected from the poll, without any cause whatever. Then, although the law provides for secrecy in voting, although this is deemed the most important provision of the election law, and the law provides that men shall go into secret compartments to prepare their votes, yet it is a conceded fact on the part of counsel that nearly all day most of the voters were hurried by Kennedy into two particular booths where men were standing folding tickets, and presumably electioneering those who came in. It is a conceded fact, not disputed by counsel, that all these things were done, and all of them in disregard of important and mandatory provisions of the elections laws

Now, was the election affected thereby? It is in evidence that two men, I think Italians, who finally penetrated into these secret com-

partments, were given Democratic tickets, and one, at least voted it. It was impossible, of course, to show that every one of these votes were influenced, but I say that there is a strong case of circumstantial evidence here, a strong case of presumptive evidence that the result of the election must have been affected by such practices. It cannot be that an election conducted in that way could not have been affected in its result. But we will pass by that, because these matters, as my friend characterized them, although important in themselves when compared with the main facts, the principal facts upon which the report of the committee should be sustained, were trifles.

When we come to the class of cases mentioned in the second subdivision of the brief of the counsel for the contestees, "where fraudulent votes were cast, or the circumstances were such that fraudulent votes could have been cast, and it is probable that they were cast, and where lawful voters were not allowed to vote, or were intimidated and did not vote," how does the case appear in that respect? The total vote of the Fourth District of the First Ward in the city of Buffalo in a presidential year, 1892, was 342 votes. The total vote in the off-year of 1893, was 641 votes. The total vote by parties for the last three years was as follows: In 1891 the Republican vote was 140, Democratic vote, 169; in 1892, the Republican vote, 101; Democratic vote, 212; 1893, Republican vote, 126; Democratic vote, 505. Now, sir, here seems to me to be a state of facts which calls for some explanation, and as a member of that sub-committee, hearing the testimony, I asked for an explanation. It did not seem possible to me that the Democratic vote of that district should be, rightfully, three times what it was in 1891 and two and a half times what it was in 1892. It seemed to me that there was a case which called for an explanation. The obvious explanation which would be given was, that there was an increase in the population in the ward or district. Does that appear? No; on the contrary, it appears by the undisputed testimony of several witnesses, and the sitting members did not deem this fact of sufficient importance to dispute, or they could not dispute it because it was a fact, it appeared by undisputed testimony that the population had actually decreased during these times. So that ends that explanation. I assume that this committee is bound by the evidence, and the evidence appears here by several competent witnesses, that the population there had actually decreased. Another explanation is that numerous citizens about a month before election moved over into that district of the First Ward for the purpose of casting their

votes for the Democratic ticket, and especially casting their votes in favor of this gentleman who was running for alderman on the Democratic ticket. There is a general improbability on the face of that explanation, but it would serve perhaps, in the absence of other facts as a partial explanation. Let us examine it. In the first place, as matter of law, I have serious doubts whether a man can make up his mind to go into another district and register for the purpose of voting, stay there thirty days, and then move out. As I understand it, though I may be incorrect, and if I am, some one will correct me, but I understand the law to be that it is the fact of residence that gives the right to register and vote, and not the fact of voting which gives the residence. And in order that a voter may have the right to vote he must have a residence, not a residence on paper, but an actual residence. He must have an intent to change his residence, and he must carry out that intent by actually changing his residence. Now, I say it is in the highest degree improbable that two or three hundred men, all moved by a common sentiment, should change their residence for the purposes of voting at this election. This improbability is greatly increased by the fact that this registration was in large bodies of men in a few houses. So, you see, that this explanation, from being improbable, becomes incredible. It is incredible that several large bodies of men, moved by a common impulse to change their residences, should move into that ward and settle in four or five houses. This incredibility is still further increased by other facts. At the house, 133 Main street, there were 129 men registered. The size of the house was about thirty by ninety. I took the trouble, with the other members of the committee, to visit that house. I inspected the outside of it. It was a small three-story house, and if one-half the men had been living there that were registered from there, their feet would have been hanging out of the windows. The house would not hold them. It was a physical impossibility for them to have resided there. There were two other houses which we visited. There is another salient feature here, and that is that an officer, armed with 129 warrants for the persons who were registered from 133 Main street, visited the house several times the night before election and on election day, and he testified before the committee that he could not find one of these men in the house. Strange. Men were living at 133 Main street, but none could be found there. Again, at No. 33 Exchange street, where a large number of men were registered, it was shown by the evidence of the landlord of the premises, or his clerk, I do not remember which, but an entirely disinterested witness, that the house was entirely vacant for several days before elec-

tion, the tenant having been evicted by him on summary proceedings for non-payment of rent. It seems to me, Mr. President, that this theory of men moving into the district for the purpose of voting is greatly impaired, to say the least.

But, again, the other houses were run also by men who seemed to have been in this scheme of controlling the election. The house 133 Main street, was hired by a woman originally, who had a lease of it. A Mr. Kilcourse, one of the gentlemen who had the charge of running in the voters here on this occasion, came to the landlord in the early part of October, and told him that he had an assignment from this woman of her lease, and desired to know if he could be substituted as tenant. He was substituted as tenant. He paid the rent for two months, and on the day after election he went to the landlord and surrendered the premises, and the landlord demurring to this and asking about the future payments of rent, he made the consoling remark that he (Kilcourse), was totally irresponsible, and it would be needless to look to him for the rent.

Now, I think, Mr. President, that we have enough facts here to assume, in the language of the contestee's brief, that the circumstances were such that fraudulent votes could have been cast. Now, let us see whether it is probable that fraudulent votes were cast. We have seen the hiring of these houses by parties who were interested in this election. We have seen the registry of this large number of voters at these houses. Those were the preliminary plans. Let us see how they were carried out in practice. The facts show that the principal supporters of Mr. Sheehan, the Democratic candidate for alderman, were Mr. Kennedy, who seems on this occasion to have been the boss, a Mr. Lynch, Mr. Kilcourse and a gentleman by the name of Regan, who was a captain of police, had formerly been a Republican, but who on this occasion, was a Democrat. These men, although they expected to have and did have fifteen policemen at the polls under the leadership of Captain Regan, made a request to the sheriff of Erie county for deputy sheriffs. Accordingly the sheriff, not acting at his office as a sheriff is supposed to act, sends his deputy, a Mr. Steele, to swear in these deputy sheriffs. Steele went down with a horse and wagon, according to the testimony, and in the first place I think he went to see Kennedy, and he swore in a large number of men behind the elevators, at some locality that is characterized as the Island. After he had sworn in that batch of men he went to Mr. Conner's hotel and swore other men in there. In all, Mr. Steele swore in 112 deputies. The evidence shows by the admissions of the undersheriff, that he did not make a single inquiry as to the character of

these men, who they were or where they lived. He took them just as they came, and administered the oath impartially to all, and among those deputy sheriffs we find, at least, three prize-fighters, just as it is stated in the report, and I do not care to qualify it, and a dog-catcher. Only one of the prize-fighters was sworn, a man by the name of Strauss. Strauss testified in the first place that he was a prize-fighter. He testified that he was spoken to by Kennedy, that Kennedy called him into his saloon and gave him twenty-five dollars for his services as deputy sheriff. He was asked whether any instructions were given him. He said no, he knew what to do, he knew what he was there for. Apparently all these prize-fighters knew what they were there for, and candor compels me to state that they carried out their contract to the very letter, and in so far as that goes may be esteemed honorable men. These deputy sheriffs were supplied with badges as deputy sheriffs and some had badges with the name of Mr. Sheehan, the candidate for alderman, and it is practically conceded that they were all there as Democratic poll workers. Now, this appointment of the deputy sheriffs is a mere incident to this case and need not be further commented upon because action has been taken since then by the executive on the facts and circumstances and it may here be dismissed.

From the time the poll opened in the morning until it closed at night, according to the undisputed evidence of entirely credible witnesses, it was under the domination of this man Kennedy. It was Kennedy who gave the directions as to who should be admitted. It was Kennedy who gave directions to the ballot clerks as to the discharge of their duty. Kennedy was the controlling force all day. Early in the morning some Italians, I don't know that they were all Italians, but a number of men, a majority of whom were probably Italians, understanding that there were to be troublous times at the polls, took time by the forelock and formed a line at the outside of the polling place in the early morning hours, for the reason that they wished to get in and deposit their votes and get away and go about their business. They were poor men, and they had a right to use that precaution. There is a natural justice in allowing those first at the polls to vote first. It has been suggested to me by one gentleman that these men had no right there; that the statute, in other words, did not give them the right to come first to the polls; but I say they had a natural right there, and they had that natural equity which arises from superior diligence. They were there formed from the open door of the poll to the north in an orderly line, in a convenient place, waiting for the poll to be open.

When Mr. Kennedy and the police and the deputy sheriffs came there they, on a pretext, directed those men to break up that line and form around on the south side of the booth. They justified that by saying that they could get up a better line there, it was a more convenient spot, that the other place was muddy. That may all be so, but inasmuch as those men had established themselves in that place, and inasmuch as they made no objections to the mud, it does not seem that the police were called upon to make any objections. The result of it all was that those other men who had come later, went into the polls first and that line had to come on behind. The evidence does show that some of the men got discouraged and went away, notably the instance of Mr. Annis, a life long resident of the district. He left and went home and did not vote. It has been established by evidence entirely credible that, while this line of men were standing there, men were admitted by Kennedy and Kilcourse in squads of five or six. Kennedy and Kilcourse would say: "Here, these are our men; let them in;" while other men were obliged to stand in the line there till their turn was reached. This is shown by perfectly credible testimony. One man stood at the head of the line and saw half a dozen men taken in ahead of him. He protested and was pushed out of the line into the street and his lip cut. He afterward, being a man of nerve, fell again into the line and when he came to vote was almost forced by Kennedy into one of these booths where the men were; but he asserted his rights and went to one of the other booths. The testimony is that these things kept on all day, although the poll clerks were protesting constantly against them. The only evidence against those specific facts which I have stated, is made up of the testimony of a number of policemen, who stated in a general way that the election was quiet, that by comparison with other elections held in that district, it was orderly, and that they did not see those things done. We have the evidence of a number of witnesses who did not see the things done against the evidence of those witnesses who not only saw the things done, but upon whom those acts were performed.

I ask again whether in the language of the brief of the contestees' counsel, it is probable that fraudulent votes were cast under such circumstances, or whether lawful voters were prevented from voting, or were intimidated and did not vote. If there had been a simple preponderance of evidence here we might well question the action we are taking. But the contestants went further. They proved beyond a reasonable doubt, on the evidence, that there was a large number of illegal voters registered here at this election district and that their votes were cast. Under these circumstances, according

to the undisputed law of the case, as conceded by both counsel, our duty is to disregard this return. We have a right to say, and we ought to say that the return, as evidence, is so uncertain and unreliable as to lose its value, and that, therefore, it should not be considered.

One word more. The Democratic party is not on trial in this matter. Those acts were not the acts of the Democratic party, but the acts of a half a dozen miscreants in an obscure portion of a large city. I think it is extremely undesirable for this minority to undertake to claim that those acts were committed by Democrats. We have no evidence that those men were Democrats. One of them formerly had been a Republican, and for aught I know, at other elections others may have been Republicans. They were Democrats like so many others of their class, for that day, but that does not make them Democrats in the sense that the Democratic party, as a party, should stand by them. I may, sir, be a little faulty in my notions of Democracy, but although I have always been a Democrat, I have never yet supposed that an indisposition to condone offenses against the criminal law of the State of New York, and especially offenses against the election laws of the State of New York was inconsistent with the professions and practices of the Democratic party. (Applause.)

Mr. Kerwin — Mr. President, when this report came in as a unanimous report of the committee, I looked at it in the same light that I looked on the unanimous report of the Committee on Rules. Could we adopt the report of the Committee on Rules before we had it printed and laid on the desk of each member? Can we now act upon the report of the Committee on Privileges and Elections in this case till we have read the testimony? I have looked and watched and waited for an opportunity to get hold of this testimony, and the first time I got it was yesterday. Yesterday afternoon I received the first volume. I find that the testimony is virtually the same as that offered in the O'Brien-Coughlan case in the Assembly last winter. In relation to Delegate Chipp's assertion that it made no material difference in this Convention, in the political aspect of it, whether we unseated these two delegates or not, I ask this Convention to say whether it made any difference in the last Assembly that they unseated Mr. Coughlan or not. The Committee on Contested Seats in the last Assembly made a report to that body, and what became of it? The Assembly refused to accept it, and allowed Coughlan to retain his seat. Gentlemen. I ask the same privilege for the sitting delegates in this Convention, or at least

I ask that they retain their seats until such time as we are all able to read the testimony. Aside from that, we have a further precedent to act upon. The inspectors of election in that very district were arrested and tried by a jury. What was the outcome of that jury trial? The inspectors were honorably acquitted of all charges preferred against them. Then again we come to the real cause of the fight in that ward. What was it? It was the fight over the alderman, and the alderman elected on that day still retains his seat in the board of aldermen in the city of Buffalo.

Then we come to the question of partisanship. Mr. Chipp says that the speakers who preceded him were misled as to the legal point. If the learned attorneys in this Convention are to be misled as to legal points, where are we, who come from the bench to this Convention, to stand? We have never had an opportunity of reading the testimony. The different counselors in this Convention have had it for a week. If they cannot agree how can we agree? Partisanship should not enter this Convention; but we are opposed to the removal of the only candidate, we might say, who stood upon his merits as a labor candidate, although he was indorsed by the Democratic party. We protest against his removal and the seating of another lawyer in the Convention in his place.

Now, as to the sixty-nine men to whom the reference has been made, it is conceded that the person who hired the house two months previous to the election put those sixty-nine men in there and they were allowed to live there during that time. It was done in strict conformity with the law of this State, which says a man need only to be thirty days a resident in the election district in which he votes. Two months is over sixty days, if I figure it rightly.

Then again as to the dummy line on which such great stress was laid. Has any gentleman in this Convention stood at the polls on election day and watched the performance of the working of a dummy line? There is a law of this State which says you must keep 150 feet away from the polls. A man who has not voted takes his place in line, goes up to cast his vote honestly and has no idea of working as a dummy, but when a man comes along and says to him that he has all day to vote and asks the man in line to step out and give his place to another, is that such an awful violation of the law that this committee on the strength of it should come in and make a unanimous report against the sitting members?

Then as to the dog-catcher about whom so much has been said. I claim that the dog-catcher is an honest and respectable man. We have heard nothing else proved against him, except that that term has been applied to him. I think he is entitled to as much respect

as any lawyer sitting in this Convention. I would like to hear what would be said in regard to Mr. Bergh's dog-catcher in New York city. Every lawyer in the Convention knows Mr. Bergh. I suppose all his men are dog-catchers, and I don't know any reason why this dog-catcher should be looked down upon or frowned upon as not being an honest and intelligent man. Men have had to stoop to all kinds of work during the last few years.

Then again as to the prize-fighters. Mr. President, I would sooner have those deputy sheriffs there, although they were boxers or prize-fighters, and have to contend with them than to contend with the leader of that line of fifty-four Italians, who stood at that poll in the early morning, each and every one of them, so far as I can learn, armed with a revolver. A prize-fighter does not need a revolver. We may get bodily abuse from the prize-fighter, but our life is practically safe in their hands. I think the sheriff of Erie county used good judgment in taking prize-fighters instead of armed Italians to guard the polls.

I do not wish to detain the Convention any longer, but I think they will make an awful mistake to go ahead and try to unseat these two delegates, who, in my judgment, have been honestly elected, and no resolution or unanimous report from any committee can make me believe otherwise until I have a chance to read the testimony. Therefore, I shall be compelled to vote against our minority representation on that committee and vote to retain the delegates who are now seated in this Convention.

Mr. Speer — Mr. President, I desire to offer the following substitute for the resolution of the committee:

Resolved, That the Committee on Privileges and Elections be requested to examine further into the election in the Thirtieth District, and to report specifically and in detail what evidence it has or can obtain, which bears directly on the number of purchased illegal and fraudulent votes cast for delegates to this Convention, and for whom they were cast; also the number of votes cast in the election districts of the Thirtieth District last fall, and the number cast in the election districts comprising such senatorial district in the previous year.

Mr. President, the object of the substitute which I have offered is that we may get before the Convention the specific and individual cases of illegal voting and of fraud. It appears also that in other districts it increased. We have no proof here to show that any of these votes, if they were illegal, were cast for Mr. Trapper and Mr. Beckwith. The only proof on the evidence is that Mr. Sheehan,

a candidate for alderman, got two fraudulent votes. I admire, sir, any display of nonpartisanship. I respect any man who can rise above the feelings of party adherence and devotion to party organization as completely as have the minority in the Committee on Privileges and Elections. But I do not think, sir, that any man in the exercise of nonpartisanship is called upon to lean backwards, and to single out for attack the people who at least profess his own political faith, and ignore the fact that forty-three voters, probably purchased, headed by an armed man, whose name also appears in quotation marks with the other wicked men who were deputy sheriffs, had taken possession of the polls and had excluded other voters, and, unless he had been driven away from there, would have disfranchised the working vote of that district. We have had brought up here the fine distinction that the men who were watchers there, and who were put out, but who afterwards returned, were gentlemen. They were members of the Society of Buffalo. They lived in the wards far removed from the 'longshoremen's district. They came down there among this class of people to distinguish and discriminate between these men who work along the shore — between the dog-catcher, on whom so much emphasis is laid, and the rest — and these gentlemen had there this gang of Italian roughs. The evidence shows that those Italians were hired by the Republican alderman, Mr. White. It also does not show that any Democrat, except the candidate for alderman, in any way profited by these votes. We have here the returns from the districts of that ward. I think we should have here the returns from all the districts of all the wards. Those returns show that there were unaccounted for 1,795 votes for delegates to this Convention. The contest there was made on other offices. Nobody paid any attention to the candidates for membership in this Convention. I know that in my district in New York on election day, not one voter in a thousand knew that there was any such office on the ticket until he got his ticket and saw it. We have here, from the evidence of the returns, the fact that there are discrepancies in the vote for delegates in the Thirtieth District of 7,495. Why not assume that all those discrepancies were in favor of Trapper and Beckwith? Why should we assume that all those discrepancies are in favor of Sullivan and Putnam, the contesting members? We have before us, out of the whole Senate district, the evidence from only one election district, an infinitesimal part of the district. There is no testimony in regard to anything else. All the evidence in that election district shows is that there were two fraudulent votes cast

there for Mr. Sheehan, as appears from the testimony, and we are asked here —

The Chairman — Mr. Speer will bear in mind that this motion, being substantially a motion to recommit to the committee for further report, precludes debate on the main question. The question is on the recommittal.

Mr. Speer — Mr. President, the object of my substitute is that we may not confine our attention here to one election district, but that we should go over the whole Senate district; that we should not disfranchise a single legal voter; that we should examine fully into all the returns, into all the discrepancies there, which the evidence shows was large, and not pick out one district like this; and that we should not make this distinction which has been made by the speakers, a social one, one of education, but that we should examine into all the facts and act thoroughly on all the facts, and that the only facts we are to consider are how many and what fraudulent votes were cast. Dog-catchers, prize-fighters, policemen, deputy sheriffs — none of those things has anything to do with the essential fact; were there fraudulent votes? How many fraudulent votes were there and for whom were they cast? My substitute is for the purpose of finding that out, and that we should omit the other stuff which the Governor and grand jury have acted upon.

The President stated the question to be upon Mr. Speer's motion requiring the Committee on Privileges and Elections to make further investigation and further detailed report on the subject involved in their present report.

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

Mr. Maybee — Mr. President, I do not desire to take up this question from a partisan standpoint, but even from a partisan standpoint I will vote to sustain the report of this committee. Here are five distinguished and able Democrats, members of this committee, who, after a long, patient and careful hearing on both sides of the controversy, after listening to all the evidence that has been adduced upon both sides of the question, and after hearing the arguments of counsel for both parties, join with the committee in a unanimous report to the effect that the sitting members are not entitled to seats in this Convention; but that, on the contrary, the contestants are entitled to the seats now held by them. I have been a life-long Democrat, and I yield to no man my principles as such. I yield to no man, in this Convention or out of it, in my desire for Democratic success. But I am not in favor of voting for

Democrats for seats in this Convention simply because they are Democrats, when the evidence carries the irresistible conclusion to my mind that they have not been legally elected to the seats they hold. (Applause.)

And I would no more vote to seat a labor man in this Convention simply because he represents the labor interests. There is no man within these walls who has more sympathy with the laboring man than I have. I believe at all times in carefully protecting the rights of the toiling millions. I believe the laborer should at all times receive the most careful, tender and solicitious consideration; but I know of no law by which a laboring man who is running against a lawyer for public office, is entitled to his seat, whether elected or not, simply because he is a laboring man and because his adversary is a lawyer.

For these reasons, Mr. President, and because it seems to me that the report of the committee is sustained by the testimony and the facts, I shall vote in favor of the adoption of the report of the Committee on Privileges and Elections.

Mr. Hirschberg — Mr. President, I trust that the substitute offered by Mr. Speer, or the motion to recommit, if it be so considered, will not be adopted by this Convention, for two reasons; while there may be a great deal of force in what he says about the propriety of inquiring into the proceedings in other election districts for the purpose of ascertaining the extent of fraud which may have been committed there, and while his sources of information may be better than those of the members of the committee, the suggestion, it seems to me, is quite pertinent that it is impossible that he should know more about the case than the two sitting members themselves. Mr. Trapper and Judge Beckwith are supposed to be intelligent men. They certainly employed intelligent counsel; and the determination was reached by them not to go into the other districts. Nobody was to be benefited thereby. This having been the course adopted and followed by the parties and the counsel upon both sides, it would seem to me to be needless and unwise to send this matter back to the Committee on Privileges and Elections for such a search as is suggested. In the next place let me suggest that there is a difficulty in the committee ascertaining who the parties were that cast the fraudulent votes; because it was substantially conceded upon the argument that the parties are myths. Nobody can find them. The hundreds of persons in whose names these fraudulent votes were cast which elected these two members, do not exist upon the face of the earth. There are no such parties.

It was not simply the day before election that these 129 warrants were in the hands of the officers; it was for weeks after election day; and the officers made the effort to find out who these people were whose names were put on the registry list and no such persons could be found. My recollection is that there were but four persons among them all who were ever discovered by anybody. Now, why send this case back to the Committee on Privileges and Elections to find people who never existed, for the purpose of showing that they had not a right to vote in that election district? It seems to me that it would be ridiculous to do it, and on behalf of the committee I say in advance that we cannot do it. The counsel could not do it. Neither side produced the men, and it is pertinent also to remark that neither side produced the men who were known to be there and who were charged with taking the machinery in their hands and putting in the fraudulent votes. Kennedy did not appear before the committee as a witness, neither did the other men named.

Now, it seems to me that the members who have discussed this matter lose sight entirely of the real question in the case. It is not so much a question as to who cast fraudulent votes. It is a question whether or not it is proper to elect men by the authorities themselves, who are sworn to obey the laws and to preserve order, taking violent possession of the machinery of election, ejecting all those who differ from them in opinion, and themselves casting fraudulent votes in the names of myths. That is the question. The charge against the sheriff was that these 112 men not only were improper persons to be appointed as custodians of the peace, but that they acted improperly after they were appointed; that they assaulted peaceable men; that they allowed fraud to be perpetrated; that they took possession of the booths, and that they arrayed themselves on the side of fraud, intimidation and violence. That was the charge that was made against the sheriff before the Executive of this State, and that was the reason the Executive decided that he must leave his office. Sheriff Beck was removed solely because he appointed the men who have been the subject of the eulogies of the gentlemen who have spoken, and because they acted in a manner which has cast a cloud upon the seats, and upon the title to their seats, of these two members of this Convention.

After hearing all this discussion, I do not see that any answer has been made to the report of the committee. I do not see that any answer has been made to the suggestion contained in the brief. I do not see that anybody has disputed the propriety of the result. The only thing that is stated here is — and it is true — that the

distinct identity of the voters has not been shown; that it has not been demonstrated who the parties were who cast these hundreds of votes, which no man honestly believes were honest votes, and that, I say, has not been shown, because it is impossible that it should be shown. All that has been shown is this: That men have registered in scores from empty houses; that they voted in scores from empty houses; that their entity does not exist; that persons who pretended names forgot them, and that when they went out and learned them they came back and voted; and that the officers who were sworn, and who were sent there to see that that was not done, were taken from a class of people not generally regarded as reputable as the legal profession. I do not want to say one word to hurt the feelings of my friends upon the subject of prize-fighters or dog-catchers; but they were not regarded as exactly the proper sort of persons to represent either the majesty of the law or public order and peace upon election day. Their conduct was scandalous in the extreme. They were on the side of violence and intimidation all day, and as a result of it 505 Democratic votes were made to grow where only 212 grew before. That is all that is before the committee, and with that fact conceded the committee decided as they did. I am free to say that I deeply regretted the fact that this contest was made, but I had reliance upon the members of the sub-committee. They came back from Buffalo unanimous in their opinion, and when the evidence was inspected it was found to justify them. It not only justified them, but it justified the Democratic Executive of this State in his action; and a vote against this report is just as much a condemnation of Governor Flower as it is a vote for the condemnation of either the majority or the minority of this committee.

Now, why send it back to the committee, It has been examined carefully, it has been discussed over and over again. The facts still remain undisputed. No lawyer will say but that with these facts undisputed, a complete case is made out. Why should not the Convention vote upon the question, and vote upon it free from partisan bias? Vote upon it as lawyers who are affected by the facts and by the law and that alone, without regard to the politics of the parties interested? I for one am prepared to do so, and I trust that the Convention will do so at this time.

The call for the ayes and noes was not sustained.

The President put the question on the adoption of Mr. Speer's resolution, and it was determined in the negative.

The President stated the question now to be upon the adoption

of the resolution reported and recommended by the Committee on Privileges and Elections.

Mr. Speer — Mr. President, I call for the yeas and nays.

Mr. Hirschberg — I second the motion.

The ayes and noes were ordered, and the President stated that the vote would be taken separately, by request, upon the different parts of the resolution.

The President put the question upon the first part of the resolution, and the Secretary proceeded to call the roll.

Mr. Bowers — Mr. President, I ask to be excused from voting, and these are my reasons:

I am satisfied that upon the evidence taken in this case, which I have examined with care, and upon the briefs of the respective parties and the arguments of counsel and the report of the committee, that there has been full justification for every argument that has been presented to this Convention to-day on behalf of those gentlemen who are opposed to the adoption of this report. And it can be based upon this state of affairs: There is no doubt that in the Fourth Election District of the First Ward of the city of Buffalo, which is the district to be thrown out to unseat the present delegates, that there was a conspiracy on the part of the supporters of Alderman White to carry that district by illegal votes of fifty to eighty Italians, who went out in the small hours of the morning under the guidance of three men, answering in the evidence to descriptions ten times worse than those which apply to any deputy sheriff appointed by the Democrats. I am satisfied that they intended to continue a course of procedure at the polls by which they would challenge Democratic voters until they deprived the Democratic party of the normal majority to which it was entitled in that district. And, sir, when the evidence is further examined it will appear that for more than four weeks prior to the time of this election the name of every one of these men who were complained of as illegal voters on the side opposed to Alderman White, were notoriously and openly before the public. It is perfectly true that the vote in that district increased to an enormous extent, but it is claimed, although there is no evidence on one side or the other in reference to it, that these men came in from other parts of the city and took up, as they had a right to do, a lawful residence in that district. There is no doubt that an application was made before a judge of the Superior Court to strike from the list the names of all illegal voters, and under the law he could have done so, and it

is no sufficient explanation to say that he only struck out those who were conceded to be wrong. There is no doubt that 129 warrants were issued the night before election for the purpose of having these men arrested who were to vote the next day, and they could just as well have been issued four weeks before.

Therefore, it is, Mr. President, that I say there has been full reason and full justification (for all these things appear upon the report) for the suggestion that has been made here this morning that the wrong was not all on one side in that district. It is not necessary that I should go into details any further. This much I want to say. It appears that in order to prevent this wrong, those who were opposed to Alderman White caused to be selected and appointed, on the night, I think, before the election, 112 or more special deputies, who were to be workers at the polls; and it appears that there was such a state of affairs in the polling district the next day as to justify the report that has been made that the Democrats, in overturning the intended wrong to be perpetrated by the adherents of Mr. White, went too far, and took such uncontrollable possession of the district, in the placing of men in the private compartments, in the removal of challengers who came there representing the Republican party, and possibly in the receipt of illegal votes, when coupled with the extraordinary increase in the registration, as to justify the report that has been made. And, sir, I am satisfied, after a careful examination of the evidence, that the committee are right in their report, and that while one wrong was prevented another was done, and that the evidence was sufficient to justify the minority of this committee in doing just what they did do, and in offering just the explanation that they have offered here to-day. For these reasons I feel that it is my duty to sustain this report, notwithstanding the wrong that was attempted by the other side, and more especially in view of the fact that members of this committee, of acknowledged standing in the party, heard the testimony of these witnesses and, being in a position to judge for themselves as to the credibility of the witnesses, determined there was no election in that district which should be counted for any man. Having this confidence in their being better able to form an opinion as to the contested questions of fact before them than I am, and finding quite enough in the evidence to justify the result I have stated, to wit, that the upholders of Alderman White went so far in their work that they overstepped the mark and did a wrong, I am compelled to withdraw my excuse and vote aye.

Mr. McClure — Mr. President, I ask to be excused from voting

and will briefly state my reasons. One thing which impressed me at first on my examination of this case in favor of voting in opposition to the report was the fact that, contrary to the usual course, no men who had lost their votes through the improper action of the deputies at the polls have been produced to prove that fact, and the additional reason that there was a crowd of Italians, whose vote was evidently purchased, who had sought to obtain possession of the polls. But the general atmosphere of the case, Mr. President, impresses me with the conviction that as there was a smaller Republican vote in this district, by fourteen, than in 1892, and that as the vote increased from 342, in 1892, to 641, in 1893, and in view of the fact that there was colonization in empty houses, I am satisfied that the twenty-six majority obtained in favor of the sitting delegates was obtained partially by this extraordinary increase in the Democratic vote, and partially by this colonization. Mr. President, thoroughly Democratic, I am sufficiently lacking in partisan feeling, whether in or out of this Convention, to rise to a proper and honest appreciation of the facts in the case, and to say that, in my opinion, there was nothing left for the committee to do in this case but to report in favor of the contestants. I withdraw my request to be excused from voting and vote aye.

Mr. Mullen — Mr. President, I desire to be excused from voting, and will offer the following reasons: I am in the embarrassing position of being in this Convention with my seat contested. I have tried up to this time to be a faithful attendant upon the duties which appertain to me as a member of this body. I have sought to be diligent in my attendance. Having rejected many nominations for important offices, it has been the ambition of years that I should participate in the deliberations of this Convention, to the end that I might, in the exercise of my faculties after twenty-four years' experience at the bar, be able, possibly, to advance some measures that might be beneficial to the State, and might, in a small sense, redound to my credit. I very much regret that I have been placed in the position here to-day which has prevented me from expressing views which I may entertain in reference to this case under consideration. But, Mr. President, under the circumstances, I feel that it would be indelicate for me to say a word, *pro* or *con*, in relation to the law or the facts of the case under consideration. My case is in the hands of the same committee, and under the circumstances, Mr. President, I ask to be excused from voting upon this question.

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

Mr. Osborn — Mr. President, I desire to be excused from voting and wish to state briefly my reasons. On the presentation of the report of this committee I was struck by the statement that neither Mr. Beckwith nor Mr. Trapper is charged with any act which in the slightest degree reflects on their character. I, therefore, was at some pains to take up the type-written evidence submitted and I have perused it thoroughly and with some anxiety to sustain, if possible, the sitting members. Sufficient to say, Mr. President, I have found no room for doubt and I ask leave to withdraw my request to be excused from voting and vote aye.

Mr. Platzek — Mr. President, I desire to be excused from voting, and for these reasons: I conceive it to be the highest duty of a Democrat, whether in the minority or in the majority in any deliberative body where he stands as the representative and exponent of Democratic principles, to vote in favor of a free and untrammelled ballot. I have been educated during my lifetime in the school of Democracy, and from the beginning to the graduation my instructions have always been, and I have adhered to the principle of a free and untrammelled ballot. I have not had sufficient opportunity, I admit, to read all of the testimony which has been taken in this matter. I have, however, read the briefs of both parties and I have read the report, and from those briefs and that report, and from the conversation I have had with Mr. Osborn and others who have read the testimony, and the faith that I shall always give to the representatives of my party when they are appointed to investigate a question in an unpartisan and fair spirit, I am inclined to stand by the committee and to uphold them and not to do otherwise. I regret exceedingly that these gentlemen are not to be allowed to retain their seats in this body, because the report states that there is nothing to impugn their character nor had they knowledge of the wrongdoing by which they might have benefited. And, therefore, I say, Mr. President, that because I am a Democrat, and because I have been taught to and do believe in a free and untrammelled ballot and believe that this was not a fair election, I withdraw my request to be excused and vote aye. (Applause.)

Mr. Roche — Mr. President, I desire to be excused from voting and will state my reasons. A number of years ago a very prominent Republican, who had a reputation of being a thoroughly honest, conscientious man, indeed who was known as "honest" so and so, came from another State and addressed a political meeting in

the city of Troy, and he told in glowing terms about the iniquities of his political opponents and of the illegal practices they resorted to in connection with elections in his part of the State. And he told about his nomination and election two years before. He referred to the fact that his opponents had nominated so and so, and he said: "Fellow citizens, what do you think the rascal did? He brought in a large number of men to vote who did not reside in our part of the State. What do you think of such rascality as that?" "But," he said, "we did not propose to let him get away with it. We turned in and beat him at his own game." (Applause and laughter.)

Now, Mr. President, if in our elections we try to beat men at their own games, we will have chaos instead of order; anarchy instead of government. Now, this is not a question of voting to unseat Democrats. I am very much in favor of keeping up the Democratic vote here. It is not a question, sir, of unseating a laboring man as such. I do not know, Mr. President, of any body of people in this State who are more interested in the integrity and the purity of our election laws, and the honesty and fairness which should characterize our elections, than the great body of the workingmen of our State. The integrity of the election laws should not only be their shield but their sword. I come from a district where the workingmen are very largely in the majority; where laboring men and labor unions are influential and, by their intelligence and their thrift, property is better distributed among them than, perhaps, in any other locality in the State. But I have before me, sir, the fact that the committee contains in its membership several reputable Democrats who have joined with their political opponents in making this report. I have before me the fact that the Democratic Governor of this State has removed a Democratic sheriff for gross neglect and dereliction of duty in connection with the scandal of swearing in 112 deputy sheriffs on the evening preceding this election in this ward. I have before me the dominant fact that the Democratic vote is equal to the combined Democratic and Republican vote in any year preceding 1893, including the Presidential year. Sir, I cannot get away from these facts. As a judge here, acting under the oath which I took at the opening of this Convention, I cannot get away from these patent, unexplained facts which characterized this election, and which show that it was tainted with fraud. For that reason I ask to withdraw my request to be excused and I vote aye. (Applause.)

Mr. Becker — Mr. President, I ask to be excused from voting and desire to state my reasons very briefly.

I stand in a peculiar position with regard to both the gentlemen whose seats are contested in this Convention. Judge Beckwith is a life-long friend, is associated with me in the Buffalo Law School, an ex-judge of the Supreme Court, and a man I believe to be thoroughly honest and intelligent. Mr. Trapper is the representative, in a measure, of the Cigarmakers' International Union of America, for which I have been general counsel for many years. I would like very much if I could see my way clear, or could do so at any time, to seat one or both of these gentlemen. But circumstances which have been detailed here by Mr. Roche in his speech, and by other gentlemen who have spoken in the same vein, which are known to all the citizens of Buffalo, place me in a position where, if my vote should be recorded in the negative on this proposition, I should meet with the universal execration and reproach of all the people in our city whose respect is worth having.

Mr. Trapper is unfortunate, like dog Tray, and so is Judge Beckwith, of being found in bad company. I desire to say here, on behalf of the Republicans of Erie county, that a proposition was made, when the nominations for constitutional delegates were proposed, that one man should be placed upon the Republican ticket in the Thirty-first District and the Democrats should not run anyone against him, and in the Thirtieth District a like man should be placed in nomination by the Democrats and no one should be placed in nomination against him by the Republicans. This proposition came from the Central Labor Union. Of the good faith of that proposition, and of the machinery that was set in motion to bring it about, I have nothing to say. Several names were suggested. Mr. Coleman, who comes from my district, and who seems bound to vote against this proposition, was approved of by the Republican party in our district. In the other district the name of Mr. Trapper was presented. When the great outrages were perpetrated upon our city charter, when the votes and bills were passed that were by the unanimous vote of the Bar Association of the city of Buffalo and county of Erie, and the united vote of the Medical Association —

Mr. Speer — Mr. President, I rise to a point of order. That has nothing to do with this question; nothing at all, sir.

Mr. Becker — I will be very brief, Mr. Speer.

Mr. Becker (continuing) — And by the Merchants Exchange, and all the good citizens of our city, repudiated, regardless of party, Mr. Trapper found it incumbent upon him to make such an intemperate speech that there came very nearly being a riot. Under these circumstances, when this

proposition to place his name upon the ticket was made, they said: "No, we will have none of Trapper; we will have nothing to do with him; give us any other man." And they said: "If you insist upon nominating Mr. Trapper, we will go you one better, and we will put two labor men on our ticket." Accordingly we nominated Mr. Springweiler, a representative of the Brotherhood of Locomotive Engineers and Firemen, and Mr. Turner, a representative of one of the labor unions, and both of these gentlemen are sitting in this body to-day as the representatives of labor.

Mr. Barhite — Mr. President, I rise to a point of order. The gentleman is entitled to three minutes to explain his vote. I think he has exceeded that time.

Mr. Mulqueen — Mr. President, I ask unanimous consent that the gentleman be given full opportunity to explain his vote, so as to place himself right with his client. (Laughter.)

Mr. Becker — Mr. President, feeling, as I do, that the labor organizations are well represented here, and feeling, moreover, that as a committee of the Assembly unanimously declared in favor of throwing out that district, the same as this committee has done, I believe it is my duty to vote to sustain this report. I, therefore, wish to withdraw my request to be excused from voting and vote aye.

Mr. Cochran — Mr. President, I ask to be excused from voting and desire very briefly to state my reasons.

As this Convention is already aware, the seat which I occupy in this body is contested by a gentleman who claims he was legally elected, and while I do not wish to reflect at all upon the gentlemen who are bringing this contest or the spirit which animates them in desiring to upset the decision of a majority of seven thousand of voters, I feel it indelicate for me to vote upon any proposition in reference to the unseating of a delegate. Therefore, I desire to be excused from voting.

The President put the question on excusing Mr. Cochran and it was determined in the affirmative.

Mr. Jenks — Mr. President, I ask to be excused from voting for the same reasons that have been stated by Mr. Cochran and other delegates whose seats are contested, in accordance with the precedents which have been set down by the Convention to-day. Not that I have any doubt how to vote, but on account of the propriety.

The President put the question on excusing Mr. Jenks and it was determined in the affirmative.

Mr. Roderick — Mr. President, I desire to be excused for the same reason as stated by Mr. Mullen.

The President put the question on excusing Mr. Roderick and it was determined in the affirmative.

Mr. Towns — Mr. President, I am in the same district as the gentleman who has just spoken and for the same reason I ask to be excused from voting.

The President put the question on excusing Mr. Towns and it was determined in the affirmative.

Mr. Meyenborg — Mr. President, I ask to be excused for the same reason as stated by Mr. Cochran.

The President put the question on excusing Mr. Meyenborg and it was determined in the affirmative.

The President declared the first resolution carried by a vote of ayes, 113; noes, 16.

Ayes — Messrs. Abbott, Ackerly, Alvord, Arnold, Baker, Banks, Barhite, Barnum, Barrow, Becker, Bigelow, Bowers, Brown, E. A., Brown, E. R., Burt, Cady, Carter, Cassidy, Chipp, Jr., Church, Clark, G. W., Clark, H. A., Cookinham, Cornwell, Countryman, Crosby, Danforth, Davenport, Davis, Deady, Dean, Deyo, Dickey, Doty, Durfee, Durnin, Faber, Floyd, Foote, Forbes, Francis, Frank, Andrew, Fuller, C. A., Fuller, O. A., Galinger, Gibney, Gilbert, Goodelle, Green, A. H., Hamlin, Hawley, Hecker, Hedges, Hill, Hirschberg, Holls, Jacobs, Johnson, I. Sam, Johnson, J., Johnston, Kellogg, Kimmey, Lauterbach, Lester, Lewis, C. H., Lewis, M. E., Lincoln, Lyon, Manley, Mantanye, Marshall, Maybee, McArthur, McClure, McCurdy, McDonough, McIntyre, McKinstry, McLaughlin, C. B., McMillan, Mereness, Moore, Morton, Nichols, O'Brien, Osborn, Parker, Parkhurst, Parmenter, Peck, Phipps, Platzek, Poole, Powell, Redman, Roche, Root, Spencer, Springweiler, Steele, A. B., Steele, W. H., Sullivan, Tibbetts, Truax, C. S., Turner, Van Denbergh, Vedder, Vogt, Wellington, Whitmyer, Wiggins, Woodward, President — 113.

Noes — Messrs. Blake, Coleman, Emmet, Gilleran, Goeller, Hottenroth, Kerwin, Marks, Mulqueen, Ohmeis, Peabody, Rogers, Speer, Titus, Tucker, Veeder — 16.

The President put the question on the second resolution as follows:

Resolved, That Harvey W. Putnam and Thomas A. Sullivan are

duly elected delegates from the Thirtieth Senatorial District and are entitled to the seats in this Convention now occupied by Herman F. Trapper and Charles Beckwith.

And the Secretary proceeded to call the roll.

Mr. Hottenroth — Mr. President, I ask to be excused from voting, and will briefly state my reasons. It appears from the facts which I have examined that fraud was committed in that district. It also appears, inferentially at least, that fraud was committed on both sides; that there was a discrepancy of 7,495 between the registry lists and the poll lists. If we divide that number of votes by ten, there is a discrepancy of 749 votes in case of each candidate. It is, therefore, impossible to determine who are the proper persons who have been elected to this office. I, therefore, desire to have my vote recorded in the negative.

The President declared the second resolution carried by a vote of 104 ayes, 13 noes.

Ayes — Messrs. Abbott, Ackerly, Alvord, Arnold, Baker, Banks, Barhite, Barnum, Barrow, Becker, Bigelow, Bowers, Brown, E. A., Brown, E. R., Cady, Carter, Cassidy, Chipp, Jr., Church, Clark, G. W., Clark, H. A., Cookinham, Cornwell, Countryman, Crosby, Danforth, Davenport, Davis, Deady, Deyo, Dickey, Doty, Durfee, Faber, Floyd, Foote, Francis, Frank, Andrew, Fraser, Fuller, C. A., Fuller, O. A., Galinger, Gibney, Gilbert, Goodelle, Hamlin, Hawley, Hecker, Hedges, Hill, Hirschberg, Holls, Jacobs, Johnson, I. Sam, Johnson, J., Johnston, Kellogg, Lester, Lewis, C. H., Lewis, M. E., Lincoln, Lyon, Manley, Marshall, Maybee, McArthur, McClure, McDonough, McIntyre, McKinstry, McLaughlin, C. B., McMillan, Moore, Morton, Nichols, O'Brien, Osborn, Parker, Parkhurst, Peck, Phipps, Platzek, Pool, Powell, Pratt, Redman, Roche, Root, Spencer, Springweiler, Steele, A. B., Steele, W. H., Storm, Sullivan Tibbetts, Turner, Van Denbergh, Vedder, Vogt, Wellington, Whitmyer, Wiggins, Woodward, President — 104.

Noes — Messrs. Blake, Coleman, Goeller, Hottenroth, Kerwin, Marks, Mulqueen, Peabody, Porter, Rogers, Speer, Titus, Tucker — 13.

Mr. Kerwin — Mr. President, I now move that the report of the Printing Committee be made a special order for to-morrow morning, immediately after the reading of the Journal.

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

Mr. Tekulsky — Mr. President, I desire to be excused from attendance to-morrow, and my reasons for that request are that there is a special committee now sitting in the city of New York representing the honorable body of the Senate of this State. Some lawyers and quite a body of ministers are very anxious to have me in New York city to-morrow morning to find out what I know about New York city and what I don't know, and I, therefore, ask to be excused for to-morrow.

The President put the question on excusing Mr. Tekulsky and it was determined in the affirmative.

Mr. McMillan — Mr. President, I move you, sir, that the delegates who have just been voted to be given their seats in this Convention, be invited to come forward and take the oath.

Messrs. Putnam and Sullivan came forward to the desk and were duly sworn in by the President.

Mr. Lincoln — Mr. President, I move that the special order which was made for to-day on the report of the Committee on Suffrage of the alien resolution be made a special order for to-morrow immediately after the consideration of the report of the Committee on Printing.

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

The Secretary read the announcements of committee meetings.

On motion of Mr. Bowers, the Convention adjourned until to-morrow morning, June 29, at ten o'clock.

Friday, June 29, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber at the Capitol, Albany, N. Y., June 29, 1894.

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

The Rev. R. H. Shirley offered prayer.

The Secretary commenced the reading of the Journal of Thursday, June 28.

Mr. Kellogg asked unanimous consent that the reading of the Journal be dispensed with.

Mr. Goodelle objected.

The Journal of Thursday was thereupon read and approved.

Mr. Porter — Mr. President, I was unavoidably absent yesterday when vote was taken on the report of the Committee on Privileges and Elections. As a matter of privilege I request that I be recorded as voting in the affirmative.

Mr. Bowers — Mr. President, I object for the reason that I do not understand upon what principle the gentleman may claim to be able to cast a ballot after the vote has been taken.

Mr. Alvord — Mr. President, I would suggest to the gentleman that he request that it be entered upon the Journal that if he were present yesterday he would have voted in the affirmative. That is the correct parliamentary way.

The President — The Chair is of the opinion that that is all that could be done now, and, if Mr. Porter is satisfied with it, the Secretary will please record upon the Journal that Mr. Porter explained that he was unavoidably absent yesterday, but if present he would have voted in the affirmative.

The President announced the next business in order to be the report of the Committee on Printing.

Mr. Cady — Mr. President, I ask unanimous consent at this time to introduce two proposed amendments. My reasons for asking leave to present them are these: I am aware that there are two special orders on for to-day and I fear that the regular order for the introduction of proposed amendments may not be reached. As these proposed amendments are submitted by Mr. George Clinton, of Buffalo, the chairman of the Canal Conference of the State, and by the Canal Conference of the State I deem it important that they should be printed and spread before the members as soon as possible. If the order should not be reached to-day there would be a delay of a week before they could be printed.

The President — If there are no objections the amendments will be received.

Mr. Cady thereupon offered the following proposed constitutional amendments:

Q. 274.— Proposed Constitutional amendment to amend section 6 of article 7 of the Constitution of the State of New York, relative to the canals.

Referred to the Committee on Canals.

O. 275.— Also, a proposed Constitutional amendment to amend section 12 of article 7 of the Constitution of the State of New York, relative to canals.

Referred to the Committee on Canals.

The President — The special order is the report of the Committee on Printing, which is document No. 21, of June 21, 1894. The Secretary will read the report of the committee, or the resolutions set forth therein. The report is in the hands of all the gentlemen. The first question will be on the adoption of the first resolution.

The Secretary read the resolution as follows:

Resolved, That the 719 volumes of the series known as volume 2, part 1, of the Manual be distributed among the members of the Convention as follows: To each delegate and to the Secretary of the Convention four volumes; and the residue to the President, to be disposed of by him as he shall deem proper, and that no more be printed.

Mr. Hamlin — Mr. President, it may be well to say, for the information of the members, that these volumes of the Manual are in a series of 719 volumes, as I am informed by the Compiler. Since this report was made or dated, on the 21st day of June, I am informed by a representative of The Argus Company that in reference to this particular volume, known as volume 2, part 1, of the Manual, there has been ordered in addition to the 719 volumes to be bound in morocco, 4,281 volumes to be bound in cheap binding, and these are to be distributed among the members of this Convention, some twenty-five volumes for each member. What conceivable necessity there can be for this mass of publication, I do not know. I do not think the Compiler — there seems, at least, to be some question between the Compiler and The Argus Company as to this order, but certainly in view of the possibility of the calamity happening to this Convention, it seems to me that there should, at least, be an order that no more be printed than the 719 volumes, which should be provided for with the other volumes. Now, this is recommended by the committee in this case as being as nearly an equal distribution of the volumes as could be made, leaving a few volumes over, which are placed in the hands of the President of the Convention. It already appears that the Manual is on sale in the second-hand book stores, and it is to protect the Convention from an improper sale of these picture books that the recommendation is made.

Mr. Cassidy — Mr. President, I have no desire to question the report of the Committee on Printing, but if I read correctly the report which was made by the Judiciary Committee, their report was to this effect: That the Legislature has undertaken to authorize the printing of the Manual and compilations and with such Journal as the Convention may keep, and has authorized a contract for such

printing, which was made before the Convention met; that, in the opinion of the committee, the Convention has no concern with these matters, and it cannot prevent such printing from being a public charge under the contract of 1893, or make it such a charge. Now, it seems to me that the report of the Committee on Printing, while it is terse in statement and beautiful in diction, is at war with the report of the Judiciary Committee on the same subject, and for fear that the Printing Committee have overlooked this portion of the report made by the Judiciary Committee, it seems to me that this resolution which has been made in this form should be referred to the Judiciary Committee, which has under consideration that contract. I move you, therefore, that the resolution which has just been read be referred to the Judiciary Committee to harmonize, if possible, the resolution with the report which they have heretofore made.

The President — The question is on Mr. Cassidy's motion to refer this first resolution back to the Committee on Judiciary. The Chair was under the impression that this had already passed through that committee. I am not sure whether that is true or not.

Mr. Cassidy — Mr. President, I think this report has not passed through the hands of the Judiciary Committee.

The President — The question is on Mr. Cassidy's motion to refer this particular resolution to the Judiciary Committee, to report as to how far it harmonizes with their previous report on the functions of the Convention in respect to the Manual.

Mr. Root — Mr. President, may I ask for the reading of the resolution?

The Secretary again read the resolution.

Mr. Cassidy — Mr. President, by referring to the act of 1892, which was amended by the Laws of 1893, you will see that the Compiler has the authority to make a contract with the printers, and did make such a contract, and that the number of volumes of the Manual which were to be distributed was stated in that contract. Now, the resolution which we have here calls for the distribution of four volumes to each member of the Convention and to the Secretary, which would make 732 volumes, whereas the report states that there are only 719.

Mr. W. H. Steele — Mr. President, I dislike very much to say anything more in reference to this matter of that Manual, on account of my connection with the Manual; but it seems to me that a simple explanation of the act of the Legislature, and of the act of the

Compiler and of his deputy, should once more be made to the Convention. The act under which these volumes of part 1 were collected, collated and ordered printed was passed in 1893, and simply ordered that the Secretary of State, the Comptroller and the Attorney-General should cause to be printed a Manual. Under that act they appointed the present compiler, Mr. George A. Glynn, of Syracuse. Mr. Glynn requested that I should aid him in getting up the first part of the Manual, volumes 1, 2 and 3. I did so, as is well known, and when my manuscript was handed in to the printer I had no idea that more than two copies of each would be printed, unless the printer saw fit to print a few extra copies at his own expense and upon his own motion. When the books came to be printed I found that there were 719. I inquired of the publishers why they had printed 719, when all the act called for was simply two for each member of the Convention, in all 350. I was informed that that was under their printing contract made with the former Secretary of State, Comptroller and Attorney-General, and if I had ordered but one for each member of the Convention they would have printed the 719 just the same; that it was under their contract, and that it did not concern me how many they printed so long as the Convention received the two copies for each member.

Now, sir, this seems to be the situation. The condition of affairs is that the act called for two copies of the Manual, however many volumes they might see fit to get out, for each member of the Convention, and no more. Nothing is said about what should be done with the balance. I think, sir, that the matter lies between the commission (as they were called in 1867), the Secretary of State, Comptroller and Attorney-General, and the printer. If the printer has printed too many, then the books are upon the printer's hands. If these commissioners ignored, or did not take the trouble to look up the contract and have ordered this printing done, and, by virtue of this legislative contract, they saw fit to print seven thousand, I do not see what this Convention has to do with the matter. It seems to be a matter between the Secretary of State, the Comptroller, the Attorney-General and the printer. Now, we know, if there were only 350 books printed, that would give two volumes, duplicates, to each member of the Convention, and no more. But under that contract the publishers have printed about 400 more copies. That is a question to be settled between them and the officials who authorized the printing. If they have made a mistake, then they are the ones who are responsible. If not, then these Manuals are to go in the ordinary way. The 719 copies were printed under the legislative contract, which gave so many to each Senator and member

of Assembly, and so many to the State Library and the different State officers. Now, under this resolution, it seems to me it is very questionable whether the Governor could have a copy; whether the Secretary of State or Attorney-General or other State officers could have a copy. Now, I am perfectly satisfied, and I am not disagreeing with this resolution. If this Convention has a right to give me four copies, I shall very gracefully receive them; but I do not understand that this Convention has any right to these extra copies. We have a right to demand the two under the act, and leave it to the Attorney-General, the Secretary of State and the Comptroller to settle with The Argus Company what shall be done with the balance. I simply make this explanation, and I said to the Chairman of the Printing Committee that that was my understanding. If we are allowed to take these four volumes, I shall take them home with me; but I do not think this Convention has any authority over a pre-existing contract, made before this Convention came into existence, and virtually this printing was largely done before the organization or assembling of this Convention. Now, Mr. President, it looks to me in this wise: That had these books been printed on the first day of May, two copies would have been laid on the desks of the members upon the day we organized. Has this Convention a right to say, we will take the balance, four or five hundred more? They seem to lose sight of the fact that the contract was made between these three officers and The Argus Company, through the Compiler, and that they are the gentlemen who are to say what shall become of the balance of these books. I do not wish to antagonize in any way the report of the committee. As I said to the chairman, I should be very glad to receive four volumes, but I think the Convention should look over the act itself and they will see that we are only entitled to two copies.

The President — Perhaps Mr. Steele will be able to inform the Convention whether there is any danger, or probability, or possibility of any more than the 719 being printed.

Mr. W. H. Steele — Mr. President, I did not suppose there was the slightest probability or possibility of that, unless a sufficient number of the members of the Convention should authorize the printing of more. I say plainly, that I would like twenty-five copies for myself. I suppose if there were enough members of the Convention who would say to The Argus Company, we would like to have five or ten copies, that The Argus Company would be glad to print them, but as a contract matter, no more than 719 volumes can be printed. If, as has been said, this Manual is on the shelves of the

second-hand book dealers, I would like to know who those dealers are; but it is no more a reflection to have a valuable book like that on the shelves of a second-hand book dealer than it is for him to have a second-hand Bible or dictionary for sale. If any member has been in such a position that he has had to sell his Manual, in order to pay his expenses here, I would like to know where they are to be found.

It seems to me that it was necessary to make this explanation and I understood from the report of the Judiciary Committee that that matter was thoroughly decided; that as to all of the work of the Compiler that preceded the actual work of this Convention, this Convention had nothing to do with it. The chairman of the Judiciary Committee will set me right, if I am wrong. I understood that to be the report, and as I read it over, that seemed to be fully decided. If this Convention sees fit to adopt this resolution and can get the copies, I see no objection to doing so.

Mr. Moore — I move, Mr. President, as a substitute for Mr. Cassidy's resolution, and for the resolution, that but two volumes of this Manual be distributed to the members of this Convention. By doing that, we keep entirely within the contract and within the law, and if there have been any more volumes printed without the authority of this Convention, I submit, Mr. President, that the contractor should stand the loss if there is any. I believe in this Convention clearing its own skirts in its apparent waste of printing. I, therefore, submit this as a substitute for both Mr. Cassidy's resolution and the resolution printed herein.

The President — The Chair is of the opinion that Mr. Moore's motion is out of order until the motion to recommit to the Judiciary Committee has been disposed of.

Mr. Hamlin — Mr. President, I wish to say a word simply upon the power of this Convention over this volume. In the first place, I wish to impress it upon the Convention, that this volume is the volume containing the pictures of the delegates of this Convention. Now, then, I do not understand, sir, that the Judiciary Committee in their report passed upon anything, except upon the question of the power of the authorities of this State to enter into the contract with The Argus Company. There is no provision in the act, under which they proceeded, in reference to the distribution of the volumes, that were created under the provisions of that contract with The Argus Company, and it would seem that this Convention is mainly interested in the question as to what distribution should be made of its volumes. Certainly, the Convention of 1867

made provision for the distribution of its publications, and I know of no limitation upon the power of this Convention to dispose of its own Manual. It is true that the act provided that two copies should be distributed to each of the members of this Convention, but there is no provision in it that no volumes shall be turned over to the individual members. While I have no objection to its going to the Judiciary Committee, if it be the opinion of the Judiciary Committee that it should go there, it seems to me that it is entirely a matter of propriety and can be decided by this Convention without such a reference.

Mr. Root — Mr. President, I think, sir, that there is a substantial agreement of intention on the part of the gentlemen who have spoken on this resolution. I think that intention is in accord with the conclusion reported by the Judiciary Committee in regard to this contract under which the Manual is being printed, and that is, that this Convention should keep its skirts clear of all responsibility for that contract. The view of the Judiciary Committee was, that the Legislature undertook to authorize the contract; that the State officers undertook to make it by the authority of the Legislature; that the Legislature had the power to make the contract for the printing of any kind of book which it saw fit to direct to be printed, and that we have nothing to say about it. I think that we should be very careful, sir, not to put ourselves in a position where we will unwittingly seem to ratify or approve, or assume responsibility for what is done under that contract and under that statute, for I am afraid that it will prove to be a very bad piece of business. I do not like the way in which things seem to be going under that contract and that statute. The statement that twenty-five hundred more copies of this volume have been ordered to be printed — we are not told by what authority or for what purpose, and there is certainly no apparent excuse for the printing of twenty-five hundred more copies — fills me with alarm, lest the work of this Convention should be associated with a scandalous job, and I think that we should avoid any hasty action which may possibly tend to throw upon ourselves the responsibility for any such piece of business. Now, sir, I am afraid that if this Convention votes to take and distribute among its members any greater number of copies of this book than the Legislature has said we must have, that we will make ourselves parties to this transaction, and I am not willing to be a party to it until I know more about it than I do now. I do not feel able, sir, to form an intelligent judgment upon the question, as to whether we would implicate ourselves in this transaction by voting to take any number of copies, or not. It is a question of law, to

be considered by a lawyer sitting down quietly by himself with the contract and the statute and all the information that he can get about the facts before him, and not a question to be determined upon the spur of the moment, upon hearing something read and some statement made which he has not had opportunity to consider. I hope the Convention will not resolve to take a single copy of this volume without full consideration by the Convention, whereby they ratify, confirm and make themselves responsible for what seems to be going on under color of this contract.

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

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

Mr. Bowers — Mr. President, may I ask for information as to whether the gentleman from New York (Mr. Root) wishes this matter to go back to the Judiciary Committee or not? It seems to me that it can be disposed of just as well now. There is no occasion for its going back to the Judiciary Committee. I understand the present motion is to refer it to the Judiciary Committee. I see no reason for doing that. The Judiciary Committee have made a full report upon the subject. Every member of the Convention knows that if we adopt this resolution it will tend to ratify a contract already entered into.

The President — If Mr. Bowers will allow the Chair — by referring to Document No. 12 he will see that the report of the Judiciary Committee dealt only with the matter of the printing of the Manual. This matter of the distribution has not been before the Judiciary Committee at all, as the Chair understands it.

Mr. Bowers — That is true, Mr. President, but there was before the Convention a question whether or not this contract, which had been made by the Compiler, was binding upon the Convention — whether the Convention had anything to do with it — and the Judiciary Committee reported that in their opinion the Convention had no concern with the matter. Now, if we are to have no concern with it, it would seem to me that by adopting this resolution it would tend to ratify and confirm this contract. If the statute provides for the distribution of two copies to the delegates, they will take them. I entirely agree with the position of Mr. Root, but I cannot see any reason for referring it back to the Judiciary Committee.

Mr. Kerwin — Mr. President, I came here, after reading carefully the report of the Committee on Printing, to give it my unqualified support; but after reading the assertions of Mr. Hamlin, the

chairman of that committee, made here on May 31, that these volumes would be in the hands of the delegates within three weeks, I rather changed my mind, and particularly when I came to read the report of that same committee of the same date, where it states "it shall be the duty of the Secretary of State, Attorney-General and Comptroller who shall be in office on the first day of January, eighteen hundred and ninety-four, to cause to be prepared and ready for said Convention at the commencement of its session a suitable Manual, two copies of which shall be furnished to each member and officer of the said Convention, and the expense of which shall be paid by the Treasurer upon the warrant of the Comptroller." Now, Mr. President, I think that the Judiciary Committee should be given power to send for those State officers and see if they have not the power to break or nullify this contract, as the books were not put upon our desks at the time provided, and then, if necessary, allow the State officers, in conjunction with the Judiciary Committee, to make a new contract, which will comply with the ideas of this Convention. Mr. President, I now move to amend that the matter be referred to the Judiciary Committee, and, further, that the committee confer with the State officers and see if there is any way to annul this contract and make a new one suitable to the needs of the Convention.

Mr. McKinstry — Mr. President, I am a member of the Printing Committee. Perhaps I might make a little statement here. I see no necessity for referring the matter to the Judiciary Committee, because that committee has already reported that this contract made by the State officers with The Argus Company is a valid contract. The resolution was referred to the Committee on Printing as to what should be done with the copies that were printed and recognized as rightly printed under that contract, namely, 719 copies. The Committee on Printing felt that most of these volumes should be distributed, for instance among the different State libraries. You will see in the subsequent resolution the provision for distributing these various volumes; but this volume containing the pictures it was thought not necessary to circulate so generally, and, therefore, to absorb them, it was thought wise to give four copies to each member. Now, I do not see any objection to inserting the word "two" instead of the word "four" if the Convention see fit, and I do not see any objection to adopting the resolution.

Mr. Foote — Mr. President, it seems to me, sir, that we are discussing a question here about which we have not sufficient information to form a decision. I do not know that this contract has in

any way been violated. I do not know that any copies of this Manual, or of this volume of the Manual, have been printed for the use of this Convention except the two volumes called for by the statute and the contract. It may be that the printer has seen fit to print extra copies of this Manual for his own uses or for purposes of sale. Under the circumstances, sir, it seems to me the proper course to pursue is to send this matter back to the Printing Committee, that they may ascertain whether it is the intention of the printer to furnish more than two copies of the Manual at public expense. I hope, therefore, the motion to refer the matter to the Committee on Judiciary will not prevail.

Mr. McIntyre — Mr. President, it seems from the report of the Judiciary Committee that certain State officers have power and authority over this printing. I cannot see why there is any need of referring it back to the Judiciary Committee, because they have nothing to do with it. Let the State officers who have charge of it do what they see fit, and let us have nothing to do with it at all. It seems to me that is the only way out. We should not meddle with it at all. Let the State officers do with it what they see fit. It is their contract. Let them fight it out and let us keep entirely free from it.

Mr. Moore — Mr. President, it seems to me that this motion to commit is a very safe thing to do. That it is the safest and surest way out of this muddle. Therefore, I am heartily in favor of the motion to commit to the Judiciary Committee for them to report our standing in reference to that contract.

Mr. A. B. Steele — Mr. President, I would like to inquire of the chairman of the Judiciary Committee whether the subject of the number of volumes to be distributed has been considered by that committee?

Mr. Root — Mr. President, I will inform the gentleman that it was not considered by the Judiciary Committee. This whole question was left out of the consideration of the committee, both as to the number of volumes and as to whether such action as this by the Convention would render it responsible for the contract. The Judiciary Committee did not consider any such question.

Mr. A. B. Steele — Mr. President, then why should not this matter go back to the Judiciary Committee? They are all attorneys. They are familiar with the contract, and I for one must confess that I am not prepared to vote upon this question unless I have the opinion of the Judiciary Committee or some other opinion that has

been carefully considered. There is no need of acting at once. There is no need of acting hastily. Why isn't it the proper way to refer it to the Judiciary Committee, in whom all the members have perfect confidence, and let them report to us whether or not the contract legally covers a certain number of volumes; and if so, how many, and what the Convention had better do?

Mr. Ackerly — Mr. President, it seems to me that we should vote down every resolution to refer this to the Judiciary Committee, and also that we should vote down the resolution of the Printing Committee and leave this just where it stood, which entitled us to two copies and have them sent here at once. We have the opinion of the Judiciary Committee that we have nothing to do with this contract, and, therefore, let us vote it down and leave it where the law leaves it.

Mr. Cassidy — Mr. President, I am perfectly willing that this matter be voted down. My only object in offering this resolution to send the matter to the Judiciary Committee was that the resolution of the Committee on Printing was at war with the resolution which had been reported by the Judiciary Committee, and I believe that this matter is something that we ought not to handle at all. If I were sure that the resolution of the Printing Committee would be voted down, I would be perfectly willing to withdraw my motion that it be sent to the Judiciary Committee.

The President — Mr. Cassidy is a little too late to withdraw his resolution, because an amendment has been made to it and it is the property of the Convention. The question is on the amendment of Mr. Kerwin to add to the committal to the Judiciary Committee instructions to confer with the State officers, with a view to the annulment of the contract and the making of a new one.

Mr. Cady — Mr. President, I call for the reading of Mr. Kerwin's amendment. It ought to be very carefully considered and understood.

The Secretary read the motion of Mr. Cassidy, as amended by Mr. Kerwin.

Mr. Kerwin — Mr. President, I have no objection to Mr. Cassidy withdrawing his resolution, and with leave of the Convention, I will withdraw my amendment. Before doing so I would like to state that we are filling up our Convention document files with a lot of stuff that will appear in the bound volumes later on. I think the Convention should find some way of compelling the delivery of these volumes.

The President — Does Mr. Kerwin withdraw his amendment?

Mr. Kerwin — Yes, sir.

Mr. Cassidy — Mr. President, I wish to withdraw the resolution.

The President — Mr. Cassidy withdraws his resolution.

Mr. Kellogg — Mr. President, I now wish to amend the resolution that the 719 volumes of the series known as Volume 2, Part 1, of the Manual, be distributed, and then insert the words "according to law."

Mr. Moore — Mr. President, I now renew my motion that the report of the Printing Committee on this first resolution be amended so that it will read that two volumes, instead of four volumes, will be distributed to the members of the Convention.

Mr. Hamlin — Mr. President, that would leave the resolution, as I understand it, that two volumes be given to each delegate, and that the residue be turned over to the President of the Convention. While I am on my feet, Mr. President, I would suggest that, personally, I would be very glad that the resolution which has been suggested here, that this matter be adjusted in accordance with the statute, be adopted. The only objection to it would be that the Convention directed the Printing Committee to make some distribution of these reports, and, therefore, they have presented their report in obedience to the mandate of the Convention.

Mr. Root — Mr. President, I am convinced that it is unwise for this Convention to touch this subject at all. Although the Judiciary Committee has not acted upon the question of distribution, my own personal opinion upon it is very clear, and it is, that the Convention should not, by any act, recognize the utility, the necessity or the propriety of what is done under that contract. I fear, if we adopt a resolution for the distribution of any number of these volumes, we make ourselves responsible for it. If the Legislature sees fit to provide that a certain book, be it manual or dictionary or hymn book, be printed and distributed to the members of this Convention, the responsibility is upon the Legislature. If the Convention, however, adopts a resolution for the distribution of these volumes, it takes upon itself the responsibility. I think we ought not to do it. Let us leave the subject alone, so long as we have not any power to change it, except to change it by making ourselves parties to it. I hope, sir, that the resolution will be voted down by the Convention.

Mr. McKinstry — Mr. President, I would like to say a word in behalf of the Committee on Printing. I do not think there is a

member here, if this matter is voted down, that will feel hurt; and still it places us in an unfair position, when we are asked by a vote of the Convention to say what shall be done with these volumes, and then for the Convention to say that it has nothing to do with it. I do not think there is a member of the committee who cares what is done with these volumes. We were asked by Mr. Cookingham's resolution to state what shall be done with these volumes, and we made the report in accordance therewith.

Mr. A. B. Steele — Mr. President, I move you, sir, that this whole matter be laid upon the table indefinitely. I suggest this partly on the suggestion of the chairman of the Committee on Printing. He thinks it would be as well, and perhaps the best disposition of the matter, to lay it upon the table and let it rest there indefinitely.

The President — Do you make that as a motion, Mr. Steele?

Several members objected to the motion.

Mr. A. B. Steele — Mr. President, I made it as a motion, but if there is opposition and it is thought that it should not prevail, I will not insist upon it; but I think that the matter should be laid on the table indefinitely.

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

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

The President then put the question on Mr. Moore's motion, that two volumes, instead of four volumes, be distributed to each delegate, and it was determined in the negative.

The President then put the question on the resolution of the Printing Committee as it stands, without amendment, and it was determined in the negative.

The President — The Secretary will read the second resolution.

The Secretary read the second resolution as follows:

"Resolved, That the other volumes of said Manual and compilations be distributed as follows: To each of the delegates and to the Secretary of the Convention, three volumes of each series; to the State Library, two volumes; to the Senate library, two volumes; to the Assembly library, two volumes; to the Regents of the University, the residue thereof, to be distributed by them to the public officers, the incorporated colleges and universities of the State, and to exchanges, including one set for each of the States and territories."

Mr. Dickey — In order that that resolution may speedily take the same course, Mr. President, I move the previous question.

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

The President put the question on the adoption of the resolution, and it was determined in the negative.

The Secretary read the third resolution as follows:

"Resolved, That the verbatim report of the proceedings and debates of the Convention, which has heretofore been printed and placed on the files of the delegates, should be continued. That hereafter there should be printed daily 300 copies thereof, of which twenty-five copies should be at the disposal of the President, and that in addition thereto 600 copies should be printed and bound and distributed as follows: To each delegate, two copies; to the State Library, five copies; to the Senate Library, five copies; to the Assembly Library, five copies; to the county clerk of each county, for the library of each county, one copy; to the Regents of the University, the residue of said copies, to be distributed by them to the public offices of the State and the incorporated colleges and universities thereof, and to exchanges, including one set to each of the States and Territories."

The President — The Chair is of the opinion that the question should be put first on this resolution and then on the two that follow as they seem to deal with separate subjects.

Mr. Hamlin — Mr. President, in explanation of this resolution, I would say this to the Convention: that the verbatim reports have been put upon the files of the members of the Convention without any special authority up to the time that a resolution was passed here discontinuing the publication in the newspapers. This was done as a matter of course. Since that time, by an arrangement with the Compiler, it was thought best to continue them until some action was taken by the Convention. Therefore, this placing upon the files of the members of the record has been continued.

The other provisions of binding 800 copies, of which twenty-five copies shall be at the disposal of the President, makes the number a little larger than the number provided by rules 70, 71 and 72, of the standing rules.

In regard to the publication and distribution of the 600 copies, it followed practically the same distribution as provided for by these rules with some modifications and then provided that these reports and debates should be distributed practically under the provisions

of the Laws of 1892, which provided in substance by section 19, that the Regents of the University shall have charge of the publication and distribution of documents to the State officers and institutions, and taking into consideration the provisions of this chapter it was thought best to turn over these volumes to the Regents of the University as being the proper officers to distribute these documents effectively to the parties, corporations or institutions which might be entitled thereto.

Mr. Root — Mr. President, I second the resolution offered by the Committee on Printing. I have no doubt that their judgment upon the various subjects to which it relates is well founded and just.

Mr. Crosby — I move to amend the resolution by inserting after the Assembly Library, "five copies, each Supreme Court library of the State, one copy." I think Mr. Becker has prepared a resolution to that effect. His resolution is: "To each judicial library district, two copies; to the New York State Bar Association, one copy; to the New York City Bar Association, one copy."

Mr. Hirschberg — Mr. President, I move to amend that amendmen by adding after the words "to each judicial library," the words, "or State law library," so that it will read "to each judicial or State law library."

Mr. Crosby accepted the amendment.

Mr. Mulqueen — Mr. President, I ask that the Harlem Law Library be included.

Mr. Crosby accepted the amendment.

Mr. Hill — Mr. President, I wish to amend by inserting, one copy to the Buffalo Historical Society.

Mr. Crosby accepted the amendment.

Mr. Foote — Mr. President, I move to amend by adding the library of the Rochester Bar Association.

Mr. Crosby accepted the amendment.

Mr. Roche — Mr. President, I move that the Court of Appeals Library be added to the list.

The President — That is already covered in the opinion of the Chair, by its being one of the State law libraries.

Mr. McCurdy — Mr. President, I move that the library of the New York Law Institute be included.

Mr. Crosby accepted the amendment.

Mr. Alvord — Mr. President, I move that a copy be sent to every library in the State, whether public or private.

Mr. Bowers — Mr. President, I offer an amendment to Mr. Alvord's amendment that a committee be appointed to ascertain such libraries.

Mr. Foote — Mr. President, I rise to a point of order, that Governor Alvord's resolution was not seconded.

The President — It has not been the usage in this Convention to call for a formal seconding, and the Chair rules that it is not necessary, except in the matter of a suspension of the rules.

Mr. Maybee — Mr. President, I move to amend Governor Alvord's resolution by striking out the word "public."

Mr. Alvord — I accept it.

Mr. Hamlin — Mr. President, I supposed the object of this resolution was to turn these volumes over to the Regents of the University, which I supposed had charge of the public and State libraries, and that they would take charge and would undoubtedly respond to their demands.

The President put the question on Mr. Alvord's amendment, to send one copy to each private library in the State, and it was determined in the negative.

Mr. Alvord — Mr. President, I call for a division of the question, and that the vote on each library that has been named by the gentlemen be taken separately and apart from each other.

The President — The amendments which have been made have all been accepted by the mover of the original amendment.

Mr. M. E. Lewis — Mr. President, I move to amend by inserting the name of the Rochester Historical Society.

Mr. Crosby accepted the amendment.

Mr. Tibbetts — Mr. President, in order to dispose of one more copy, I move that the Cornell Law Library be included.

Mr. Crosby accepted the amendment.

Mr. Barhite — Mr. President, I move to amend by inserting Powers Law Library of Rochester, and I may say that while this is a library owned by a gentleman in Rochester, it is one that is used by a large number of lawyers in that city.

Mr. Crosby accepted the amendment.

Mr. Kellogg — Mr. President, I move to amend by inserting the Normal College Library, at Oneonta.

Mr. Crosby accepted the amendment.

Mr. Crosby — Mr. President, my object in offering this resolution was, that in each law library of the State there should be a copy of these proceedings, and, as I read the resolution, there is no obligation to furnish any copy to any law library or the Supreme Court Law Libraries, and, further than that, I do not think that it is proper to furnish them.

The President — The question is on Mr. Crosby's amendment, that copies of the proceedings be furnished to each of the libraries or societies named, to each judicial district or State law library, two copies; to the New York State Bar Association Library, one copy; to the New York City Bar Association Library, one copy; to the New York Law Institute, one copy; to the Harlem Law Library, one copy; to the Buffalo Historical Association Library, one copy; to the Rochester Historical Society, one copy; to the Powers Library, one copy; to the Oneonta Normal College, one copy.

Mr. Gilbert — Mr. President, I would like to add to that list the Malone Village Library.

Mr. Crosby accepted the amendment.

Mr. Tibbetts — Mr. President, in reading over the amendments, you did not read the Cornell Law Library.

The President — That is inserted.

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

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

The President then put the question on the resolution as it stands amended, and it was determined in the affirmative.

The Secretary then read the next resolution, as follows:

"Resolved, Further, that 600 copies of all documents ordered printed be bound and distributed in like manner."

The President put the question on the adoption of the resolution, and it was determined in the affirmative.

The Secretary read the next resolution, as follows:

"Resolved, Further, that 1,000 copies of all proposed constitutional amendments be printed, of which twenty-five copies shall be at the disposal of the President."

Mr. Alvord — Mr. President, I would like to ask of the chairman of the Committee on Printing whether this 1,000 copies is in addition to the quantity of copies which have been added from time to time in addition to the usual number? It seems to me that

we will crowd down our shelves with these useless copies, in addition to crowding up the money for printing above the $20,000 saved a few days ago.

Mr. Hamlin — Mr. President, perhaps that resolution should be amended by adding after "constitutional amendments" the words "hereafter introduced." I think, Mr. President, there has been no resolution of this Convention as to the number of copies of constitutional amendments which were to be printed; but, as a matter of fact, a thousand copies have in each case been printed, and the object of this resolution was simply to legalize, by the action of this Convention, what had heretofore taken place. I presume that should be added there.

The President — That is, a thousand copies of all constitutional amendments not already printed.

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

The President put the question on the adoption of the resolution, as amended, and it was determined in the affirmative.

The Secretary read the next resolution of the committee, as follows:

"Resolved, That the Compiler be directed to enter into a contract, if possible, with The Journal Company and The Argus Company, respectively, of the city of Albany, on the following conditions, namely, to print the entire proceedings and debates of this Convention, including record of votes by division and roll call, from this date until the close of the Convention, for a sum not exceeding $7,500 in each newspaper, provided said publishers will agree to mail one copy of their daily issue to the office of each newspaper and periodical in the State of New York, excepting monthly and trade publications, and to provide each member of this Convention with two copies of the newspapers containing the proceedings of this Convention; and, also, provided that said publishers waive all further claims against the State under their contracts with the Compiler, dated 5, 1894.

"Said papers to publish complete each day the Convention proceedings of the day before, unless an afternoon or evening session is held, then such afternoon or evening proceedings to be published not later than the second succeeding day.

"Resolved, That before said contract is signed, it be first submitted to the Committee on Printing and receive the approval as to detail.

"Resolved, That in the opinion of the committee, the aforesaid contract will give all needful and immediate publicity to the proceedings of the Convention, and no other regular distribution of reports or documents will be required during the session of the Convention."

Mr. Durfee — Mr. President, I move to strike out the word "further" before the word "claims," in next to the last line of the first paragraph of the first resolution.

Mr. President, as the resolution now stands, it would appear to me to warrant, or at least, to leave the printing companies at liberty to make any claims they may see fit to make under the contract for the work which they have already performed. I presume that it was in the minds of the Committee on Printing that the proposed $7,500 apiece should cover the entire compensation of these printing companies for this work of printing the debates in the newspapers and furnishing copies to other newspapers throughout the State during the entire session of the Convention. At any rate, it occurs to me that that compensation will be ample for that service, and the resolution is capable, perhaps, as it now stands, of that construction. I offer this amendment for the purpose of more definitely fixing the limit of the entire compensation which may be received for this purpose. If this Convention directs the service, it occurs to me that it is entirely proper that it shall know in advance what will be the limit of its cost for the entire session.

Mr. Hamlin — Mr. President, for the information of the Convention, it is desirable, perhaps, that certain facts should be stated in regard to this resolution. In the first place, in reference to the suggestion of Mr. Durfee the fact is that a bill has been rendered by each of these papers for the publication in each of them of the reports of the Convention from the nineteenth of May to the thirteenth of June, inclusive, of $1,112.25 each, which is at the rate of $66.41 daily, as an average rate for each paper, or $132.82 for the two papers together. Now, this resolution was recommended by the Committee on Printing after some deliberation by the committee. There are three questions: First, the legal question, and the committee refers to this Convention the question as to the power of this Convention to enter into a contract, or have the Compiler enter into a contract with the papers. Second, as to the desirability of a contract of this kind with the newspapers. And, third, assuming that, as is assumed in the preamble, the compensation is a suitable one. The gentlemen upon the committee who are newspaper men seem to think that this is a fair compensation, a reasonable com-

pensation, for the service which these papers agree to give to the Convention; that is, to supply the next morning a verbatim report of its proceedings, and in addition thereto to mail daily to some fourteen hundred newspapers in this State a copy of their issues in each case, and to supply to each member of the Convention two copies. I will say, in regard to the Convention of 1867, that they entered into a contract with these two papers at that time under an original contract by which they were to receive $6.50 per column for the reports and debates, but that was not to exceed $6,000 in each case; that is to say, the whole amount was not to exceed $12,000 for the whole period of the Convention. But subsequently after the Convention had held much longer than was anticipated, that limit was voted down and the matter was left open at $6.50 per column. Under that contract the State paid $15,756. This was the history of the last Convention, and, in view of the fact that the claim has been made on the part of the two newspapers, it being represented there by counsel of the respective corporations, that a claim would be made against the State on account of these contracts, it was thought by a majority of the committee that this was a fair adjustment of the whole matter, and, therefore, it is before this Convention.

The President — The question is on Mr. Durfee's amendment to strike out the word "further."

Mr. Cookinham — Mr. President, I offer an amendment to the first resolution. Perhaps it is not germane to the amendment now pending, or, perhaps, it is advisable to wait.

Mr. Becker — Mr. President, I desire to offer an amendment to Mr. Durfee's amendment. I will read it first so that the Secretary will get the sense of it and he will be able to read my writing more readily: Insert in place of the words "all further claims against the State under their contracts with the Compiler, dated April 5, 1894," as follows: "All claims arising under their contracts with the Compiler, dated April 5, 1894, which have accrued since the adoption by the Convention of the resolution forbidding further publication of the debates and proceedings, other than the Journal." I would like to put the date in, but I do not have it. If some gentleman will furnish me with the date when we adopted that resolution forbidding further publication, I will insert it. Another part of this amendment, which I desire to go with it, is the following: "But the matter mailed to the other newspapers and periodicals of this State shall be complete in itself and shall not be the daily issue of the newspapers known as The Evening Journal and The Albany Argus."

The President — The Chair is of the opinion that the latter part is not germaine to Mr. Durfee's amendment, and that it will come up later.

Mr. Becker — I will offer that here.

Mr. President, in explanation of this resolution, while I am as much opposed as anybody to the funny business that has been going on about this printing, I think that there is some evidence to show that as between the proprietors of these journals and the members of this Convention, the proprietors of these journals have acted in good faith. The Compiler, clothed with apparent authority by a statute, has seen fit to make a contract with these people to do certain things. It seems that that contract was referred by them to their counsel, the Hon. Matthew Hale, who prepared the contracts between these proprietors and the Compiler. They went on and published the proceedings until the time that the Committee on Judiciary had the matter referred to it and reported, and its report was adopted. Now, I think that it would be fair and right to allow them for that printing. It would be decent and orderly, provided, of course, that all other claims against the State for any printing that they have done since then would be disallowed, arising under that contract with the Compiler for publishing such matters, namely, the debates and proceedings, other than the Journal. Therefore, I offer this amendment in that form.

Mr. Durfee — Mr. President, it seems to me that this matter ought to be put into a shape to be definitely disposed of. I am entirely willing and desirous that the State should pay a fair compensation for the service which has been rendered it by any one acting in good faith, and, if it be true, as stated by the gentleman from Buffalo (Mr. Becker), that the publishers of these papers having this contract have proceeded to publish these debates in good faith, they certainly ought to be paid a fair compensation for that service. I understand that the Committee on Printing, composed, in part, of practical printers, are of the opinion that the sum which they have reported is or will be a fair compensation for the entire printing of these proceedings in the newspapers, not alone for the service that has been rendered since the Convention took action, or that may be rendered in pursuance of a contract hereafter to be made, as provided in this resolution, but for the entire service, the thought being that we should have this matter, by this proposed contract, definitely disposed of, and not leave any room for claims to be hereafter made under the contract of April fifth, referred to in the resolution. It seems to me that this is a wise course to take,

and that it is the course that this Convention ought to take. If the amount is not sufficient, let us put the sum at a limit, where it will be a fair compensation; but, by all means, let us get rid of this question, which, with cognate questions, has occupied so much of the time of the Convention. I hope it will be disposed of to-day, as far as any action of the Convention may be required. I hope, therefore, that the resolution offered by the gentleman from Buffalo will not prevail.

The President — The question is on Mr. Becker's amendment.

Mr. Becker — Mr. President, I would like to have the date inserted there "June thirteenth." That was the time that the resolution discontinuing the publication in the newspapers was adopted.

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

The President — The question is on the adoption of Mr. Durfee's amendment to strike out the word "further."

Mr. Dean — Mr. President, I offer the following amendment:

The Secretary read the amendment as follows:

"Strike out all that part of the resolution providing for publication by The Argus Company."

The President — Mr. Dean's amendment is not now in order, not being germane to Mr. Durfee's amendment. It is a little different subject matter. Mr. Dean will have to offer his amendment later on.

Mr. Vedder — Mr. President, as I understand it, a contract was made between The Argus Company and The Journal Company, dated April 5, 1894, in relation to the publication of the debates, etc.; incidentally, this Convention heard of that, and, in order not to ratify that contract, which was thought to be unauthorized, so far as the Convention was concerned, the Convention, on the thirteenth day of June, determined, so far as this Convention was concerned, that The Argus and Journal Companies should cease the publication of the debates. I understand that publication did subsequently cease and upon that day. Now, the whole matter subsequently was referred to the Committee on Printing, to take up this question, whether or not the people demanded that the newspapers print these daily proceedings, so that the people might know what was being done here, and that the Printing Committee have reported that they believe that these contracts should be made at the rate of $7,500 each for the printing of these debates for the balance of the Convention, and that they simply put this in, that from and after this date these publishers should not make any claims

against the State under the contract of April fifth, and that they did not assume, in any way, to settle that matter beween these two newspapers and the Compiler, leaving that to the court or any other body that had the disposition of it, other than this one. I think it had better be left in that way. We have repudiated that contract and want nothing to do with it, in settlement or otherwise, and to prevent any action of this Convention, the Committee on Printing have wisely said that they make no claim under that contract of April fifth hereafter. Before that and behind that they say, make your settlement with the powers that ordered it. We have repudiated it, as far as that contract of April fifth is concerned. Let it stand that way; and they say, don't make any claim against the State from now on. I am opposed to this amendment.

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

The President — The question now is on Mr. Becker's amendment, to add to the first paragraph of the first resolution the words: "But the matter mailed to the other newspapers and periodicals of this State shall be complete in itself, and shall not be the daily issue of the newspapers known as The Evening Journal and The Albany Argus."

Mr. Becker — I desire to explain that resolution, Mr. President. I wish to do so in all kindliness and with careful regard to what I am saying, if I can keep within the bounds of the explanation which I deem necessary. These papers are both partisan newspapers, one representing one party and the other the other. Necessarily, their views of the action of this Convention — I should not say necessarily — but according to human nature, their views and editorials concerning the action of this Convention are more or less colored. Those of you who have read these papers, particularly one of them — I will not mention which — have probably noticed this. It may not have escaped your attention. Now, I, for one, do not desire that the regular report of the proceedings of this Convention, including its debates, should be sent out in connection with any comments which the gentleman in the editorial chair of either of these papers may see fit to make concerning it.

My proposition (and I was the one who introduced this matter originally) was that this matter, bound in pamphlet form or in sheets, just as it comes to the desks of the members, should be sent out, and I think that is the best way still. If it can be done in the way my amendment calls for, I want it; but I do not want to have it go out all over the State in connection with garbled reports of what

the Convention does every day and the comments of the editorial page. The resolution calls for the material that is to go out to the periodicals and newspapers of the State to consist of just what we do here — the report of our proceedings and nothing more.

The President — If Mr. Becker will allow the Chair, he would call his attention to this point in his amendment. Perhaps it will require alteration in language. The resolution is: " Provided the publishers will agree to mail one copy of their daily issue," that is, The Argus and Journal newspapers. The amendment is that the matter mailed to the other newspapers in this State shall be complete in itself and shall not be the daily issue of the newspapers known as The Argus and The Journal.

Mr. Becker — Strike out those words the daily issue. I think the Chair can change that for me. He has the resolution before him.

The President — I think Mr. Becker will have to make the change himself.

Mr. McKinstry — Mr. President, I object to that resolution, for two reasons. In the first place, I do not think the delegates here are afraid of what The Argus says about them. If The Argus misrepresents me in the morning, I think The Journal will set me right in the evening. The resolution provides that one paper from each party shall furnish this, in order that there cannot be any partisanship about it. It will cost about twenty-five dollars a day for postage to mail these proceedings by themselves, whereas, if it goes with the paper, it will go as second-class matter. There are other matters, reports of hearings of committees and other matters which will interest the public at large, contained in the newspapers. I am opposed to Mr. Becker's resolution.

Mr. Floyd — Mr. President, I beg to call the attention of the Convention to the fact that in providing for the distribution of The Journal and Argus to the various newspapers in the State we will duplicate what is already being done. These papers are very generally circulated. Mr. President, it seems to me that from the 1,400 newspapers which this resolution refers to we should first except the daily newspapers which are connected with the Associated Press; second, the weekly newspapers which have a daily; and, third, the newspapers which exchange with The Albany Argus and The Albany Evening Journal. I do not know what portion of this $7,500 represents the charge of these papers for circulating these 1,400 copies, but whatever it is would seem that we are paying more for the matter than the Convention gets in return.

The President — I do not understand that Mr. Floyd makes any motion.

Mr. Floyd — I do not.

Mr. Becker — Mr. President, I appreciate what my friend from the Printing Committee says. I do not think there is any difficulty about it, but, if there is, I suppose we will have to stand it. We have this matter on our desks every morning. The printers have to separate it. Now, what is to hinder them from sending these proceedings separately just in the form that we have it on the desks, so if any of the newspapers throughout the State desire to preserve a file, they can do so. What is that going to cost? It will not cost but a few more turns of the press and a little more ink, and it does not seem to me to amount to anything. Now, all I care about is to go on record in reference to this matter. I do not want to have these proceedings go out through the State with such statements as have been appearing lately in one of these papers, that the delegates here are drawing pay for work that they are not doing and other scurrilous and malicious attacks upon members of this Convention. I can stand a little abuse myself, but I cannot stand misrepresentation. It is not what it says in its editorials that I object to, but when it states things as facts, which are untrue and which tend to color the judgment of the people upon our work. For my part, I want to go on record as opposed to sending anything out in the State in connection with such matter in reference to this Convention as has been crowding the columns of this newspaper from day to day.

Mr. Barhite — Mr. President, it seems to me that there is but one way in which we can get rid of the difficulty referred to by the gentleman from Erie, and that would be to pass a resolution in this body strictly enjoining and commanding every editor and newspaper in the State of New York from commenting in anywise upon the proceedings of this Convention until the further order of this body. (Laughter.)

The President — Does Mr. Barhite move that as an amendment?

Mr. Barhite — No, sir.

The President put the question on Mr. Becker's amendment, and it was determined in the negative.

The President — The question is on the amendment offered by Mr. Dean to strike out all that part of the resolution providing for publication by The Argus Company.

Mr. Dean — Mr. President, the only possible pretext under which this proposed printing is to be done is on the theory that we are

to inform the country editors of this State of the proceedings of this Convention. In my judgment, one paper can do this just as well as two. I do not see any object in sending a copy to the editors of the Albany Evening Journal and then follow it up with the same to The Albany Argus. It seems to me that if the country editors read one paper containing these proceedings, that that will be sufficient. We have proposed to save this convention $20,000 by shutting off this printing entirely, and it is now proposed to bring in a measure that will cost $15,000 in the aggregate. It seems to me that every possible object will be provided for if we send out one newspaper at a cost of $7,500.

The President put the question on Mr. Dean's amendment, and it was determined in the negative.

Mr. Cookinham — Mr. President, I move to amend the first resolution by inserting at the end of the first paragraph on page 3 the following: "And in no event shall the compensation to each of said companies exceed thirty cents per folio for each such publication." In explanation of that, Mr. President, allow me to say that we have no difficulty in procuring legal notices to be published at that rate. Should the debates in this Convention be so limited that in reporting them there should not be a large space in each of these newspapers taken up on each day, it might be that the compensation, as it appears and as it is recommended by the committee, would be one dollar a folio or seventy-five cents a folio, or some other rate, which might be very high. Now, I think I have fixed a price that would be reasonable compensation. If not, there are those present, as delegates upon this floor, who know just what that compensation should be. If that is not right, I am certainly open to conviction upon the amount, but I think there should be a limitation, beyond which we should not go.

Mr. McKinstry — Mr. President, I would say that I do not desire to trespass upon the Convention, but I know something about this matter. The compensation that we fixed was estimated as closely as we could estimate the amount to be published during the remainder of this Convention, and it was estimated at thirty cents per folio. We then computed the whole number of papers they would have to send out, and the whole matter came to $8,000 for each paper. We finally proposed to make this lump sum of $7,500, which I do not think will allow them thirty cents per folio. In addition, they were to take their chances upon the floods of eloquence that would burst out here. For my part, if I were a printer,

I would not take the chances. In the midsummer madness of these debates there is no knowing the limit; yet, with a childlike sort of faith, these publishers said they would take that chance. They assumed that this Convention would not talk itself to death and talk them into bankruptcy. They assumed that the admonition of the President would be heeded, that we should put some restraint upon our tongues. I think Mr. Cookinham's resolution is unnecessary, because I do not think they will get more than that.

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

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

The President put the question: Shall the main question now be put? and it was determined in the affirmative.

The President — The question is on the adoption of the resolution as it stands amended.

Mr. Dickey demanded the ayes and noes, and they were ordered.

The President — The Chair would call the attention of the Convention, before the motion is put, to the last resolution. It recites or resolves: "That in the opinion of the committee," I suppose the intention of the committee is to substitute the word "Convention." Does any gentleman move to change that word to "Convention?"

Mr. McDonough — Mr. President, I move the amendment.

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

The President — The Secretary will call the roll on the original resolution of the Committee on Printing, as amended.

The Secretary proceeded to call the roll.

Mr. Dickey — Mr. President, I ask to be excused from voting, and I want to say, what I would have said a few moments ago if I had not been shut off by the moving of the previous question, that I am opposed to this resolution. It seems to me an unnecessary expense. While I would be willing to favor the local papers, I do not think the taxpayers will justify this expense. The newspapers of our State are now receiving full reports, as full as their readers care to have, and they would not publish any fuller reports if this resolution was passed.

Mr. Durfee — Mr. President, I ask to be excused from voting, and will briefly state my reasons. I was inclined to oppose this entire resolution at the outset, but there is this consideration which has great weight with me. I suppose that it is not at all probable that

this Convention will finish its labors earlier, at least, than the middle of September, and, if it proposes any considerable number of amendments to the Constitution, there will be scant time to bring those amendments to the attention and knowledge of the people, together with the reasons upon which they are founded. It is very important that this should be done. It necessarily must be done, if we wish to have the outcome of our labors here ratified by the people at the polls, for the people will not support any new project which they do not understand. As an educational process, therefore, it has seemed to me that to put it in the power of all the newspaper men of the State to make such comments, as these debates proceed, as they may deem necessary and wise to put the people in possession of what is going on here, and the reasons that are advanced *pro* and *con*, and of the results of our deliberations here, as well as the various propositions out of which are evolved the ultimate proposed amendments that we are to submit to the people, it will be worth all that it costs. Therefore, Mr. President, and with that solely in view, I withdraw my request to be excused and vote aye.

Mr. Gilbert — Mr. President, I ask to be excused from voting, and will briefly state my reasons. I only want to say this: In some way the people ought to know what we are doing. They ought to be preparing themselves to act intelligently upon such propositions as are to be submitted. I do not know how they are going to get this information, unless in some such way as this. Now, if the local papers — and I wish they were all here that we might speak to them — if the local papers will take these reports and edit them, and digest them, and set the substance before the people, it would be a very great service, and until I can learn of some better way I shall favor this. I, therefore, withdraw my request to be excused, and vote in the affirmative.

Mr. Hamlin — Mr. President, I would ask to be excused from voting upon this question for the reason that when the question was brought up in the committee I was not in favor of the resolution, but the majority of the committee, which I have the honor to represent, being in favor of it, and the rules of this Convention requiring that my name be attached to the report, I have signed it, and, while I did not approve of it at that time, I still was not able to present any better way of making public the proceedings of this Convention. And, therefore, while I did not approve of it at that time, I am inclined, nevertheless, to support my committee, and will withdraw my request to be excused and vote aye.

Mr. Hawley — Mr. President, I will ask to be excused from voting, and state my reasons. I think that abundant publicity of the proceedings of this Convention is provided by the row of gentlemen who sit in front of the Clerk's desk, and that all necessary information will be conveyed to the people of this State as to our doings without any intervention at all. I withdraw my request to be excused from voting and vote no.

Mr. Jesse Johnson — Mr. President, I ask to be excused from voting, and will briefly state my reasons. I believe, sir, that the utmost publicity of the proceedings of this Convention is the right of the people and the necessity of this Convention. I wish, sir, that they should know not only what shall be given as news, but that they shall be brought as near as possible to a full intelligence of the proceedings within this room. I, therefore, Mr. President, withdraw my requestion to be excused, and desire to be recorded as voting in the affirmative.

Mr. Lincoln — Mr. President, I wish to be excused from voting, and will briefly state my reasons. If this Convention continues in session until the middle of September, there will be less than two months after that for the people to become advised of what we have been doing here, by the ordinary publication by the Secretary of State or through any other public channel. Now, it seems to me of the utmost importance that the people at large be advised of what we do. Up to this time we have simply been suggesting amendments and propositions to change the Constitution. From this time, and especially within two weeks, we shall begin the discussion of those important propositions, as they come before us in Committee of the Whole, and the result of our deliberations and of our votes will be determined. Now, there are, of course, a great many city papers and daily papers. I represent a country district, and I know that there are a very great many families in our country who receive all their information through the local papers. I think it is of the utmost importance that we put into the hands of the local papers all the information possible, and this is the most practical way to do it. Only the day before yesterday I received a letter from an editor of a local paper in my county, saying that he was going to give the deliberations of this Convention a great deal of attention. Most of the country papers extract all their information from the city papers, which contain correspondence from this city and the Convention hall. I think it is of the utmost importance that we put in the hands of these editors full information of the proceedings of this Convention, from day to day, so that they can

comment thereon. I will withdraw my request to be excused from voting and vote aye.

Mr. McKinstry — Mr. President, I will not occupy the attention of the Convention more than a moment, but I ask to be excused from voting. I dislike the insinuation that this matter is especially for the benefit of the country printers. It seems to me the most practical means of diffusing this information. The editor can use one copy for clippings and the other can be kept on file. The members would be surprised to know how many people resort to the printing-office in small towns for information. While these able correspondents on the front row are sending out reports of the proceedings, of course, they are very brief, necessarily, and hasty, and are not able to say exactly what a delegate has said and done. Now, the publishers of the Journal and Argus inform me that if any members wish extra copies to be sent to any place in their districts, for instance, any free reading-room or library, he can leave the address at The Argus or Journal office and it will be mailed with their regular edition. I withdraw my request to be excused from voting and vote aye.

Mr. O'Brien — Mr. President, I desire to be excused from voting, and will briefly state my reasons. I know of no authority in the law under which we are acting, and I know of no reason why this Convention should spend $15,000 of the people's money in the establishment of a news agency. I withdraw my request to be excused from voting and vote no.

Mr. Spencer — Mr. President, I desire to be excused from voting upon this motion, and will briefly state my reasons therefor. Originally I was opposed to the scheme of publishing the debates in the newspapers, and it was my intention to vote against any proposition so to do; but, upon reflection, upon finding that the last Constitutional Convention set a precedent for this business, finding that the Compiler and the authorities of the State entered into a contract so to do, which seemed to be binding upon this Convention, and finding from the report of the committee that we, by adopting this resolution, might settle a disputed question, possibly avoiding the payment of damages to the contractors under that contract, I have been induced to change my mind on this proposition, and I, therefore, withdraw my request to be excused from voting and vote aye.

Mr. Vedder — Mr. President, I ask to be excused from voting, and will briefly state my reasons. Mr. Dickey always takes very high ground on every proposition, but I think he did not get at the central idea, the cardinal thought, of these resolutions, when he said

it was a tax upon the people, and the people ought not to be taxed in this way. I think, Mr. President, that the best tax that was ever imposed was the tax for our common schools, and any tax is more than justifiable which diffuses knowledge and gives information to the people. Now, I speak for a section of the State of New York, a most important section, which does not have the facilities of these gentlemen who have been voting against this resolution, of the large daily cosmopolitan newspapers of the State. They get their information, the people. I speak for, from the country newspapers that get theirs in turn from the city newspapers. But they get the editorial news only from the city papers, and the country papers are too small to print anything but extracts from these larger papers, whereas, if they had the proceedings which are had here, they could make extracts, make quotations, and, in fact, they would have a little Convention in every county, so that all the voters in that county would know as much about what was going on as if they sat in these galleries from day to day. It is that intelligence which we wish the people to have. We do not want this Convention to be put into such shape that no knowledge can be had of it, except by the use of a burglar's jimmy. My plea is for the country people who do not live in the great cities and cannot get newspapers twice a day. I plead for the people who get their newspaper on Thursday or Friday and read it until Sunday. I plead for the people who are thirsting for the knowledge. I make this plea, notwithstanding the fact that a couple of Albany papers have unjustly criticised this Convention. I will not injure my people by trying to get even with these papers by refusing them this printing, and that would surely be the result. I would rather be right and thereby serve my people than to have The Argus or The Journal right. After all, what if unfriendly comments are made concerning the Convention? If we are just we need not fear, and we propose to be just. If The Argus shakes up some delegate in the morning with its mimic thunder, it will be blistered by the lightnings of The Journal in the evening. My plea is for the country people. The stability and integrity of the State, to a very great extent, depends upon the brainy, patriotic vote of the country. Let us open our doors and let them see what we are doing. I am more than sorry to see the gentlemen from the cities voting that the people in the country shall not have this knowledge. It is their right to have it and it is wrong, eternally wrong, to refuse it.

The President — Mr. Vedder only excused himself.

Mr. Vedder — Mr. President, I wish it were in my power to

excuse the vote of these people. Mr. President, I withdraw my request to be excused from voting and vote aye.

The resolution was lost by a vote of 52 ayes, 65 noes.

Ayes — Messrs. Abbott, Ackerly, Alvord, Baker, Barhite, Barnum, Brown, E. R., Cady, Cassidy, Chipp., Jr., Countryman, Crosby, Durfee, Faber, Foote, Francis, Fraser, Fuller, C. A., Gilbert, Hamlin, Hedges, Holcomb, Johnson, I. Sam., Johnson, J., Johnston, Kellogg, Kimmey, Lewis, M. E., Lincoln, McArthur, McCurdy, McDonough, McKinstry, McLaughlin, C. B., McMillan, Meyenborg, Moore, Nichols, Parkhurst, Pool, Pratt, Smith, Spencer, Steele, W. H., Storm, Towns, Tucker, Vedder, Woodward, President — 52.

Noes — Messrs. Arnold, Banks, Barrow, Becker, Bigelow, Blake, Bowers, Campbell, Carter, Cochran, Cookinham, Curran, Danforth, Davenport, Dean, Deyo, Dickey, Doty, Emmet, Fitzgerald, F. T., Fitzgerald, T. W., Forbes, Frank, Andrew, Galinger, Gibney, Gilleran, Goeller, Goodelle, Green, A. H., Green, J. I., Griswold, Hawley, Hecker, Holls, Hottenroth, Jacobs, Jenks, Kerwin, Lewis, C. H., Marshall, Maybee, McIntyre, Morton, Mullen, O'Brien, Ohmeis, Parmenter, Peabody, Peck, Platzek, Powell, Putnam, Roche, Rogers, Root, Sandford, Steele, A. B., Sullivan, W., Truax, C. H., Truax, C. S., Van Denbergh, Veeder, Vogt, Whitmyer — 65.

Mr. Becker offered the following resolution:

R. 104.— "Resolved, That a copy of the proceedings and debates of this Convention, including the reports of committees, be published and sent, at least twice a week, by the Secretary of this Convention to each of the newspapers and periodicals in this State, excepting monthly and trade journals; and that the Secretary be and he hereby is authorized to make contracts for that purpose with the publishers of the Journal of the Convention."

Mr. Peck — Mr. President, I desire to debate that resolution.

The President — It will lie over under the rules.

Mr. Goodelle — Mr. President, I hope this Convention will not adjourn until we have gone through the regular order of business.

The President — We are going through it.

Mr. Goodelle — Mr. President, I want to make a motion. It seems to me if there are any proposed amendments to be introduced that they should be introduced to-day, so that next Thursday, when the Convention meets, it will have them before it printed.

In reference to the resolution reported by the Suffrage Committee, I move that it be made a special order for Thursday next immediately after the reading of the Journal. I make this motion, with the consent of the mover of the resolution, Mr. Lincoln.

The President put the question on making the resolution a special order for next Thursday immediately after the reading of the Journal, and it was determined in the affirmative.

The President announced the order of presentation of memorials.

Mr. Barhite presented a petition in favor of striking out the word "male" from the Constitution, signed by 689 citizens of Monroe county.

Referred to the Committee on Suffrage.

The President announced the order of motions, notices and resolutions, and the Secretary called the districts.

Mr. Pratt offered the following resolution:

R. 105.—"Resolved, That the Secretary of the Convention cause to be prepared a compilation of the titles of all special acts of the Legislature of this State, exempting property from taxation, contained in the Session Laws and not in the last edition of the Revised Statutes.

Referred to the Committee on Taxation, and also to the Committee on Charities.

Mr. McKinstry asked to be excused from attendance next Thursday and Friday, and his request was granted.

The President announced the order of communications from State officers, and the Secretary read the following communication (communication No. 9 in response to resolution No. 12):

To the Constitutional Convention:

Responding to the resolution of your honorable body, calling for a statement of the amount that has been paid for the last five fiscal years to the judges of the Court of Appeals and the justices of the Supreme Court, under section thirteen, article six of the Constitution, and also the amount appropriated at the recent session of the Legislature for former judges of said courts, I have the honor to submit the following:

PAYMENTS TO JUDGES WHOSE TERMS HAVE EXPIRED.

Court of Appeals.

1889	$5,000 00
1890	10,000 00
1891	12,000 00
1892	12,000 00
1893	6,000 00
Total	$45,000 00

Supreme Court.

1889	$12,000 00
1890	10,800 00
1891	22,116 66
1892	21,436 67
1893	28,800 00
Total	$95,153 33

"There was appropriated by chapter 358 of the Laws of 1894, for the payment of judges the sum of $36,000. There was also appropriated for Catharine Lydia Brady, widow of Judge John R. Brady, $4,725.80.

"The total amount thus far paid to judges of the Court of Appeals under the above provision of the Constitution is $59,225.27; to justices of the Supreme Court, $198,978.33, making the total amount thus far paid under the provision $258,203.66. There are at present five judges who are beneficiaries of this fund.

"Respectfully submitted,

"JAMES A. ROBERTS,

"*Comptroller.*"

Referred to the Committee on Judiciary.

Mr. Andrew Frank asked to be excused from attendance next Thursday and Friday, and his request was granted.

On motion of Mr. Galinger, the Convention adjourned until next Thursday, July 5, at eleven o'clock A. M.

Thursday, July 5, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber at the Capitol, Albany, N. Y., July 5, 1894, at eleven o'clock in the morning.

President Choate called the Convention to order.

The Rev. A. Kennedy Duff offered prayer.

The Journal of June twenty-ninth was read and approved.

The President — Mr. Goodelle, from the Committee on Suffrage, to which was referred the resolution, No. 43, introduced by Mr. Lincoln, requesting Congress to recommend and submit to the several States a proposed amendment to the National Constitution, requiring all voters to be citizens, reported adversely thereon. The matter was made a special order for this particular time, and the question now is whether the Convention will agree to that adverse report.

Mr. Lincoln — Mr. President, the resolution in question will be found on page 95 of the debates.

These resolutions were introduced on the thirty-first of May, I think, and, after lying on the table for several days, were referred to the Committee on Suffrage. A few days ago that committee made a report recommending that these resolutions be not adopted. The question now is upon agreeing to the report of the committee.

The Chairman of the Suffrage Committee, in making the report, stated, as a reason for the action of the committee, that it was thought a recommendation of this kind, coming from this Convention to Congress, might be deemed an officious intermeddling with the affairs of Congress, and that the resolutions themselves might also be construed as a discourteous criticism upon the Constitutions of our sister States, which contained the provisions in question.

It seems to me, Mr. President, that it is eminently proper for this Convention to take some action upon this question. The question of suffrage is one of the great questions before the Convention, and the people of this State are looking to this body for some action which will tend to strengthen the right of suffrage in this State, to elevate the standard of qualifications of voters, and, if possible, to improve our elective system. We have had placed in our hands, at the expense of the State, the Constitutions of all the States in the Union. In examining these Constitutions, with a view, possibly, of borrowing some ideas therefrom, which we might find useful, I find that in sixteen of these States, named in the reso-

lutions, persons are permitted to vote before they become citizens of the United States.

Now, the State of New York has steadily adhered to the principle of citizen suffrage. We do not believe in permitting people to become voters and to participate in the affairs of government until they are at least citizens. In getting at the matter, to see what could be done, so far as this Convention is concerned, it seemed to me that we might very properly call the attention of Congress to this matter by resolution of this Convention; not in the sense of discourteous criticism of the Constitutions of other States, as is suggested in the report of the Suffrage Committee; that was not intended by these resolutions at all; but that we might ask Congress to take some action, with a view to implanting the principle of citizen suffrage in the Constitution of the United States. That instrument does not now regulate this question. It is left to the States themselves, and, I believe, the time has come in our history when the Constitution of the United States ought to define the rules of suffrage, or at least that it should go to the extent of limiting the right of suffrage to people who are citizens. The Constitution does define citizens as "persons who are born or naturalized within the United States and subject to the jurisdiction thereof." Those persons are citizens. The Constitution prohibits any State from making or enforcing any law impairing the rights, privileges and immunities of any citizen of any other State. It seems to me that we ought not to have one standard for citizenship and another standard for suffrage; but that in all the States, and especially in the event of a national election, there should be one standard for all voters throughout the entire Union. These voters in these States vote for representatives in Congress, for presidential electors, and they, also, vote for members of the Legislature who elect Senators of the United States, thereby making the qualifications of voters unequal in the different States; and, therefore, it may work to the disadvantage of States holding to citizen suffrage. To illustrate: Four of these States permit voting after a residence of only six months; so that if a foreigner goes to one of those States the first of May, and declares his intention of becoming a citizen, he may at the following November election vote for any officer, State or national. Thus, after a residence of only six months in this country, he becomes entitled to vote, with the same force and effect, and his vote counts for just as much as the vote of a citizen who has resided here five years, or who has been raised in this country and has been compelled to live here twenty-one years.

Again, suppose that two brothers come here by the same steamer;

one of them goes to one of these States, and the other remains in this State. The one who goes to these States may vote after living there six months, but the one who remains in New York State must live here five years before he is entitled to vote.

It is this inequality that is aimed at by these resolutions, and there seems to be no way of remedying this state of affairs, except by amending the Constitution of the United States. The Constitution itself, at the time it was framed, was the creature of compromises. The question of suffrage was left largely to the States themselves. The electors who are entitled to vote for the most numerous branch of the State Legislature may vote for representatives in Congress. That, I think, is the only provision in the Constitution on the subject. It seems to me that it is peculiarly proper to take some action upon this matter; not in the spirit of criticism, but by way of courteous depreciation or protest. We are here representing ten per cent of the population of the entire Union. We are here representing fifteen per cent of the wealth of the entire Union; and when we find that our sister States have placed in their Constitutions provisions which we believe to be inimical to our interests and the interests of the entire country at large, I think it is proper for us to, at least, call their attention to it, and by going to the source of amendments to the Constitution of the United States, ask that the Constitution itself be so amended as to correct this inequality in the right of suffrage. We have a right to be heard. It is our duty to speak, and we would be remiss if we failed to do so.

The suggestion has been made that the Constitutional Convention is not the proper body to make this petition to Congress. I would like to ask, what body of men could be called together in the State of New York from whom the suggestion could so fittingly come? Clearly not the Legislature, but with the most eminent propriety from this Convention. We are here to deal with questions of fundamental law. We have a right to look beyond the confines of the State of New York, to consider questions of fundamental law in our sister States, and consider questions of fundamental law for the entire United States, By virtue of our pre-eminence as a State it is due from us, it is due from this Convention, it is due from the State of New York, by virtue of its leadership in the American States, to make this recommendation leading, as I suggested before, to establishing in our Constitution the principle of absolute citizen suffrage.

It should not be forgotten that at least ten of the amendments to the Constitution of the United States which have been adopted

originated in a Constitutional Convention. Some originated in Constitutional Conventions in New York, and some in the Constitutional Conventions of other States. Clearly we may make another recommendation, placing upon the same foundation, footing and plane, voters for national officers in all the States of the Union.

Mr. President, it seems to me that it is eminently proper for this Convention to take this action; and I think if we can pass some resolution upon this question, not for the purpose of criticising any State, but for the purpose of having our National Constitution right upon this question, we shall initiate a movement which may result, which clearly ought to result, in implanting in our fundamental law the principle of absolute citizen suffrage. And, I think, it would be no small honor to this Convention. More than that, I think our action will be approved and commended, not only by the people of the State of New York, but by the patriotic sentiment of the entire country. I hope, sir, that this report of the Committee on Suffrage will not be agreed to, but that these resolutions, which are before this Convention, will be adopted. (Applause.)

Mr. Barhite — Mr. President, the evil referred to in the resolution under discussion is one of the great dangers which threatens our peace as a people and our prosperity as a nation. I was aware of the existence but not of the extent of the evil referred to, until my attention was called to the matter by the gentleman from Cattaraugus. It seems to me to be an eminently just and proper resolution, as indicating a desire on our part to induce the federal authorities to make the standard of suffrage uniform throughout the States of the Union. If there is any question which is more difficult of solution, or more important, than the question of suffrage, I do not know what that question is. When we discuss the government of cities, the proper method of arranging and managing our courts, the question of taxation, or any of the interesting questions which have come or may come before this body, we are discussing, simply, matters of detail. But when we come to the question of suffrage we strike the fundamental principle, the foundation stone upon which rest these matters of detail, these questions of superstructure. It seems strange to me, Mr. President, that the States referred to in this resolution should ever have allowed this provision to creep into their Constitutions. And whatever may be our views as to the other questions which concern the right to vote, there can be no question that this provision in the Constitutions of these States, which permits a foreigner, with good intentions, to vote, should be done away with by the superior authority of the federal government. Under this provision we have

the strange and unnatural condition of men who are yet subjects of a foreign power, mingling with our citizens and influencing by their voices and votes the course of our government. Not yet have they foresworn allegiance to any foreign prince, potentate or power. They must still look for protection to the land from which they sprung. Not yet can they look to the Stars and Stripes as their shield and their defense. Anarchy and socialism may stir their hearts and fire their minds. Alien in birth, alien by education, alien in purpose, they have not yet learned that liberty is not license, and the hand which to-day with ruthless valor may strike at the heart of a Carnot, to-morrow may grasp that priceless treasure, the ballot of an American citizen. I do not wish, Mr. President, to be understood as saying a single word against, or as decrying in any manner, that large class of citizens who, born on foreign shores, have come here for the simple purpose of bettering their condition, and who, when they reach the land of their adoption, have left behind them the practices and prejudices of the land of their birth. They come here, and by their industry, by their fidelity, by their sturdy adherence to the principles of our liberty, they have done credit to themselves and honor to this country.

But, Mr. President, the Committee on Suffrage, by the mouth of their chairman, tell us that they believe in all these things; that they think the sentiment expressed in the resolution is just and yet they say they report adversely to it upon the ground that it might be deemed an unwarrantable interference with the powers of the federal government, and might be considered an unjust criticism upon the Constitutions of our sister States. I am thankful and every man in this Convention must be thankful, that the existence of this government was made possible and its unity preserved by men who dared not only to criticise their neighbors, but dared to enforce that criticism with steel and with lead. When the colonists said, "We will not be taxed unless we are represented," it was an awful criticism upon the conduct of the mother country. Yet the guns at Bunker Hill and Yorktown made that criticism a fact. When the southern States said, "We will secede," I am surprised at the ungentlemanly conduct of those gentlemen in official positions in Washington who said, "You shall not secede."

Can it be, Mr. President, that the Committee on Suffrage has listened so long to the seductive, entrancing and unanswerable arguments of the fairest and ablest ladies in the State that they are still under the power of the charmer, and come to us in dreamland with no faith in their own ability and tell us that politeness

is the most valuable quality that a Constitutional Convention can possess?

They say it is an unwarrantable interference with the powers of the federal government. If I am not mistaken, sir, the Constitution of that government still preserves the right of petition to all its citizens; and this resolution is in effect and in its nature simply a petition to Congress. An unjust criticism upon the Constitutions of our sister States? Is it improper for us to criticise the Constitutions of those States, when by their votes they not only nominate, but send to the executive chair in Washington and to the halls of Congress men who make and execute the laws under which we live. Why, Mr. President, within forty-eight hours there has been passed by the Senate of the United States a measure which more directly affects the State of New York than any other State in the Union. I refer to what is commonly known as the income tax. And while I do not at this time intend to discuss the propriety or the merit of that measure, I cannot do so now, because the Committee on Suffrage might deem my remarks an unwarrantable interference with the powers of the federal government and a criticism upon the acts of Congress, and, Mr. President, I would rather pay than be impolite. But I can refer to that measure simply as an illustration of the fact, that the question who shall vote in the southern and western States concerns the people of those States themselves. Without any discourtesy to the Committee on Suffrage, it seems to me, sir, that it would be perfectly proper for this Convention to disagree with this report. This is not a question upon which they have had any better opportunities than we have to understand the merits of the resolution. It is not a question upon which they have heard argument. It is not a question upon which they have been obliged to take testimony, but it is a question which they have decided upon their individual judgments; and, Mr. President, in view of all these matters, in view of the importance of the subject, in view of the fact that there is no body which may come together within the State of New York which could more appropriately petition Congress, I sincerely hope that the report of the committee will not be agreed to.

Mr. Roche — Mr. President, it seems to me that these resolutions should not be adopted. This Convention has not been summoned for the purpose of taking note of the differences between our Constitution and the Constitutions of other States, and of memorializing Congress or any other body to make such changes as we may think proper. In the limited time at our command

we have plenty to do to consider the weighty matters which press upon us for settlement, without branching off into other fields and trying to regulate the policy of other States. The subject-matter of these resolutions is one for the consideration of the States themselves. It is a matter of State rights.

Now I am entirely willing, as one of the results of the late war, to spell nation with a big N, as it is said. I believe in a federal government with power and strength enough to protect and defend all the States of this Union. But I have also been sufficiently educated in the democratic faith to know that the federal government is one of limited powers, that there are many things which the people, through their State governments, can do and can regulate for themselves much better than can the government at Washington; that centralization never was and never should be a distinctive feature of American institutions; that home rule is a wise principle, applicable not only to the town, the city and county, but to the States themselves; and that whatever directly concerns the welfare and the government of the States should be left to the wisdom and discretion of the people of the States.

This matter of who should be allowed to vote is one of State regulation, and, so far as the subject of these resolutions is concerned, it has not been affected by the later amendments to the Constitution of the United States. In support of that, I desire to call the attention of the members of the Convention to some decisions of the United States Supreme Court upon the subject.

In the case of Presser v. Illinois (116 U. S. Reports, 252), the court refers to the first section of the fourteenth amendment to the Constitution of the United States, which declares that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States," and the court says: "It is only the privileges and immunities of citizens of the United States that the clause relied on was intended to protect. A State may pass laws to regulate the privileges and immunities of its own citizens, provided that in so doing it does not abridge their privileges and immunities as citizens of the United States."

In the case of New York v. Miln (11 Pet., 102, 139), the court said: "We choose rather to plant ourselves on what we consider impregnable positions. They are these: That a State has the same undeniable and unlimited jurisdiction over all persons and things within its territorial limits as any foreign nation, where that jurisdiction is not surrendered or restrained by the Constitution of the United States; that by virtue of this, it is not only the right but the bounden and solemn duty of a State to advance the safety,

happiness and prosperity of its people, and to provide for its general welfare by any and every act of legislation which it may deem to be conducive to these ends where the power over the particular subject or the manner of its exercise is not surrendered or restrained in the manner just stated; namely, by the Constitution and laws of the United States."

In the case of the United States v. Reese et al. (92 U. S. Reports, 214), the Supreme Court had under consideration the fifteenth amendment to the Constitution relative to the right of suffrage, and it said: "The fifteenth amendment does not confer the right of suffrage upon anyone. It prevents the States, or the United States, however, from giving preference, in this particular, to one citizen of the United States over another, on account of race, color or previous condition of servitude. Before its adoption, this could be done. It was as much within the power of a State to exclude citizens of the United States from voting on account of race, etc., as it was on account of age, property or education. Now it is not. If citizens of one race, having certain qualifications, are permitted by law to vote, those of another having the same qualifications must be.

"Previous to this amendment, there was no constitutional guarantee against this discrimination; now there is. It follows that the amendment has invested the citizens of the United States with a new constitutional right which is within the protecting power of Congress. That right is exemption from discrimination in the exercise of the elective franchise on account of race, color or previous condition of servitude.

"This, under the express provisions of the second section of the amendment, Congress may enforce by 'appropriate legislation.'

"This leads us to inquire whether the act now under consideration is 'appropriate legislation' for that purpose. The power of Congress to legislate at all upon the subject of voting at State elections, rests upon this amendment.

"The effect of article 1, section 4 of the Constitution, in respect to elections for senators and representatives, is not now under consideration. It has not been contended, nor can it be, that the amendment confers authority to impose penalties for every wrongful refusal to receive the vote of a qualified elector at State elections. It is only when the wrongful refusal at such an election is because of race, color or previous condition of servitude, that Congress can interfere and provide for its punishment."

Now, Mr. President, the policy of the States named in this reso-

lution is not in any way injurious to the State of New York so far as our representation in Congress is concerned. For I call the attention of the members to the fact that by section 2, article 14 of the Constitution of the United States, representatives in Congress are apportioned upon the basis of counting the whole number of persons, and not the whole number of citizens, in all the States of the Union, excluding untaxed Indians. It might be very desirable that the qualifications for voting should be uniform throughout our country, but we know they vary largely. We have not the power to correct them, and Congress will not undertake the work. We might with equal propriety memorialize Congress upon many other matters wherein our Constitution and laws differ from those of the other States. For instance, Vermont has very stringent liquor laws. Their enforcement interferes with the trade and business of New York brewers and distillers. Maine and Iowa have adopted constitutional provisions, or have general laws of a prohibitive or restrictive character in reference to the liquor traffic. Thousands of thirsty American citizens believe that they should be at liberty to get certain drinks wherever they travel throughout the broad domain over which floats the Stars and Stripes. The railroad legislation of some of the western States, generally known as granger legislation, is believed to be injurious to the moneyed classes in this State and other eastern States; and yet upon these and other subjects which the States have always exercised jurisdiction over, it seems to me that it would be presumptious in us as a Convention, to arraign them before the bar of public opinion, and ask the federal government to initiate amendments to the Constitution looking toward national legislation. The States named in these resolutions have seen fit to be very liberal in regard to qualifications for the exercise of the elective franchise. They undoubtedly deemed it good public policy, and the people believed that such liberality would attract emigrants and help build up their communities. If they have suffered any by this policy they have it within their own hands to remedy the evil. That they do not consider it an affliction is apparent from the fact that they retain these provisions, although all their Constitutions provide methods for amendment, which are similar to our own. Politically speaking, some of these States have been in the Republican column for a period that the memory of man runneth not to the contrary. A Democratic victory in them is almost as rare as a white black bird in the woods. The foreign born persons that they have permitted to vote at an early day have stepped up with great regularity and deposited their ballots in favor

of the party of which Mr. Lincoln here is a respected member. Thousands upon thousands of these men were found in the armies of the Federal Union at Gettysburg, Appomattox and Vicksburg, and it would not sound very well, therefore, in the mouths of the members of this Convention, whatever might be their political affiliations to seek to overthrow the well-established policy of these States.

There is another thing, Mr. President, about these resolutions which do not recommend them to my mind. I find that they are a part of the platform of the American Protective Association, commonly called the A. P. A., a secret, oath-bound organization, American in name, but not in spirit or purpose. Now, it is entirely possible that the platform of this association may contain some useful suggestions. Sometimes wheat will be found among the chaff. But I feel about this association a good deal like the Trojan of old, when he said he feared the Greeks even when they came bearing gifts in their hands.

I find in the Troy Observer of Sunday last an interview with one of the local leaders of the A. P. A. and the circular which he handed to the reporter, showing the principles of the party, contains, among other things, these: Restriction of immigration, uniform naturalization laws for every State, with extension of the term of probation, taxation of church property, the opening of all private and parochial schools, convents and monasteries to public official inspection! There is now rolling over the country a wave of bigotry, of opposition to the foreigner and of hatred to the Catholic. Under the auspices of this association this feeling has manifested itself in different directions. This is one of them. I do not for a moment identify the gentleman who offered these resolutions with the spirit of this association. I simply intend to call attention to the fact that the resolutions are expressive of a plank in the platform of a narrow, proscriptive body, which should not receive the sanction or encouragement of any assembly of enlightened genuine American citizens. The Democratic party by its history, its traditions and its platform, is opposed to the existence and the designs of such an association. I trust that the Republican party, with its noble record of magnificent work accomplished in the interests of human liberty, will not falter in denunciation of the purposes and designs of an association which would sunder the pleasant, social, business and political relations which should exist among all classes of our people, and which is a menace to the peace and prosperity of the State.

Mr. President, I believe that these resolutions and this association

should be left alone. Whatever of good is advocated by this association can be much better accomplished by the great political parties, which live in the light of day, and which do not seek the caverns or recesses of darkness in which to promulgate their principles or advance their cause. A generation ago we had in Troy — where men great in all the walks of life, either originate or have their homes, a distinguished Congressman whom President Lincoln transferred to Washington and made a judge of the District Court, Abram B. Olin. In one of his opinions, Judge Olin laid down this very terse and sensible doctrine, which seems to me peculiarly appropriate to the matter before us. He said: "The first great canon of human conduct is, be obedient to law, human and divine; the next is, mind your own business."

Mr. Goodelle — Mr. President, inasmuch as the report of the committee seems to be challenged, it may not be out of place, and I may be excused for saying a single word in explanation of the views taken by the committee.

As I stated, when this report was presented to the Convention, the committee were unanimous in the sentiment embodied in the resolution, to wit: That none but citizens should vote. It was approved by them. I need not have said that, for our Constitution, since 1846, has proclaimed in such strong terms that no one could misunderstand it, that none but citizens can vote. I have no doubt that is the sentiment of this Convention, but that was neither here nor there. Your committee thought, and I think they thought properly, that we were called upon to pass upon a question which we had better leave alone; that we were called upon to make adverse criticisms upon our sister States; that these resolutions almost in terms declared that sixteen of our sister States are acting to-day under a Constitution which is in hostility to the spirit of the American Constitution. In other words, we are asked to say that these sixteen States are to-day perpetrating a wrong.

Now, I would like to inquire by what authority shall this Convention assume to sit in judgment upon sixteen sister States? Where is the propriety, where is the policy in so doing? If we undertake to sit in judgment upon these States, they might come up and say: "We want to be heard before we are condemned." We have not before us the circumstances nor the facts under which they adopted their Constitutions, but it is sufficient for us to know that they would, doubtless, make an issue with us and say: "We are not acting in hostility to the spirit of the American Constitution, and have the same right to sit in judgment upon the State of New York that the State of New York has to sit in judgment upon

us." And, furthermore, these sixteen States are simply exercising to-day those rights which were reserved to them when they came into the compact of the Union. They are exercising those rights as the State of New York is exercising its rights to-day, and we have no more right to criticise their action for exercising those reserved rights than they have to make a similar criticism upon this State. I say, let them alone. Do not undertake to interfere with the rights which belong to them, and to them alone.

Furthermore, it is said by these resolutions that suffrage should be uniform throughout the country. We say, very well, very likely that is so; but by what right shall we assume that New York State is to be made the standard by which to measure those rights? And if we undertake to pursue an investigation in order to see where the rights of suffrage in other States differ from those in our own State, we shall be in a field of investigation that would require much of the time of this Convention to examine. We might go to the State of California and say to her: Why do you preclude and prohibit the Chinese from voting? New York State does not do it, and because New York State does not do it, therefore, you Californians are exercising the rights of suffrage contrary to the spirit of the State of New York. Or we might go to the States of Georgia and Mississippi, and ask them why is it that you require that every man shall have paid his tax the year before, and that he shall have property qualifications, in order to be entitled to vote? Or we might go to old Massachusetts and ask her: Why is it that you require that your voters shall be able to read and write, shall read the Constitution, before you allow them to vote? New York does not do it, and, therefore, Massachusetts is acting contrary to the spirit of the American Constitution. We might go to the State of Connecticut and say to her: You are perpetrating a great wrong. You require that every voter in your State shall be of good moral character. Come down from that moral position, State of Connecticut; put your voters on a lower grade. But I think Connecticut might come to us and say, instead of our stepping down from our higher level, New York State, we will ask you to take a step upwards. And we might go to the State of Idaho, and ask: Why is it that you prohibit anybody from voting who believes in celestial marriages? In New York State many of the old school believes that marriages are made in Heaven, and yet the State of Idaho provides in her Constitution that those who believe in celestial marriages shall not be entitled to vote. And we might go one step farther and say that if this Convention should be disposed to favor woman suffrage, we might go to the State of

Pennsylvania and say: Pennsylvania, our suffrage must be uniform. You must conform with us. We believe in woman suffrage, and, therefore, you are acting in hostility to the government under which we live, because you have not stricken the word "male" from your Constitution. Or, if this Convention should allow its Constitution to remain as it is at present, and not approve of female suffrage, then we would call upon Wyoming and ask her to disallow such suffrage, and make its rules of suffrage to correspond with those of New York.

We might go through with the entire list of States and fine innumerable instances where they disagree with us in their provisions in reference to the question of suffrage. It seems to me, as I said before, that these are matters which should be left with the several States, and that we should be establishing a dangerous precedent if we undertook to correct the evils of other States. Let us attend to the legitimate business before this Convention, and let us, when we are through, be accorded the virtue at least of having confined our labors to those matters which were entrusted to us by our constituents. In my judgment, these resolutions should not be passed by this Convention, and the report of the committee should be agreed to.

Mr. Cassidy — Mr. President, I have no desire to waste the time of this Convention, but it seems to me that the resolution offered by the gentleman from Cattaraugus is eminently fair and just, and I feel that I must of necessity give it my cordial approval, both by my vote and by my voice.

The question is: Has this Convention the right to petition the Congress of these United States for a regulation that only citizens of the United States shall be entitled to vote? Now, the right to peaceably assemble and petition Congress is a right guaranteed by the Constitution of these United States, and if it be immodest and undignified for a body of this character to petition Congress for the passage of a constitutional amendment, if you please, to the effect that only citizens of these United States shall be entitled to vote, then I know not what body will have the boldness to petition Congress to do anything. I think that these resolutions ought to be adopted for very many reasons; if for no other, because it is not according fair treatment to the alien citizen of this State to deny him the right to vote before he becomes a citizen of the United States and allow the alien citizen of some other State to vote. It may be extremely nice for some of these western States to allow foreign citizens to vote, but it is extremely unfair to the people of this State, and we are affected by the votes of these foreign citi-

zens, because the representatives of those States affect our interests indirectly.

I remember reading not long since an epitaph in a modern cemetery, which was something like this:

Here lies Mary Ann West,
With her head on Abraham's breast.
It is nice for Mary Ann,
But awful tough on Abraham.

While it may be extremely pleasant for some of these people in the West to accord the right of voting to their foreign citizens, it is extremely unfair to us of this State who hold to the principle that only American citizens are entitled to vote.

I, therefore, wish to give my approval to the resolutions offered by the gentleman from Cattaraugus.

Mr. McDonough — Mr. President, I desire to say one word upon this question, and I shall be very brief. I have been converted by my friend from Troy. It would be very strange if Troy and Albany should agree, and, inasmuch as he votes one way, I intend to vote the other. I see no harm at all in these resolutions. I do not know why a foreigner should vote in this country, in any State. I see no hardship in asking him to wait in Michigan as long as he is required to wait in New York. I can see great danger in permitting him to vote in some of these States. We have three thousand miles of foreign country on our border, and the States bordering upon that country are many of them close in politics. A few thousand men might carry an election one way or the other. There might be an election in which such questions were involved as we had in 1892, when three or four thousand men might be thrown across the border before the election, and carry the election. I am opposed to that. I say we are not interfering with our neighboring States. We are not asking them to change their Constitutions. We are petitioning the federal government — the government we have a right to petition. We are asking the United States government to change the Constitution of the United States so that none but citizens shall vote in this country, and that is good doctrine. I do not think these resolutions warrant anything like the flavor that my friend from Troy has given them. I do not see any such hidden purpose in them, and I shall vote for the resolutions.

Mr. Moore — Mr. President, I am heartily in favor of these resolutions of Mr. Lincoln, and opposed to the report of the committee, particularly as the report seems to be based upon the ground

of expediency rather than that of right. I consider that from no body of men in this State can such resolutions as these come with more propriety than from this Constitutional Convention. New York State has a grievance in this matter. I was surprised and grieved that my distinguished friend from Troy, for whom I have conceived an intense admiration, since we have been here, on account of his eloquence, should have attempted to twist these resolutions into an inquisitorial measure on the part of the A. P. A., against the Roman Catholic Church; and also that he should have attempted to make them a party matter. There is nothing partisan in it, Mr. President and gentlemen of this Convention. This Convention, which represents, more than any other body of men possibly could, the people of this State, simply goes to the Congress of the United States and presents what it conceives to be a grievance in relation to the voting by aliens before they ought to vote. It gives other States an unfair advantage over us. It gives them the right, if you please, to the votes of ten thousand men who are not really citizens of the United States, whereas, foreigners here have to wait five years before they can vote. I see no impropriety in passing these resolutions, and, as a member of the Convention, I shall vote to disagree with the report of the committee, and vote for the resolutions.

Mr. Platzek — Mr. President, I believe that from the report of committee and the discussion already had the Convention is prepared to vote on the proposition, and, I, therefore, move the previous question.

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

Mr. Lincoln called for the ayes and noes upon the question of agreeing with the report of the committee, which was ordered, and the Secretary proceeded with the call of the roll.

Mr. Crosby — Mr. President, I ask to be excused from voting, and will briefly state my reasons. When these resolutions were presented to this Convention, and referred to the committee, there was nothing apparent upon the face of them indicating any partisanship in the matter, and there was no attempt to advance the idea that they were offered for any such purpose. There is no indication of anything of the sort now, except the declaration of a gentleman upon this floor.

Now, this is purely a matter of public policy, a question of the right of one American citizen as against the right of an alien; a question of what is for the best interests and commonweal of the

whole country to maintain the dignity of American citizenship. It is not a criticism upon the actions of other States. It is not a criticism upon the policy which they have adopted. It is simply asking, as we have a right to do, representing the great State of New York, that Congress shall provide an amendment that will make a uniform rule of citizenship and right to cast a ballot — the highest, the most sacred right of an American citizen. I am not afraid, Mr. President, to express my views, if I believe, as the Committee on Suffrage, through their chairman, say that they believe, the principles here involved. It is my duty, as a member of this Convention and a citizen of the great State of New York, to assert my right of citizenship everywhere and have it respected and protected. It is my right and my duty to express my views by my vote whenever the opportunity is presented. I withdraw my request to be excused from voting and vote no.

Mr. Gilbert — Mr. President, I ask to be excused from voting, and will state briefly my reasons. I want to call attention to two points: First, that the main object of these resolutions is to promote the adoption of a minimum qualification for voting, and that minimum qualification is citizenship. I am most profoundly convinced that the right to vote in this Republic ought not to be exercised by anybody who is not a citizen. (Applause.) The second point I make is this: It has been stated upon the floor of this Convention that the people of the State of New York are not prejudiced by this, and in support of that proposition, section 2 of article 14 of the United States Constitution was read. It is true, Mr. President, that we are not prejudiced by it so far as the number of representatives is concerned, but we are prejudiced, and we may be fatally prejudiced in another way. It is possible, and, considering the balance of power in this country, it is not very remotely probable, that men who have never sworn allegiance to the United States, may have the balance of power here, and determine the policy of this Republic by one, two or three votes in the Congress of the United States. We may, Mr. President, be fatally prejudiced by the possibility of having the policy of the whole country determined in some of these sixteen States by the votes of men who are not citizens. Mr. President, I withdraw my request to be excused from voting and vote no.

Mr. Lauterbach — Mr. President, I ask to be excused from voting, and will state my reasons. I am a member of the Suffrage Committee. When this petition came to the committee, I think that every member of the committee felt that a wrong was being perpetrated against the people of the State of New York, and

against many of the citizens of the United States, by the maintenance of the condition of affairs sought to be criticised in the resolutions presented by Mr. Lincoln. I think that the views of the individual members of the committee were unanimously in sympathy with the views as expressed by the resolutions. But with the same unanimity, that committee concluded that, as a committee and representing this Constitutional Convention of the State of New York, it was none of our business to interfere officially and on behalf of the Convention with the Constitution of the State of Kansas or any other State, either in this particular respect or in any other respect; and we thought that the eleventh commandment would very well apply to this case, that we should sedulously mind our own business. We have sought to do so, and have presented the report that is before you with that purpose and with that aim.

Now, there is no member of that committee, and, probably, no member of this Convention, who will not be entirely willing to sign a petition to be addressed to Congress with a view to remedying this or any other gross and patent wrong that is being perpetrated by the maintenance of certain provisions in the Constitutions of some States. But, as a Convention, we have nothing whatever to do with the matter. If a petition is started, it will be signed and will be sent to the members who represent us in the Senate, if you please, and the energy and industry that have been able to accomplish for the city of Troy a protective tariff on collars and cuffs of 125 per cent will be able to start an amendment which will probably be successfully adopted, that will prevent this and other outrages. But just as little as we have a right to interfere with questions of tariff, or questions of whiskey, or sugar tax or any other similar matter, just so little have we the right, as a Constitutional Convention, to go outside of the routine of our own business and suggest, as a Convention, what ten or fifteen States of the Union ought or ought not to do. Let us, as individuals, do what we may as citizens of the United States, and let us, as members of the Constitutional Convention, attend to our own business — and we have enough of that to do, Heaven knows, between now and the fifteenth of September. I ask to withdraw my request to be excused from voting and vote aye.

Mr. Riggs — Mr. President, I ask to be excused from voting, and will state my reasons.

A party aspect has been given to this discussion, and I am sorry to see it. But I am free to say that I believe the resolutions, as presented by the gentleman from Cattaraugus, are correct, and that the Convention should express itself in that way. I approve of the

resolutions, and, therefore, withdraw my request to be excused from voting and vote no.

Mr. Roche — Mr. President, I desire to be excused from voting. I simply desire to say that since the Senate of the United States. at the instigation of the able and patriotic Senators from the State of New York, took the very sensible course of securing needed and sufficient protection for the great Troy collar and cuff industry and laundrys, the beautiful girls of Troy have laundried —

Mr. Moore — Mr. President, I rise to a point of order. The gentleman has already spoken once.

The President — The gentleman has not spoken before on the subject of being excused from voting.

Mr. Roche — I was going to say, Mr. President, that the beautiful girls of Troy have made the collars and cuffs and shirts of the distinguished gentlemen from New York 125 per cent whiter and 125 per cent stiffer than they were before that action was taken. I withdraw my request to be excused from voting and vote aye.

Mr. Vedder — Mr. President, I wish to be excused from voting, and will state my reasons. It is always disagreeable to be seemingly discourteous and vote against a report of a committee, particularly when it is unanimous. But courtesies must give way to matters which are exactly right. I believe these resolutions ought to be passed, and I believe it is not discourteous on the part of this Convention to speak the voice of the great State of New York to Congress, petitioning for the passage of a law in consonance with these resolutions.

The State of New York is interested in the votes of other States, and interested in the qualifications of those who shall vote. A law may be passed by Congress, and one has already passed the Senate, greatly, deeply affecting the people of the State of New York in their rights of property and the pursuit of happiness. Therefore, the State of New York, being interested, ought not to have any hesitancy in saying to the Congress of the United States and to our sister States how we are interested and why we are interested. It is possible under the law of these sixteen States for them to send members to Congress and to elect two Senators from each of those States by foreign votes. And we ought to make proclamation now that these United States are controlled, at least in the law-making branch, by the people of the United States and not by foreign power, prince or potentate, or the subjects of either of them. The supreme test, the fundamental, the eternal test in these United States ought to be that of citizenship, and upon that as the

supremest possible test should be based the right to vote. No man ought to be permitted to vote in this or any other State, unless he is bound to support the law which he helps to enact. He should not be allowed to vote to impose a law upon the people of these States, unless he is bound by allegiance to support that law which he helps to make.

It is for that reason and for these reasons that I say citizenship should be the fundamental test of the right to vote. After that has been accomplished, then each State may regulate its purely domestic concerns as it pleases, but no State should permit the subject of any foreign power to have a voice in making laws which may be seriously detrimental to this nation and favorable to any other country.

That is the question, and there ought not to be a division upon it. New York, it has been stated, and it is true, contains one-eleventh of the whole population of these United States. It pays fifteen per cent of the taxes of these United States. There ought not to be from any State in the Union a man sitting in the House of Representatives nor in the Senate, except he is there by the votes of citizens, and not by the votes of Englishmen, or Russians, or Turks, or those of any other nationality. Every voter should be a citizen, and no one but a citizen should ever be permitted to influence in the slightest degree the law-making, law-executing or law-expounding branches of our government. Every dweller among us owing foreign allegiance should be silent when this great people are in the act of governing themselves. There should be no drum beat nor heart beat on American soil which is not in sympathy with the high and holy meaning of the Stars and Stripes, and no one should have the rights which that flag guarantees, unless he is bound by the laws and love of country and with his life to defend it. I think that when the attention of Congress is called to this matter, it will act promptly upon it. It is not discourteous, as some call it, for us to petition Congress. Let the potential voice of the imperial State of New York be heard and not be divided, as it is upon the tariff question, which is ruining the industries of our country, and Congress will listen to it. Let us speak as a great and united people, with but one sentiment upon this great and seriously important subject, and our voice will be respected, as it should be. I withdraw my request to be excused from voting and vote no. (Applause.)

Mr. Cochran — Mr. President, not having been in my seat when the motion was made, I was unfamiliar with its terms and was misinformed as to its effect. As a member of the Suffrage Com-

mittee, I voted for the report which has been submitted, and I desire to so vote in this Convention. I desire to have my vote changed from no to aye.

The President announced, as a result of the vote, that the Convention had agreed to the adverse report of the committee by a vote of 64 to 48.

Ayes — Messrs. Acker, Alvord, Barnum, Barrow, Becker, Bigelow, Bowers, Chipp, Jr., Clark, H. A., Cochran, Danforth, Davenport, Durnin, Emmet, Fields, Francis, Frank, Andrew, Goeller, Goodelle, Griswold, Hawley, Herzberg, Hill, Hirschberg, Hottenroth, Johnson, J., Kerwin, Kimmey, Lauterbach, Lester, Lewis, C. H., Lyon, Marks, Marshall, Maybee, McIntyre, McLaughlin, J. W., Nicoll, O'Brien, Ohmeis, Osborn, Peabody, Peck, Platzek, Putnam, Roche, Root, Sandford, Schumaker, Speer, Spencer, Steele, A. B., Sullivan, T. A., Tekulsky, Tibbetts, Titus, Truax, C. H., Truax, C. S., Tucker, Veeder, Wellington, Whitmyer, Wiggins, President — 64.

Noes — Messrs. Abbott, Ackerly, Allaben, Barhite, Cady, Carter, Cassidy, Countryman, Crosby, Curran, Davies, Dean, Dickey, Durfee, Floyd, Foote, Frank, Augustus, Fraser, Fuller, C. A., Fuller, O. A., Galinger, Gilbert, Hedges, Johnson, I. Sam, Johnston, Kellogg, Lewis, M. E., Lincoln, Manley, Mantanye, McArthur, McDonough, McLaughlin, C. B., Moore, Nichols, Phipps, Powell, Redman, Riggs, Roderick, Rogers, Steele, W. H., Storm, Sullivan, W., Turner, Van Denbergh, Vedder, Vogt — 48.

The President — The next business is the presentation of memorials.

Mr. Dean — Mr. President, I move that this Convention do now adjourn.

The President put the question upon Mr. Dean's motion to adjourn, and it was determined in the negative.

The President — Memorials are in order.

Mr. Hill presented a communication from the University Convocation of the State of New York, now in session in the Senate Chamber, extending an invitation to the members of the Convention to visit the sessions of the Convocation.

Mr. Gilbert moved the thanks of the Convention for the invitation contained in the communication.

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

Mr. Goodelle presented a communication from S. F. Rawson, in relation to soldiers and sailors, etc., which was referred to the Committee on Suffrage.

Mr. Moore (by request of the Rev. Father Walworth) presented a communication, which was referred to the Committee on Suffrage.

Mr. McDonough — Mr. President, I am requested by Mr. Roach, president of the New York State Branch of the Iron Molders' Union of America, to present a petition in behalf of one hundred organizations of the State of New York, representing 40,618 people, in favor of an amendment prohibiting labor in prisons which would compete with free honest labor outside.

Referred to the Committee on Prisons.

Mr. Tucker presented a petition of citizens of New York city, requesting that the word " male " be stricken from the Constitution.

Referred to the Committee on Suffrage.

The President — Motions, notices and resolutions are in order, and the Secretary will call the roll.

Mr. A. B. Steele — Mr. President, as there seems to be little question about a full expression upon the subject that was voted on last Friday, concerning the printing resolutions, I move that the vote taken last Friday, concerning this subject, which would be under subdivision 3 of Document 21, report of the Committee on Printing, be reconsidered, and that the subject lie on the table until there is a full attendance, so that the matter may be fully considered.

The President — Did you vote in the affirmative?

Mr. Steele — I voted in the negative and the resolution was defeated. I voted with the majority.

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

Mr. Root presented the following resolution:

R. 106.—" Resolved, That the Compiler appointed pursuant to the act of March 30, 1894, be and he hereby is called upon to inform the Convention what the documents now upon the files of the delegates and numbered 15, 18, 19, 20 and 23 are; pursuant to what resolutions of the Convention, if any, they have been printed, and if any of them be not printed pursuant to such a resolution, then by what authority they have been printed, and whether these papers are a part of any forthcoming manual directed by the Legislature, and, if so, whether the printing thereof as Convention documents, is to be paid for separ-

ately, or by what authority these pages are called "Convention Documents."

Mr. Root — Mr. President, I have offered this resolution because I find upon the files of documents between four and five hundred pages of statistics and statements of various kinds about the government of the State and called Convention documents, not purporting to be made Convention documents by any public officer, not purporting to be sent to the Convention pursuant to any resolution of the Convention, not signed by anybody, not appearing to be upon the authority of anybody, and, therefore, wholly useless. And I am told — I don't know whether correctly or not — that these pages have been taken substantially from some forthcoming volume of the so-called manual which the Legislature directed to be prepared and furnished to the members of the Convention, and that they are printed separately as Convention documents, to be paid for separately, so that the State in the end will have to pay for them twice over; once because they are thrust upon the Convention without its demand or its authority and called Convention documents, and once because they are to be included in some volume of some manual which will come along about the time the Convention adjourns. I hope, sir, that the Convention will make this inquiry and that we will not leave ourselves responsible for the printing of this matter without knowing what it is.

The President — The Secretary informs the Chair that Document No. 15 was ordered by a vote of the Convention, so that, perhaps, Mr. Root will omit that part from his resolution.

Mr. Root — Mr. President, I included that in the resolution only because I find reprinted in Document 15, in full, the entire body of the rules of the Convention, which the State already pays for as printed in Document No. 9. I do not suppose the Convention intended to vote that we should keep printing these rules over and over and over again, paying for them every time. That is the only reason I included that in the resolution.

Mr. Truax — Mr. President, may I ask by what resolution Document No. 15 was printed?

The President — The Secretary informs me that it was by an order of the Convention.

Mr. Cochran — Mr. President, I think you will find that on page 115 of the Journal.

Mr. Root — Mr. President, I would ask permission to include No. 9 in the resolution.

The Secretary read the resolution upon this subject contained at the top of page 115 of the Journal.

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

Mr. Moore presented the following resolution:

R. 107.—" Resolved, That after July 15, this Convention meet Mondays and Saturdays, in addition to the days in each week it now meets under the rules."

The President — Does any gentleman wish to debate this resolution?

Mr. Dickey rose to debate the resolution, and, under the rules, the resolution was laid over until to-morrow.

Mr. Van Denbergh presented the following resolution:

R. 108.—" Resolved, That the Secretary of State furnish to this Convention the names of the judges of the Court of Appeals and the names of the justices of the Supreme Court of the State of New York whose terms of office commenced on and since January 1, 1880, with the ages of each at the time of the commencement of their said terms, and when the official term of such commenced; when the official term of each terminated or will terminate, either by completion of a full term of by the reason of disability of age prescribed in the Constitution."

Referred to the Judiciary Committee for report.

Mr. Van Denbergh also offered the following resolution:

R. 109.—" Resolved, That the Comptroller of the State of New York furnish to this Convention the names of the judges of the Court of Appeals of the State of New York, and the names of the justices of the Supreme Court of the State of New York, with sum paid to each annually, as such officers, since January 1, 1890, without regard to the question whether such person continues to exercise the duties and powers of his office or not."

Referred to the Committee on Judiciary for report.

Mr. Becker presented the following resolution:

R. 110.—" Resolved, That the State Engineer be requested to furnish the Committee on Legislative Organization with a map of the State showing the Senate and Assembly districts, the population of each district, the registered vote, and the vote cast at the last general election for Senators and Members of Assembly."

Referred to the Committee on Legislative Organization.

The President — Communications from State officers are in

order. A communication has been received from the Comptroller of the State, which the Secretary will read.

The Secretary read the communication referred to, as follows (communication No. 10, in response to resolution No. 17):

ALBANY, N. Y., *July* 3, 1894.

HON. CHARLES E. FITCH,

Secretary of the Constitutional Convention:

SIR.— In relation to the resolution of the Convention, requesting the Comptroller to furnish a statement of property exempt from taxation throughout the State, permit me to say that every effort is being made to obtain this information, which I shall be happy to transmit to the Convention at the earliest date possible.

Very respectfully,

JAMES A. ROBERTS,

Comptroller.

Mr. Storm moved that a recess be taken until 2.30 this afternoon.

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

The President — Propositions for constitutional amendments are in order.

The Secretary called the roll of districts.

O. 276.— Mr. Titus presented a proposed amendment to the Constitution providing for local option in the sale of spirituous, malt or intoxicating liquors or beverages.

Referred to the Committee on Legislative Powers and Duties.

O. 277.— Mr. Dickey presented a proposed amendment to section 6, article 6, so as to permit the Legislature to increase the number of judicial districts.

Referred to the Judiciary Committee.

O. 278.— Mr. Davies offered a proposed amendment to section 2, article 3 of the Constitution, relative to Senators and Members of Assembly and their terms of office.

Referred to the Committee on Legislative Organization.

O. 279.— Mr. Kellogg offered a proposed amendment to the Constitution, to be known as a new section to article , in relation to the way and manner in which taxpayers shall furnish to boards of assessors a statement of the property owned by them in their possession or under their control.

Referred to the Committee on State Finances.

O. 280.— Also, a proposed amendment to article 1, section 6 of the Constitution, forbidding the passage of any law to cure a jurisdictional defect in any proceeding relating to the title of property.

Referred to the Judiciary Committee.

O. 281.— Also, a proposed amendment to article 3, section 17 of the Constitution, forbidding the passage of any law which shall render void a previously valid conveyance of property.

Referred to the Judiciary Committee.

O. 282.— Also, a proposed amendment to the Constitution, to be known as a new section, in relation to the passage of laws providing for an equal and uniform rate of taxation, and specifying what property shall be exempt from taxation in this State.

Referred to the Committee on Finances and Taxation.

O. 283.— Mr. Mantanye offered a proposed amendment to change or amend section 1, article 10, in relation to election and terms of office of sheriff and other county officers.

Referred to the Committee on County, Town and Village Officers.

O. 284.— Also, a proposed amendment to change or amend section 22, article 3, in relation to supervisors of towns and villages and their election.

Referred to the Committee on County, Town and Village Officers.

Mr. McLaughlin requested that the amendments offered by Mr. Mantanye be referred to the Committee on Judiciary, and they were so referred.

Mr. Kellogg requested that the two amendments offered by him, which were sent to the Judiciary Committee, be referred to the Committee on Powers and Duties of the Legislature, and they were so referred.

The President — Reports of standing or select committees are in order.

Mr. Durfee moved that the Convention do now adjourn.

The President — Before the motion to adjourn is put, the Secretary will read announcements of meetings of committees.

The Secretary read the announcements of committee meetings.

Mr. Peabody requested to be excused from attendance to-morrow and he was excused.

Mr. McLaughlin — Mr. President, I ask to have the proposition to amend the Constitution first introduced by Mr. Mantanye, relating to increased representation, be also referred to the Committee on County, Town and Village Government.

The President — It will be so referred.

The President put the question on Mr. Durfee's motion to adjourn, and it was determined in the affirmative. Whereupon the Convention adjourned to July 6, at ten o'clock A. M.

Friday, July 6, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber, at the Capitol, Albany, N. Y., July 6, 1894, at ten o'clock.

President Choate called the Convention to order.

The Rev. S. F. Morrow offered prayer.

The Journal of Thursday, July 5, was read and approved.

The President — Mr. Deady, of New York, is appointed on the Railroad Committee, in place of Mr. Koch, who has never taken his seat in the Convention.

On motion of Mr. Maybee, Mr. E. A. Brown was excused from attendance to-day.

On motion of Mr. Gilbert, Mr. Cookinham was excused from attendance to-day.

The President — The Chair has received a communication from the State Charities Aid Association, of New York, in respect to the support of children at public expense in private institutions in New York city, which is referred to the Committee on Charities.

Also, further communications in favor of civil service reform, which are referred to the Select Committee on Civil Service.

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

The Secretary called the districts.

Mr. Cochran — Mr. President, I desire to ask that the printed Journal of June 28 be corrected, so that it may appear on page 314 thereof that I asked to be excused from voting on the report of the Committee on Privileges and Elections in the Erie county contests.

The President put the question on the motion to correct the Journal, in accordance with Mr. Cochran's request, and it was determined in the affirmative.

Mr. Moore called up his resolution of yesterday in reference to holding sessions of the Convention on Mondays and Saturdays, after July 15.

The President — Mr. Moore's resolution is in order, and the Secretary will read it.

The Secretary read the resolution as follows:

R. 107.—" Resolved, That after July 15, this Convention meet Mondays and Saturdays in addition to the days of the week it now meets under the rules."

Mr. Moore — Mr. President, I ask that that resolution be made a special order for Wednesday morning next, immediately after the reading of the Journal.

The President put the question on making the resolution a special order for Wednesday morning next, immediately after the reading of the Journal, and it was determined in the negative.

Mr. Alvord moved the previous question on the passage of the resolution, and the previous question was ordered.

The President put the question on Mr. Moore's resolution.

Mr. Foote called for a division of the question.

The President put the question as to whether, after July 15, the Convention shall sit on Monday, and it was determined in the negative.

The President then put the question as to whether the Convention, after July 15, shall sit upon Saturday, and it was determined in the negative.

Mr. Towns offered the following resolution:

" Whereas, The Attorney-General of the United States has directed one of the district attorneys to convene an extraordinary United States grand jury for the purpose of indicting one Eugene Debs, a citizen of the United States, against whom no crime was charged or specified; and,

" Whereas, The paid soldiers of the nation have been sent to Chicago to coerce the people and shed blood of citizens, while trusts and monopolies are endowed with bounties wrung from the poor.

R. 111.—" Resolved, That we, the representatives of the people of the State of New York, in Constitutional Convention assembled, view with alarm the extraordinary and arbitrary action of the national government, and condemn it as fraught with peril to the peace and happiness of the Republic, subversive of the rights, privileges and liberties of the citizens, and the exercise of national powers not authorized or implied by the Constitution of the United States or the laws thereof."

The President — Do any gentlemen desire to debate this resolution?

Mr. Dickey — Mr. President, I move that it be referred to the Suffrage Committee.

The President — Under the rules, unless any gentleman wishes to debate the resolution, its consideration is now in order.

Mr. Dean — Mr. President, I call for the previous question on the resolution.

Mr. Root — Mr. President, may I inquire by whom that resolution was introduced?

The President — Mr. Towns.

The President put the question on ordering the main question, and it was determined in the affirmative.

The President put the question on the resolution, and it was determined in the negative.

The President announced the order of introduction of proposed amendments to the Constitution.

O. 285.— Mr. Tucker offered a proposed amendment to section 2 of article 13 of the Constitution, in order to insure the meeting of future Constitutional Conventions when the same are demanded by popular vote.

Referred to the Committee on Constitutional Amendments.

O. 286.— Mr. McDonough offered a proposed amendment to section 15 of article 3 of the Constitution, relating to the passage of laws.

Referred to the Committee on Powers and Duties of the Legislature.

The President announced the order of communications from the Governor and other State officers.

The President — The Chair has received a communication from the Compiler, in response to the demands made upon him yesterday, which the Secretary will read.

The Secretary read the communication referred to, as follows (communication No. 11, in response to resolution No. 106):

To the Constitutional Convention:

GENTLEMEN.— In compliance with the resolution adopted by your honorable body July 5, I would respectfully report that Document No. 9 was printed from copy supplied by the Secretary. Document No. 15 was printed in accordance with a resolution of

your honorable body, adopted May 29. Documents Nos. 16, 19, 20 and 23 were not ordered by me, and I have given no receipt for the same to the contractor. Documents Nos. 18, 19, 20 and 23 are from the volume of statistics in preparation for the Convention.

I have given my receipt for no documents or printing of any kind for this Convention not ordered in the regular manner, except for Document No. 3, ordered by Mr. Root, of the Committee on Rules; Document No. 5, ordered by the subcommittee of the Judiciary Committee, and Document No. 8, ordered by Mr. Hamlin, of the Printing Committee. The orders for these documents were given to the contractors by the gentlemen named.

Very respectfully,

GEORGE A. GLYNN,
Compiler.

The President — The communication will be placed on file.

The President announced the order of reports of committees.

Mr. Root, from the Committee on Judiciary, to which was referred the resolution introduced by Mr. C. B. McLaughlin, reported in favor of the passage of the same without amendment.

The President — The question is on the adoption of Mr. McLaughlin's resolution, which will be read by the Secretary, having been approved by the Judiciary Committee.

The Secretary read the resolution as follows:

R. 101.—" Resolved, That the Clerk of the Court of Appeals be requested to furnish to this Convention, on or before July 9, a statement as to the time when the present calendar of the Court of Appeals was made up; the number of causes placed thereon; the number of causes since added thereto; the causes since argued and disposed of, and the number of causes now remaining on said calendar undisposed of; that said Clerk also furnish a statement of the number of appeals taken to and filed in said court since said calendar was made up and not on said calendar."

The President put the question on the adoption of the resolution, and it was determined in the affirmative.

Mr. Root, from the Committee on Rules, reported in favor of the adoption of the following new rules:

" Rule 73. After the fifteenth day of July, no further propositions for constitutional amendment shall be printed or referred, as, of course, under rule 32, but all such propositions shall be referred, without printing, to a select committee of five, to be appointed by

the President, for examination and comparison with proposed constitutional amendments already introduced and referred. If any such propositions shall be found to relate to a subject already under consideration by a standing committee, the select committee shall transmit the same, without printing, directly to such standing committee for its information. Upon all other propositions so referred to such committee it shall report whether, in its opinion, the same should be printed and referred under rule 32. On the first day of August the call for the proposed constitutional amendments by districts, under rule 3, shall be discontinued, and thereafter no proposed constitutional amendment shall be introduced, except on the report of a standing or select committee."

"Rule 74. After the fifteenth day of July, 1894, no member of this Convention shall receive pay for any day upon which the Convention is in session and he is absent without leave; and after the same day no member shall receive pay for any day of any calendar week during which he is absent without leave from all the sessions of the Convention."

The President put the question on the adoption of rule 73, and it was determined in the affirmative.

The President then put the question on the adoption of rule 74.

Mr. Alvord — Mr. President, I would like to ask the gentleman from New York (Mr. Root) how he is going to determine the fact that a member is absent. It seems to me that the rule as proposed lacks one essential spoke in the wheel. There ought to be a call of the roll on the assembling of the Convention each day, in order to determine who is absent. If there is no call of the roll, it will be impossible to determine whether the party is present or absent.

Mr. Storm — Mr. President, I am inclined to think that we ought to leave that to the consciences of the members. I think we could safely do that and trust to the member's honor to report his absenteeism.

The President — Perhaps the Convention ought to put the Chair, who has to certify to this matter, in some position where he could do it.

Mr. Riggs — Mr. President, I move to refer the rule back to the Committee on Rules, to be amended in the manner suggested by Mr. Alvord.

Mr. Root — Mr. President, as acting chairman of that committee, I will answer the question of the gentleman from Onondaga (Mr. Alvord), by saying that the subject was broached and dis-

cussed in the Committee on Rules. The question naturally arose, whether the adoption of this rule would necessarily involve a roll call. It seemed that that would be rather burdensome, and we hoped that it would be possible to make a rule like this operate without it. We thought that it was at least worth while to try the experiment. The way in which it would work, we thought, was this: That it would be perfectly safe and perfectly proper to leave to each member, as he draws his pay, the responsibility of making to the President, as the basis of the President's certificate, that he was entitled to pay, a statement that he had not been absent without leave of the Convention for any day for which he called for pay. I see no difficulty in that. It certainly seems quite desirable that some such rule should be adopted. The statute throws upon the Convention the responsibility of establishing rules in regard to pay. The Convention will remember that the original statute of 1893 precluded pay for more than three days, when the Convention was not in session. The statute of 1894 expunged that provision from the law, and in its place put upon the Convention the responsibility of establishing rules as to pay. Now, there are gentlemen upon the list of this Convention legally entitled to draw pay for every day from the eighth day of May, and who will probably, or presumptively, call upon the State for that pay at some time, who have never shown their faces upon the floor of this Convention.

The President — That only applies to one.

Mr. Root — That only applies to one; but there are other cases where gentlemen have been absent for a large portion of time. It seems as if it was incumbent upon us now to exercise the power given us by the statute. I hope the matter will not be referred back to the committee, because we have already considered the question. If the Convention, however, thinks that there should be a roll call, why, the committee will be perfectly satisfied.

Mr. Alvord — Mr. President, I desire to say that I heartily agree with the purport of this rule. I think it is right and proper, and that it should be adopted in the main. I desire, however, in connection with that to say to my friend from New York (Mr. Root), that I believe that this Convention is superior, vastly superior to the Legislature, which, according to the Constitution, made the preliminary steps to call us together. Its idea of undertaking to dictate how we should govern ourselves was entirely outside of its province. But, sir, I desire, in addition, to say this: That I have not so high an opinion of humanity in general as to believe that any man — I say any man — there may be a great many men

who will follow the dictates of their consciences and report correctly to the President the days they were absent, but the mass of men will be very apt to say that they have been here the whole time, when they come to draw their pay. I have no desire to compel a roll call, if the gentlemen of this Convention are satisfied that men will be honest in their statements to the President, that they have not been absent without leave. As a whole, I am in favor of the proposition of the Committee on Rules. If a man does not stay here and do his duty to the people who have sent him here, it should be deducted from the pay which he would otherwise receive from the State.

Mr. Maybee — Mr. President, it seems to me there is this difficulty about a roll call: Many members are not present at the opening of the session in the morning, but do come in subsequently and are present during the entire session of the Convention. There ought to be some way devised by which a member coming in after the roll call could be recorded.

Mr. Goodelle — Mr. President, while the calling of the roll would take some little time, I think, upon the whole, it would be a very good idea. I think it would act as a spur upon the members to be present promptly at the opening of the session. I think it would aid us greatly in expediting business and in getting down to our work. It seems to me that that provision ought to be inserted in this resolution. Therefore, it should be referred back to the Committee on Rules, and the roll call should be put in for the reasons I have suggested.

Mr. W. H. Steele — Mr. President, it seems to me that there is a peculiar significance to this rule, intimating, as it does, that members may be drawing pay for no work. In order to avoid unnecessary discussion, it suggests itself to me that about as appropriate a thing as we can do, if the question is not left to the members' honor, is to have a time-clock located at the gate, so that those who come in after the session has begun can deposit their tickets, and thus save all question as to whether they are here or not. I merely suggest this plan to save further debate as to the best mode of ascertaining the presence or absence of members. Is not the rule good enough as it stands?

Mr. Griswold — Mr. President, the object of this rule, of course, is to save all the time that is possible. Now, I do not quite agree with the gentleman. I believe that the word of honor of any delegate in this Convention is to be taken, and we presume it will be truthful. There is another advantage we have. I suppose that

any member, upon any question that comes up here, can, at any time, ask to have a roll call to find who is present and who is absent, and in that case, of course, a member who is absent is liable to have that placed upon record at any time. Now, it seems to me that, for all practical purposes, this rule, as reported, will answer for the time being, and, if you find members absent so as to obstruct our proceedings, why, there will be time enough to adopt a more stringent rule.

Mr. Chipp — Mr. President, I would like to ask the chairman of the Committee on Rules a question, as to whether the excuse is to be obtained after the absence or only before? Whether, if a member remains away from the Convention, he can subsequently present a proper excuse and be excused under that rule? It seems to me that that point ought to be covered. It ought not to be confined simply to asking for the excuse prior to his absence.

Mr. Root — Mr. President, as I understand the rule, it does not contemplate subsequent excuses. It does contemplate that, if any gentleman wishes to be absent and receive pay for the time during which he is absent and not serving the State, he should ask leave of the Convention; or, if any gentleman is unavoidably and unexpectedly absent, he can send word to some other member of the Convention, who can ask leave for such absence. That can readily be done by letter or telegraph. The rule does not anticipate subsequent excuses to be reinstated with the right to be paid.

Mr. Chipp — Mr. President, my only reason for asking the question was in my own case. I have been present at every session of the Convention, except two, when I was taken sick. It seems to me if a member is unable to be here by reason of sickness, he ought to be permitted to present that fact and be excused.

Mr. Riggs — Mr. President, I think this resolution ought to go back. As it now stands, it puts men upon their honor upon a matter of finance or money. As you know, that is a principle of the income tax which the majority are not in favor of.

The President put the question on Mr. Riggs's motion to recommit proposed rule 74 to the Committee on Rules, with a request that they add a provision for a roll call or some other provision for ascertaining the presence of members, and it was determined in the negative.

The President then put the question on rule 74, as amended by the committee, and it was determined in the affirmative.

Mr. Goodelle, from the Committee on Suffrage, to which was referred the proposed amendment introduced by Mr. Hill, introductory number 183, entitled "Proposed constitutional amendment to amend section 5 of article 2 of the Constitution, relating to the manner of elections," reported in favor of the passage of the same, with some amendments.

Referred to the Committee of the Whole.

The President — The Chair will give notice that in consequence of the adoption of rule 74, delegates making application for pay warrants should state the days upon which they have attended the Convention.

Mr. Lincoln — Mr. President, I have a report from the Committee on Legislative Organization, which I wish to present in the absence of the chairman. It was handed to me by the clerk of the committee, and relates to a resolution offered yesterday.

The Secretary read the report as follows:

"The Committee on Legislative Organization, to which was referred the resolution introduced by Mr. Becker, asking information from the State Engineer, reported in favor of the passage of the same, with some amendments."

The President — The Secretary will read the resolution.

The Secretary read the resolution as follows (No. 110):

"Resolved, That the State Engineer be requested to furnish the Committee on Legislative Organization two maps of the State, one showing the Senate and one showing the Assembly districts, and the population of each district, classified as citizens and aliens by the counties and districts, and the vote cast at the last general election for Senators and Members of Assembly."

The President put the question on the adoption of the resolution, and it was determined in the affirmative.

The Secretary read the announcements of committee meetings.

Leave of absence for to-day granted to Mr. E. A. Brown and Mr. Cookinham.

Mr. Ackerly was excused from attendance on Tuesday and until half-past eleven A. M. on Wednesday.

On motion of Mr. Foote, the Convention adjourned until Tuesday morning, July tenth, at ten o'clock.

Tuesday, July 10, 1894.

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

President Choate called the Convention to order.

The Rev. Charles W. Hardendorf offered prayer.

The Journal of Friday, July sixth, was read and approved.

The select committee, appointed under rule 73, was announced, as follows: E. R. Brown, Mr. McKinstry, Mr. Church, Mr. Bowers and Mr. T. W. Fitzgerald.

The President announced the appointment of Mr. Putnam in the place of Mr. Trapper, on the Committee on Industrial Interests; Mr. Sullivan, in place of Mr. Trapper, on the Committee on Governor and State Officers, and also in place of Mr. Beckwith on the Committee on Printing.

The President — Memorials are now in order. The Chair has received further memorials in reference to the civil service, and they are referred to that committee.

A memorial from the president of the Sheltering Arms and the Children's Fold, in regard to sectarian appropriations, has been received, and is referred to the Committee on Charities.

Mr. O'Brien presented additional petitions from the central and western counties of the State, on the subject of striking the word "male" from the Constitution, signed by 2,671 citizens.

Referred to the Committee on Suffrage.

Mr. Goodelle (by request) presented two memorials on the subject of striking the word "male" from the Constitution, and they were referred to the Committee on Suffrage.

Mr. Morton presented the petition of 3,884 citizens of the eastern counties on the same subject, which was referred to the Committee on Suffrage.

Mr. McMillan (by request) presented a petition from the citizens of Buffalo in respect to the civil service, which was referred to the Select Committee on Civil Service.

Mr. Hamlin presented a petition protesting against striking the word "male" from the Constitution, which was referred to the Committee on Suffrage.

Mr. A. B. Steele presented a petition and memorial asking for a change in the Constitution upon the subject of appropriations for

sectarian purposes, signed by the pastors of various churches, which was referred to the Committee on Charities.

Mr. Hedges presented a petition upon the subject of appropriation of money for sectarian purposes, which was referred to the Committee on Charities.

Mr. Countryman presented a petition in reference to a commission of visitation to certain religious institutions, which was referred to the Committee on Charities.

Mr. Dean — Mr. President, I ask unanimous consent to introduce a resolution out of its numerical order, and to give notice that I desire to debate the same.

The President — Mr. Dean asks for unanimous consent to introduce a resolution out of its regular order, and, if there is no objection, the Secretary will read the resolution.

The Secretary read the resolution as follows:

" Whereas, Anarchy has raised its hateful head in the republic, menacing the peace and good order of the common country; and,

Whereas, ' We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare and secure the blessing of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America;' and,

Whereas, The members of this Convention have taken an oath to support the Constitution of the United States, of which the above is the preamble and which provides that ' this Constitution and laws of the United States, which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the Supreme law of the land; and,

Whereas, The President of the United States, as commander-in-chief of the military and naval forces of the nation, to ' insure domestic tranquility, provide for the common defense, promote the general welfare,' has felt that it was his duty to call upon the army to support the orders of the courts and to protect the transit of the mails and the interstate commerce; and,

Whereas, It is not pretended that the President, in this action, has violated any of the laws of the United States; and,

Whereas, The House of Representatives, which is endowed with the exclusive right of impeachment and which is now in session, has not felt called upon to take any action in the premises; therefore, be it

R. 112.— Resolved, That this Convention, without passing in any manner upon the merits of the quarrel between the railroad companies and their employes, recognizing only that the laws of the United States are being defied by a lawless mob, that the processes of the courts are being held in contempt, thus laying the foundations of anarchy and bloodshed, approve of the action of the President of the United States; and, be it further

Resolved, That it is the duty of the State of New York, not alone by its elevated and patriotic public sentiment, but by force of arms, if necessary, to sustain the President in protecting the property of the United States intrusted to his care, and in enabling the courts to discharge their duties by the people of the United States; and, be it further

Resolved, That we pledge the support of the people of the State of New York to a patriotic discharge of this duty."

Mr. Cassidy and Mr. Kerwin rose to debate the resolution.

Mr. Cady — Mr. President, I desire to raise the point of order as to that resolution, that it should not be accepted or considered by this Convention, not being germane to any subject properly before this Convention or upon which it has power to act.

The President — The Chair has no power to limit the scope of resolutions that may be offered. The resolution is laid over under the rules until to-morrow.

Mr. Vedder presented a petition in favor of female suffrage, signed by 3,560 persons in western New York, which was referred to the Committee on Suffrage.

Mr. Bigelow offered the following resolution:

R. 113.—" Resolved, That the Judiciary Committee be instructed to ascertain and report the latest day to which the deliberations of this Convention can be prolonged consistently with the submission of its results to the people at the next general election, as required by law."

Mr. Bigelow — Mr. President, I do not propose, of course, to debate that resolution, but by way of explaining the necessity for some expression of that sort, I allow myself to state that by the law of 1892 all amendments, whether adopted by the Legislature or by the Convention, are required to be submitted at the next general election, and to be advertised thirteen weeks before. That law is, of course, in force. By that law, if it is complied with, our deliberations must terminate not later than the first week in August. Of course it is impracticable for us to hope to be able to present

to the State a Constitution such as is contemplated by the delegates to this Convention within that time. But by the act of 1893 we are authorized to sit until the middle of October. I understand that we are authorized to draw pay until the middle of September, but we are allowed to sit into October and not later. Those who are familiar with the statute will correct me if I am wrong.

But, whether it is September or October, it is immaterial. The fact that we are authorized to draw pay up to September, by implication, authorizes us to deliberate until that time, and then to submit the result in such way as is practicable. Now, I think if would be well that we should know definitely what our duty will be; therefore, I hope that the resolution may pass.

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

Mr. Forbes offered the following resolution:

R. 114.— "Resolved, That the Committee on Revision and Engrossment be requested to compare the amendments of phraseology of the present Constitution proposed by the Convention of 1867, and report at the earliest session practicable on the advisability of adopting such phraseology."

Mr. Forbes — Mr. President, this resolution is entirely in line with what has been said by Mr. Bigelow in regard to expediting the business of the Convention. I have taken the trouble to cull out these proposed amendments by the Convention of 1867 and have found that they are very numerous and some of them seem to be important. On considering the matter fully, I have come to the conclusion that it was far better that these amendments should go immediately to the committee rather than that they should be proposed as Constitutional amendments and take the usual course. The business of the Convention will be expedited thereby.

Mr. Mereness — Mr. President, I move that the resolution be referred to the Committee on Revision and Engrossment.

Mr. Forbes — Mr. President, I accept the reference to that committee.

Mr. Foote — Mr. President, is it a reference to that committee for a report previous to the consideration of that resolution?

The President — The Chair understands it so.

The President put the question on referring to the Committee on Revision and Engrossment, and it was determined in the affirmative.

Mr. Roche offered the following resolution:

R. 115.—"Resolved, That the Comptroller be and is hereby requested to transmit to this Convention a statement of what lands, other than the forest preserves, the canals, the salt springs and the lands upon which public buildings are erected, are owned by the State of New York, the estimated value of said property, what income is derived from the same, and where situated, and what provision, if any, in his opinion, should be made for disposing of such property."

Referred to the Committee on State Finances.

Mr. Roche also offered the following resolution:

R. 116.—"Resolved, That the Committee on County, Town and Village Officers are requested to draft and present for the consideration of this Convention an amendment to section 1 of article 10 of the Constitution, so as to provide that all county officers therein named shall receive a stated compensation to be fixed by law, and that all fees which shall be paid to such officers shall be turned over to the county treasury."

Mr. McDonough moved to amend said resolution that the committee report "if, in their judgment, they ought to so report."

Mr. Nichols rose to debate the resolution and it was laid over, with the amendment, under the rules.

Mr. Kerwin — Mr. President, I do not know whether it requires a resolution or not, but, if so, I will introduce one to-morrow. I would like to ask the Secretary, through the Chair, why we have not got the Record published after June 28? I did not know that it was stopped. I understand there is a question of the stenographer's furnishing the copy to the printers. If so, I would like some information to that effect. I wish to use some of the last day's debates to-morrow. The Record is not published. I would like to know the reason why it is not published, and I would ask the Chair whose business it is to transmit to the Convention printer the proceedings of this Convention?

The President — The Chair believes it to be the Compiler's, under rule 28.

Mr. Kerwin — I would further ask what stenographer furnishes the Compiler?

The President — The Chair has no control of any of these officers referred to. He was informed, one day during the last session, that there was some failure on the part of the stenographer who had previously supplied The Argus Company with copies of the

Records, and that he would rely henceforth upon the stenographer of the Convention.

Mr. Kerwin — Then, under this head, Mr. President, I move that the stenographer of this Convention furnish the Convention printer a record of the proceedings daily.

The President — Will you please put that in writing, Mr. Kerwin?

Mr. Kerwin — Yes, sir.

The President — This resolution of Mr. Kerwin is entirely in order now. The Convention will understand that the stenographer's compensation has not been fixed, as required by law, and that any duties imposed upon him will enter into this question.

Mr. A. B. Steele — Mr. President, I was about to ask consent to call up the resolution in reference to printing the proceedings in the two papers, The Argus and the Journal, and was thinking that this resolution about to be offered by Mr. Kerwin might have some connection with the matter, and might be material upon it; whether it would not be advisable to call that resolution from the table and consider it in connection with Mr. Kerwin's resolution. I ask unanimous consent to do so.

Mr. Kerwin — Mr. President, I strenuously object to considering the proposition of giving $15,000 to the newspapers, when we can't get the proceedings in our Record. I offer the following resolution:

R. 117.—" Resolved, That the stenographer of this Convention furnish the Convention printer a copy of the proceedings daily, and I ask for unanimous consent that the resolution shall be passed."

The President — The resolution only requires a majority vote, and is now open for consideration under rule 50, as it relates to the business of this day and every day.

Mr. Cassidy — Mr. President, I desire to debate the resolution.

The President — The Chair is of the opinion that it cannot go over, because of that.

Mr. Cassidy — Then I move that the resolution be referred to the Committee on Contingent Expenses.

Mr. Kerwin — Mr. President, the object of this motion to refer this matter to the Committee on Contingent Expenses I cannot understand. We have already decided to print the Convention debates. The Convention debates have only been stopped from the mere fact that it is a question between the two stenographers

as to who is to furnish the material for the printer. The printer stands ready, and he has been already authorized by the Convention to furnish the same. The expense has already been incurred, and now the question comes up as to who is to give this matter to the printer for which we have incurred this expense. I do not see where there is any further expense to be incurred. I can't understand why this resolution should be referred to the Committee on Contingent Expenses. It is only a matter of form as to who shall furnish this copy. Let us go down to business. We have had printing here week after week, and, I think, it is time to get down to business. To-morrow I want to use some of last Friday's minutes in debate. I cannot have them for the reason that they are not printed. The printer stands ready to print the matter when he gets it from the stenographer. Which stenographer? We have done away with the extra stenographer, and now we want a resolution instructing our own stenographer to do the work that he should do, and furnish the printer with the debates of this Convention. I don't see any reason for referring it to the Committee on Contingent Expenses. The expense has already been incurred.

The President put the question on Mr. Cassidy's motion to refer Mr. Kerwin's resolution to the Committee on Contingent Expenses, with instructions to report, and it was determined in the negative.

The President — The Chair will remind the Convention how the matter stands. It is now the standing order of the Convention that the debates shall be printed; that is, printed by The Argus Company. Through a failure of the stenographer in the last two days to furnish copy to The Argus Company, it appears that the proceedings have not been printed. Now, Mr. Kerwin moves that the stenographer be instructed to furnish this copy as stated in his motion.

Mr. Durfee — Mr. President, I would like to inquire whether anybody knows anything in respect to the fixing of the stenographer's compensation for his services?

The President — That is now in the hands of the Committee on Contingent Expenses, of which Mr. Lyon is chairman.

Mr. Lyon — Mr. President, the Committee on Contingent Expenses considered the matter of the compensation of the stenographer, and prepared a report, some little time since. It was stated to the members of the committee that additional work was likely to be imposed upon the stenographer of the Convention, and the suggestion was made that the report of the committee be held until it could be done by the stenographer of the Convention. As

I understand it, there are two stenographers here, one employed by the Compiler, whose duty it is to furnish the report to the newspapers, while the duty of the stenographer of the Convention is simply to furnish a single report to the Secretary of the Convention. As soon as the Convention determines the amount of work that is to be placed upon the stenographer of the Convention, the committee is prepared to fix his compensation. In fact, there is a meeting of the Committee on Contingent Expenses called for immediately after the adjournment.

Mr. Kerwin — Mr. President, I would like to ask the Secretary whether a resolution has not been passed by the Convention doing away with the special stenographer appointed by the Compiler.

The President — The Chair has no recollection of any such resolution.

Mr. Kerwin — I think there was, Mr. President. Not having time to look through the Journal, I would ask the Secretary to inform us.

The President — The vote of the Convention was to discontinue the printing in the two newspapers.

Mr. Root — Mr. President, it seems to me that the explanation made by the chairman of the Committee on Contingent Expenses makes it important that the Convention should now pass upon Mr. Kerwin's resolution. We cannot wait for the fixing of the stenographer's compensation in order to determine what the stenographer shall do, and also wait to know what the stenographer shall do in order to fix his compensation, and make any progress. The chairman of the Committee on Contingent Expenses has told us that that committee has been waiting, and, I think, very properly waiting, to ascertain precisely what duties the Convention will require from the stenographer in order to fix his compensation. We are now called upon by Mr. Kerwin's resolution to fix those duties. When we have done that, the Committee on Contingent Expenses can act. It seems to me we should do it now. It further seems to me that we ought not to have two different reports of our debates; one official report made by our own stenographer, handed to the Secretary and put in a pigeon-hole where nobody will ever see it, and another unofficial report, which is printed and made the subject of reference by the members of the Convention. What do we have a stenographer for, but to make the report to which we should refer? I think that our stenographer ought to make the report which is printed and to which we are to refer as the authori-

tative record of the action of the Convention, and I hope, therefore, that Mr. Kerwin's resolution will be adopted.

Mr. Kerwin — Mr. President, before putting the motion, I would like to ask the Secretary what became of the report of the Printing Committee, which was made on June 12, that the report of the official stenographer of the Convention and the assistants employed by him be henceforth the only report of the proceedings printed under the authority of the Convention. That was before the house Wednesday, June 13, and will be found on page 230 of the Journal.

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

Mr. Kerwin — Mr. President, I have the floor, and I object to any previous question being put while I hold it.

The President — Can the Secretary answer Mr. Kerwin's question?

Mr. Kerwin — I do not wish to detain the Convention, Mr. President, but the Journal itself states what became of it, and that decides that we have only got one stenographer, I believe. I think that my motion is in order to instruct the stenographer to do the work.

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. Kerwin's resolution, and it was determined in the affirmative.

Mr. A. B. Steele — Mr. President, I now call up the resolution that was laid on the table last Friday, in reference to printing the proceedings in the Albany Evening Journal and The Argus.

Mr. Bowers — Mr. President, I would like to know what the motion is?

Mr. A. B. Steele — Mr. President, my motion last Thursday, I think it was, that the last resolution in Document 21 on page 330 of the Journal, that those resolutions or the vote taken upon them, should be reconsidered and laid upon the table. That motion prevailed. I now call for the matter to be taken from the table.

Mr. Dean — I call for the ayes and noes upon the motion to take from the table.

The call for the ayes and noes was not sustained.

The President put the question of Mr. Steele's motion to take the matter from the table, and it was determined in the affirmative.

The President stated the question now to be on the motion to reconsider the resolution on page 32 of the Journal.

Mr. Dean called for the ayes and noes on the motion to reconsider, and they were ordered.

Mr. Maybee — Mr. President, I do not understand what the resolutions are.

The President — They are set forth on page 332 of the Journal. It is the only resolution on page 332, as the Chair understands it.

Mr. Kerwin — Mr. President, is this on the adoption of the original motion, or on the question of reconsidering?

The President — This is only on the question of reconsideration, after which, if this is sustained, the whole question will be up.

Mr. A. B. Steele — Mr. President, was not the motion that I made last Thursday, that it be reconsidered, carried? If so, why is not the original proposition back before the Convention? My motion was that the matter be reconsidered and laid upon the table, and that was carried.

The President — The Chair is of the opinion that no question was taken on the motion to reconsider, but you made a motion to reconsider, and before that was put a motion was made to lay it upon the table, which was carried. The Secretary will proceed with the call.

Mr. Crosby — Mr. President, as I understand this question it is to reconsider the matter of printing in the newspapers. This will bring it before the house for such action as may be taken thereon.

The President — That is the question.

Mr. Crosby — I vote aye, Mr. President.

Mr. Dickey — Mr. President, no wonder the newspapers are making so much fun of us and stating that we are wasting our time here, and that a good part of our time is taken up in the discussion of this printing question. One day about a month ago we prided ourselves on the fact that we had saved the taxpayers of the State $20,000; since that time we have been doing our best to spend that $20,000. We voted the other day, after a long discussion, not to spend this $15,000. Now we are considering it again as a new question, as though it had never been considered before. I think we ought to dispose of it finally now by failing to reconsider. I withdraw my excuse and vote no.

The motion was lost by a vote of 75 to 59.

Ayes — Messrs. Abbott, Baker, Barhite, Barnum, Blake, Burr, Cady, Carter, Cassidy, Church, Clark, G. W., Clark, H. A., Coleman, Countryman, Crosby, Davies, J. C., Doty, Faber, Fields,

Frank, Andrew, Fraser, Gibney, Gilleran, Hamlin, Hecker, Hedges, Hill, Holcomb, Hottenroth, Johnson, I. Sam, Kellogg, Lauterbach, Lincoln, Lyon, Mantanye, Marks, McClure, McDonough, McLaughlin, C. B., Mereness, Meyenborg, Moore, Nichols, Parker, Peck, Pool, Powell, Pratt, Riggs, Steele, A. B., Steele, W. H., Truax, C. S., Tucker, Turner, Van Denbergh, Veeder, Vogt, Williams — 59.

Noes — Messrs. Acker, Allaben, Alvord, Arnold, Banks, Barrow, Bigelow, Bowers, Brown, E. R., Campbell, Chipp, Jr., Cochran, Cookinham, Cornwell, Curran, Danforth, Davenport, Davis, G. A., Dean, Deyo, Dickey, Durfee, Durnin, Floyd, Foote, Forbes, Francis, Fuller, C. A., Fuller, O. A., Goodelle, Green, A. H., Green, J. I., Griswold, Hawley, Herzberg, Hirschberg, Holls, Kerwin, Kimmey, Lewis, C. H., Manley, Maybee, McArthur, McCurdy, McIntyre, McMillan, Morton, Mullen, O'Brien, Ohmeis, Osborn, Parmenter, Phipps, Platzek, Porter. Putnam, Redman, Roche, Roderick, Rogers, Root, Rowley, Sandford, Springweiler, Storm, Sullivan, T. A., Sullivan, W., Tibbetts, Titus, Truax, C. H., Wellington, Whitmyer, Wiggins, Woodward, President — 75.

Mr. Goodelle offered the following resolution:

R. 183.— "Resolved, That Constitutional amendment, introductory No. 183, printed No. 184 — 289, entitled proposed Constitutional amendment to amend section 5, article 2 of the Constitution, relating to the manner of elections, be recommitted to the Committee on Suffrage, retaining its place on general orders."

Mr. Dean — I move the adoption of the resolution.

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

Mr. Hawley offered the following resolution:

R. 118.—"Resolved, That it is advisable that the general subdivisions of the Constitution into articles be preserved, but that the sections of the Constitution shall be numbered consecutively from the beginning to the end thereof.

"Resolved, That the foregoing resolution be referred to the Committee on Revision and Engrossment, with instructions to report thereon when directed by the Convention, or at such time as such committee shall deem to be expedient."

Mr. Hawley — Mr. President, it will be observed that this resolution is upon the border line of a proposed amendment to the Constitution, and its advisability may depend somewhat upon the extent of the work which we shall do in the way of revising or amending

the Constitution; that is, if we should amend it so extensively as to uproot practically the old order of the sections, then it seems to me there would be no objection to the adoption of a consecutive numbering; but, if the amendments should be slight in number, and not materially disarrange the old Constitution, then, perhaps, it might be desirable that the number to which we have been accustomed, and to which so many references are made in judicial decisions, should be preserved. So, I do not ask for the adoption of the first resolution, but I would like to have the second resolution adopted now that it may be held under advisement by the Committee on Revision and Engrossment, to await the action of the Convention at a later date.

Mr. Root — May I ask for the reading of the resolutions? I am apprehensive that if put as a whole we might be deemed to commit ourselves to the first resolution. I would ask that the second resolution be put separately.

Mr. Hawley — That was precisely my request. I do not ask for the adoption of the first resolution.

The President put the question on the adoption of Mr. Hawley's resolution referring the matter to the Committee on Revision, and it was determined in the affirmative.

Mr. I. S. Johnson offered the following resolution:

R. 119.—" Resolved, that hereafter the Convention may dispense with the reading of the Journal, and that amendments thereto may be made on the legislative day following that on which the printed Journal is placed on the desks of the members."

Mr. I. S. Johnson — Mr. President, it has been the experience of those somewhat familiar with legislation that a body of members of this size are unable to hear to any great extent the reading of the Journal. So far in this Convention, all amendments, except one, have been made after the Journal has been printed and placed upon the desks of the members. I simply suggest by this resolution that we save about ten or fifteen minutes of each day's session and then, when the Journal is printed and placed upon the desks of the members, each person may make his amendments at that time. I think that will save a considerable amount of time by the passage of this resolution.

The President — This resolution touches the rules, and it is referred, under rule 56, to the Committee on Rules.

Mr. Doty offered the following resolution:

R. 120.—" Resolved, If it be not already furnished, that the Secre-

tary is hereby directed to obtain from the proper county officers the amount of the existing indebtedness of all the counties of the State, and also obtain the amount of the existing indebtedness of each incorporated village in the State, and of the amount of assessed valuation of the real estate of such village, as the same appears on the last assessment-roll of said village."

Mr. Doty — Mr. President, the information called for by this resolution is deemed absolutely necessary to enable the Committee on County, Town and Village Government to act intelligently upon certain propositions for constitutional amendment before the committee.

Mr. Kerwin — Mr. President, I wish to object to the resolution.

The President — Do you wish to debate it?

Mr. Kerwin — I do not wish to debate it. I only wish to call attention to the resolution adopted here. In Record No. 3, on page 10, you will find that Mr. Kerwin moved that the Compiler be instructed to present all information in his possession to the Convention to-morrow. I think we are getting pretty nearly tired of paying for documents which are piling up in these files here, and at the same time paying for their printing in the books of the Convention.

Mr. Alvord — Mr. President, I rise to a point of order. My point is that the gentleman is debating the resolution. Therefore, it must necessarily go over.

Mr. Kerwin — I desire to debate the resolution, Mr. President.

The President — It will lie over under the rules.

Mr. Dean offered the following resolution:

"Whereas, Section 6 of article 7 of the Constitution provides that '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;' and,

Whereas, Section 9 of the same article provides that 'The credit of the State shall not, in any manner, be given or loaned to or in aid of any individual, association or corporation;' and,

Whereas, Section 10 of article 8 provides that '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;' and,

Whereas, The Legislature of 1893, acting within the limitations thus fixed by the Constitution, enacted chapter 499, in which it

is provided that 'The Superintendent of Public Works may, from time to time, authorize any person or corporation to contract, maintain or operate electrical conductors for light, heat or power, upon or along any canals of this State, or any portion thereof, upon such terms or conditions not inconsistent with the public use of such canals as he may impose; and in like manner he may contract for or permit the use of such light, heat or power upon any such canal; provided that he shall thereby create no charge against the State, except as against appropriations lawfully applicable to such purpose;' and,

Whereas, The Superintendent of Public Works, acting under the provisions of this statute, has entered into a pretended contract with the Cataract General Electric Company, under the provisions of which the said Cataract General Electric Company is given a monopoly of the means of economical transit of the canals for a period of fifty years, thus violating the provisions that they shall 'remain the property of the State and under its management,' as well as the provisions forbidding the State to lend its money or credit to or in aid of any individual, association or corporation; and,

Whereas, The said Superintendent of Public Works has assumed to go outside of the domain of the canal lands of the State and to pretend to grant rights to the said Cataract General Electric Company to distribute light, heat or power to any part of the State; and,

Whereas, He has sought, in the fourth article of the pretended contract, to waive the power of eminent domain, an inherent right of the State; and,

Whereas, The fourth article of the pretended contract being the elective obligation of the said pretended contract, and this being void because in conflict with the Constitution of the State, it does not come within the protection of the Federal Constitution inhibiting the power of the State to pass any 'law violating the obligation of contracts;' and,

Whereas, This pretended contract is counter to the established canal policy of the State and seeks to give to a private corporation, without any adequate consideration, rights and privileges worth millions of dollars, thus working a great wrong upon the people of this State; therefore, be it

R. 121.— Resolved, That this Convention, directly representing the people of the State of New York, and charged with the high duty of asserting the policy of the State, call upon the Attorney-General to bring an action against the Cataract General Electric Company, or take such other steps as may be necessary, for the purpose of annulling the so-called contract, and restoring to the

people all the rights and privileges which they have by right in the canals of this State; and, be it further

Resolved, That the Secretary of this Convention serve a certified copy of these resolutions upon the Attorney-General of the State and upon the Cataract General Electric Company, to the end that it may have notice of the intended action, and that it may make no investments in good faith intended to give it vested rights in the premises."

Mr. Moore rose to debate the resolution, and it was laid over under the rules until to-morrow.

The President announced the order of communications from State officers.

The Secretary read the following communication from the Clerk of the Court of Appeals (communication No. 12, in response to resolution No. 101):

COURT OF APPEALS, CLERK'S OFFICE,
ALBANY, *July* 6, 1894.

To the Secretary of the Constitutional Convention of the State of New York:

SIR.— In response to your communication of this date, I would state that:

1. The present calendar of the Court of Appeals was made up October 2, 1893.
2. The number of causes then placed thereon was 693.
3. The number of causes since added thereto is 142.
4. The number of causes since argued and disposed of is 656.
5. The number now remaining on the present calendar undisposed of is 184.
6. The number of appeals taken to and filed in the Court of Appeals since said calendar was made up and not on said calendar is 386.

Very respectfully,
GORHAM PARKS,
Clerk of the Court of Appeals.

Referred to the Judiciary Committee.

The President announced the order of introduction of proposed constitutional amendments, and the Secretary called the districts.

Mr. Doty — Mr. President, before leaving this order of business, I desire to ask that the resolution I offered be referred, under rule 50,

to the appropriate committee, instead of laying it over until to-morrow.

The President — The rules require it be laid over until to-morrow. It called for debate, did it not? Propositions for amendment to to the Constitution are in order.

O. 287.— Mr. Bigelow offered a proposed amendment to section 4 of article 2, to provide for the registration of voters.

Referred to the Committee on Suffrage.

O. 288.— Mr. Bigelow (by request) also offered a proposed amendment to the Constitution to secure proportional representation.

Referred to the Committee on Suffrage, and also to the Committee on Organization, Powers and Duties of the Legislature.

O. 289.— Mr. Bigelow also offered a proposed amendment to the Constitution, amending section 2 of article 13, providing for future revisions of the Constitution.

Referred to the Committee on Constitutional Amendments.

O. 290.— Mr. Bigelow also offered a proposed amendment to the Constitution, abolishing the office of Superintendent of the Insurance Department and restoring its functions to the Comptroller of the State.

Referred to the Committee on Governor and other State Officers.

O. 291.— Mr. Bigelow also offered a proposed amendment to the Constitution, abolishing the office of Superintendent of the Department of Banking and restoring its functions to the Comptroller of the State.

Referred to the Committee on Governor and other State Officers.

O. 292.— Mr. Bigelow also offered a proposed amendment to the Constitution, providing for the abolition of the office of State Engineer and Surveyor.

Referred to the Committee on Governor and other State Officers.

O. 293.— Mr. Tucker offered a proposed amendment to the sixth article of the Constitution, by adding three sections thereto, to create a court of arbitration to arbitrate and decide differences between employers of labor and employes.

Referred to the Committee on Industries.

O. 294.— Mr. Forbes offered a proposed amendment to the Constitution, amending sections 10 and 11 of article 8, relating to loaning the credit of the State.

Referred to the Committee on State Finances.

Mr. Forbes — Mr. President, I will state that that amendment

refers to article 8, which is specifically in regard to corporations, and it also refers especially to charitable appropriations. Therefore, I ask that it go to the Committee on Charities, and also to the Committee on Corporations. The Committee on Corporations, I know, being a member of that committee, has little to do, and the subject-matter, that is, article 8, is in regard to corporations, and its specific matter is in regard to appropriations for charitable purposes.

The President — It will be referred to the Committee on Corporations and to the Committee on Charities.

O. 295.— Mr. Speer offered a proposed amendment to article 3 of the Constitution, to secure home rule for cities.

Referred to the Committee on Cities.

O. 296.— Mr. C. B. McLaughlin offered a proposed amendment to amend article 6 of the Constitution, relating to the Judiciary.

Referred to the Judiciary Committee.

O. 297.— Mr. Tibbetts offered a proposed amendment to section 1, article 2 of the Constitution, relating to suffrage.

Referred to the Committee on Suffrage.

O. 298.— Mr. O. A. Fuller offered a proposed amendment to section 1 of article 8, relating to corporations.

Referred to the Committee on Corporations.

The President announced the order of reports of standing committees.

Mr. Root, from the Committee on Judiciary, to which was referred the resolution No. 108, introduced by Mr. Van Denbergh, calling upon the Secretary of State for certain information respecting the Court of Appeals and the Supreme Court, reported in favor of the passage of the same without amendment.

The President put the question on the adoption of Mr. Van Denbergh's resolution, and it was determined in the affirmative.

Mr. Root, from the Committee on Judiciary, to which was referred the resolution No. 109, introduced by Mr. Van Denbergh, calling upon the Comptroller for information concerning the judges of the Court of Appeals, etc., reported adversely thereto.

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

Mr. Holls, from the Committee on Education, to which was referred the resolution No. 21, introduced by Mr. Holls, entitled "A resolution asking that the reports of the various county treasurers be compiled," reported in favor of the passage of the following resolution:

R. 122.—" Resolved, That the Secretary of the Convention be and he hereby is directed to tabulate and compile and to have immediately printed the reports from the treasurers of the various counties of the State, and the chief fiscal officer of every city, in answer to the communication sent to them May 23, asking for a detailed statement of all moneys paid by them during the last three years to institutions, whether under sectarian control or not, giving the name of the institution and the religious denomination or denominations in control."

The President put the question on the adoption of the resolution, and it was determined in the affirmative.

Mr. Holls, from the Committee on Education, reported in favor of the passage of the following resolution:

R. 123.—" Resolved, That the Secretary of the Convention communicate with the boards of education of the various cities of the State and with the Normal schools of the State, inquiring if they have any suggestion as to a possible change in the organization of the various educational bureaus of the State, respecting the Board of Regents and the Department of Public Instruction, and that replies be requested on or before the 20th inst.

The President put the question on the adoption of the resolution, and it was determined in the affirmative.

Mr. A. H. Green — Mr. President, I offer a report of the Special Committee, and, in offering that report, I would state that it is a unanimous report of the committee; but I desire to say on behalf of Mr. Wellington, who is a member of the committee, that he deems the subject of the report should be referred to the Legislature, rather than to the Convention.

The Secretary read the report as follows (Document No. 27):

REPORT OF THE SPECIAL COMMITTEE ON LAND TRANSFER OF TITLES.

To the Constitutional Convention:

The Special Committee on improving the methods and lessening the cost of transferring land and interest therein respectfully report that, after careful consideration of the subject referred to them, they are impressed by its importance and can but conclude that very great advantage and benefit of no ordinary extent will result to the whole people by the adoption of judicious methods of lessening the expense of the transfer of land and by the establishment of a system of recording and indexing instruments relating thereto that shall be uniform throughout the State.

The committee, therefore, recommend that the following clauses be inserted in the Constitution:

All laws relating to the transfer of titles to or interest in lands in this State by conveyance, devise or descent, or the recording or indexing of instruments providing for such transfers, shall hereafter be general laws applicable to the entire State.

The Governor is directed, at the first session of the Legislature after the adoption of this Constitution, to appoint, with the advice and consent of the Senate, five persons, residents of this State, who are counsellors-at-law and have been admitted to practice for not less than ten years, who shall be known as the Board of Commissioners of Land Records of the State of New York, whose duty it shall be, among other things, to be prescribed by the Legislature in connection therewith, to consider, and from time to time report to the Legislature such bills, as, in their opinion, should be passed by the Legislature to reform, simplify and cheapen the transferring and dealing with the titles to and interest in land in this state.

Any vacancy in said board shall be filled in like manner as the original appointments. Said commissioners shall serve without compensation and shall be allowed for their respective expenses and clerk hire such sums as shall be audited and approved by the State Comptroller.

Dated *July* 5, 1894. ANDREW H. GREEN,
Chairman.

Referred to the Committee of the Whole.

Mr. Wellington — I have the honor to be a member of the Select Committee of which the chairman, Mr. Green, has just submitted a report.

I agree, in the main, with the report of the committee. I believe in the reforms that the proposed amendment proposes to establish; but I believe, further, and disagree with the committee on another point, to wit: I believe that the Legislature now has full power to grant the relief that is proposed by this proposed amendment. I am not in favor of incorporating it in the organic law.

The President announced the order of general orders.

Mr. Vedder — Mr. President, I now move that we go into Committee of the Whole on proposed amendment No. 173.

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

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

Chairman Alvord stated that the question before the committee was the proposition of the gentleman from Sullivan, Mr. Maybee, to add at the end of the proposed amendment: "Any bills passed otherwise than as herein provided shall be void."

Mr. Root — Mr. President, I offer the following substitute for the proposed amendment of Mr. Vedder:

The Secretary read Mr. Root's substitute as follows:

Proposed constitutional amendment, to amend section 15 of article 3 so as to secure greater publicity and deliberation in the passage of all bills.

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

Section 15 of article 3 is hereby amended so as to read as follows:

No bill shall be passed, unless by the assent of a majority of all the members elected to each branch of the Legislature, and the question upon the final passage shall be taken immediately upon its last reading and the ayes and nays entered on the Journal. No bill shall be passed until it has been printed and upon the desks of all the members of each house in its final form at least three calendar legislative days before its final passage, unless the Governor or the acting Governor shall have certified, under his hand and the seal of the State, that a public emergency demands its immediate passage.

No bill shall be amended upon its last reading and no bill shall be presented to the Governor for his approval, unless the presiding officer of each house shall have first certified that in the passage thereof the provisions of this section shall have been obeyed.

The Chairman — The question is on the substitute offered by the gentleman from New York (Mr. Root).

Mr. Vedder — Mr. Chairman, I would like to have the gentleman from New York explain to the Convention wherein the amendment differs from the one before the Convention?

Mr. Root — Mr. Chairman, perhaps I ought to have offered this as an amendment to the proposed amendment reported by the committee. It is such, for it is designed to preserve all the substantial characteristics of the amendment which is before the Convention, and to make three changes only in that amendment. The first is this: The members of the Convention will observe that the amendment as reported interweaves in the language of the existing provision of the Constitution the additional idea which the committee designed to introduce. This amendment leaves the language of

the existing section, section 15 of article 3, precisely as it is in the Constitution, and adds those additional ideas by themselves in a separate paragraph. I think that it is important that we should follow that course in making amendments. Wherever we design to retain existing provisions, I think we should retain them in the precise form in which they are now in the Constitution, because hundreds of thousands of dollars and years of time have been expended by the bench and the bar and the people of this State in finding out what the existing language of the Constitution means. Wherever we want to keep a provision, let us keep it just as it is, because we know what it means; it has been construed by the courts. The committee designed in this amendment to keep everything which is now in section 15 of article 3. They do not wish to take one idea from that section, but to keep it all. I have drawn this proposed amendment or substitute in such form that it keeps those ideas exactly as they are and adds the other ideas in separate form and in a separate paragraph. That is the first distinction. The second is: It changes the length of time during which bills are required to have been printed and upon the desks of members, from one day to three; and the object of that is this: One day gives no opportunity for members to hear from their constituents, and no opportunity for the publicity which we designed to secure by this provision, to receive its due effect in the carrying of information to constituents and notices from constituents back to their representatives. If a bill be printed one day only, it may, nevertheless, be passed without the people of the State knowing what is being done. If, however, it be printed three days, then, through the public press, information of what is being done will go to every city and county of the State, and there will be an opportunity for letters and telegrams to come back to the representatives of the people telling them what their constituents think about the proposed measure. I cannot conceive, Mr. Chairman, that the interests of the State will suffer by three days' delay in the passage of any bill which comes before the Legislature. But, if it should be that the interests of the State require its immediate passage, both the original amendment and this proposed amendment or substitute provide that a bill may be passed without this delay, whenever the Governor shall certify that there is an emergency. The third difference is: That in this proposed amendment or substitute I have added a clause of the nature suggested by the gentleman from New York (Mr. Green) when we were in committee upon this bill the other day. That is designed to make the provision effective and to prevent the Legislature, in the wild rush and scramble of its closing

days, from overriding the provision and setting it at naught. That provision is in these words: "No bill shall be amended upon its last reading, and no bill shall be presented to the Governor for his approval, unless the presiding officer of each house shall have first certified that in the passage thereof the provisions of this section have been obeyed." That seems to me, sir, to be the most simple and effective way to make certain that the provisions of the proposed bill are observed by the Legislature. It will impose upon the presiding officer of each house the solemn act of certifying to the performance of this duty by the Legislature, to the observance of these provisions, before the Governor can be called upon to act upon the bill. Those, Mr. Chairman, are the three, and, I think, the only three differences of any substance between the proposed amended bill and the bill as reported by the committee.

Mr. Forbes — Mr. Chairman, I move that this matter be laid over until the proposed amendment is printed, so that we pass upon it, as it is proposed the Legislature shall pass upon bills which come before them.

The Chairman — The gentleman from New York (Mr. Forbes) will understand that that motion cannot be made in Committee of the Whole.

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

The Chairman put the question and it was determined in the negative.

Mr. Vedder — I have read the amendment offered by the gentleman from New York (Mr. Root) and also heard what he had to say in its behalf. I concur entirely in what he has said and concur entirely in his amendment to the proposed amendment. My object was, that no bill should be passed, unless the members of each branch of the Legislature should have a reasonable time during which they might see it in print, and know what they were voting for, which has not been the case in the passage of a great many bills, within the knowledge of the chairman of this committee and many others upon this floor. The only difference in that regard between my proposition and that of Mr. Root is that he provides for three days instead of for one calendar day. I think there is much reason in what he says in respect to that matter. One day will be sufficient for each house to read it and digest it, but it would not be sufficient for the public to know what it was and make their comments thereon, which are always suggestive to the Legislature.

Mr. Chairman, a number of legal conundrums were thrown into the Committee of the Whole, when the bill was before it the other day, and some of them, I think, were quite pertinent. The question was, whether that portion which related to a bill not being passed, unless it had been printed twenty-four hours, was directory or mandatory. The other was the clause which stated that upon its last reading no amendment should be offered, and the question was whether that was mandatory or directory. In regard to those questions, I addressed three gentlemen of the State, sending them my bill and asking them the questions which were propounded in the Committee of the Whole. One of these gentlemen was Hon. Sherman S. Rogers, of Buffalo, one was Hon. Charles Daniels, ex-judge of the Supreme Court, and the other was ex-Judge Noah Davis, of New York. I desire, for the benefit of the committee, to read the letters I received from ex-Judges Daniels and Davis. Judge Davis writes as follows:

NEW YORK, *July 2*, 1894.

MY DEAR SIR.— I have read the proposed amendment of section fifteen of article three of the Constitution in connection with the question you asked me. In my opinion the words "and upon the last reading no amendment shall be allowed," are mandatory and not directory. The purpose of the section, as amended, will be so clear that no upright court will hold the words to be directory merely. A bill thus amended in direct conflict with the Constitution will clearly not be the one that has been printed and upon the desks of the members one calendar legislative day; and the exception "unless the Governor, etc., so clearly manifests the intention of the provision that no question can remain."

The second clause of the amendment of the gentleman from New York (Mr. Root) reads: "No bill shall be passed unless it shall have been printed and been upon the desks of all the members of each house, three days." That is precisely in the form of my amendment, and that, as I will show you in a moment if Judge Daniels is right, ought to be amended, in order to be effective. Judge Daniels, in his letter on that point, says: "I do not think that the provisions proposed and added to your letter will prevent a bill from becoming a law, even if it should not be one legislative day on the desks of the members before its passage, or be amended on its last reading." Now what is his reason? "The provision is addressed to the members of the Assembly and the Senate, forbidding them to pass a bill in any other manner." "Mark you," he says, "that this provision, as contained in my amendment and

that of Mr. Root, is addressed to the members of each house." It is not proposed to address it to the effect of the bill if it should not be passed in this manner. To pass it otherwise would violate the oaths of the members voting for it, as well as violate such a provision of the Constitution, but, as the majority have the power to pass bills, a failure to exercise that power in conformity to the constraints would not invalidate the act if it should be properly attested by the Speaker of the Assembly and the Lieutenant-Governor and approved by the Governor; and the same result would follow the disapproval of the Governor if a bill should be passed by a two-thirds vote, and the modern tendency is to hold that a bill, if enacted and certified and deposited with the assigned custodian of the law, cannot be shown not to have been constitutionally enacted, by consulting the legislative journal. And this principle you will find has been generally asserted and maintained in the following cases:" Among others he cites the 143 U. S. Rep., 649, the opinion in which I have before me, which confirms the language used by Judge Daniels. "If this principle can be avoided at all it seems to follow that it would be by a restraint affecting the bill itself, as distinguished from the conduct of the members, and that would require the declaration that no bill should become a law unless it shall be upon the desks of the members one legislative day before its passage, nor in case of amendment on its last reading." Now, to me, gentlemen of the Convention, this argument seems to be absolutely conclusive and establishes the fact that if we desire to make this amendment of Mr. Root's or mine effective, it must be made to read not that a bill shall not be passed because, as Judge Daniels says, that addresses itself to the members only, and if they should pass it, notwithstanding that it had not been printed, that would simply be violating their oaths and not carrying out the requirements of the Constitution. But it should read: "No bill shall become a law unless it shall have been printed and been upon the desks of the members," etc. This is the way it should be amended. Now, Mr. Chairman, there are two amendments already pending. I would like to inquire if I may move an amendment to this pending amendment?

The Chairman — The Chair is of the opinion that the gentleman cannot. The powers of amendment are at present exhausted.

Mr. Vedder — Then I would suggest, in order that I might do that, that I think the committee will be with me to vote down the first amendment pending, so that my amendment might come in to the amendment offered by Mr. Root.

Mr. Maybee — In answer to the suggestion of the gentleman from Cattaraugus (Mr. Vedder) the purpose of my amendment was, of course, to meet this very question, in reference to bills passed in contravention of the provision and to make the provision peremptory or mandatory. If, in the opinion of the chairman of the committee, that difficulty will be better met by the amendment now proposed, I will withdraw the amendment offered by me.

The Chairman — The gentleman from Sullivan (Mr. Maybee) withdraws his amendment, therefore the amendment of the gentleman from Cattaraugus (Mr. Vedder) is in order.

Mr. Vedder — Mr. Chairman, I move to amend the second subdivision of Mr. Root's amendment commencing with the words, "no bill shall be passed" so that it shall read, "no bill shall be passed nor become a law, unless it shall have been printed," etc. And, after the word "approval" in the second line of the third subdivision, insert the same words, "nor become a law."

The Chairman — The Chair would inform the gentleman from Cattaraugus (Mr. Vedder) that in the opinion of the Chair the substitute offered by the gentleman from New York (Mr. Root) cannot be amended until it has been adopted in place of that offered by the gentleman from Cattaraugus.

Mr. Vedder — The gentleman from New York (Mr. Root) offered it as an amendment, not as a substitute.

The Chairman — If he offered it as an amendment it changes the nature of the case. Did the Chair understand the gentleman from New York to offer it as an amendment.

Mr. Root — I am perfectly ready to offer it as an amendment.

The Chairman — Then the amendment of the gentleman from Cattaraugus is in order.

Mr. Root — Mr. Chairman, I accept the amendment suggested by the gentleman from Cattaraugus, if I have the power.

The Chairman — The gentleman from New York has the power. The question before the committee is now upon the adoption of the amendment offered by the gentleman from New York, as amended by the gentleman from Cattaraugus.

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

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

Mr. Alvord, from the Committee of the Whole, reported as directed by said committee, which report was agreed to.

Mr. Vedder — I move that the amendment proposed in the Committee of the Whole, which is now before the Convention, be printed and put on file so that all the members may have an opportunity of seeing it printed in its present form.

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

Mr. Barhite offered the following resolution:

R. 124.—Resolved, That it be referred to the Committee on Rules to report to this Convention a rule which shall provide for the printing or placing in the hands of members substitutes to proposed amendments to the Constitution, or amendments to proposed amendments exceeding twenty-five words in length which may be offered in Committee of the Whole or in Convention.

The President — If there is no objection to the consideration of this resolution at the present time, it may now be considered.

Mr. Barhite — I desire to say, Mr. President, that my attention was called to this matter when the substitute was offered by the gentleman from New York (Mr. Root).

The matter of introducing substitutes to proposed amendments, or amendments to proposed amendments in the Committee of the Whole is a very important one. It is obviously impossible for the members of this Convention to correctly understand what is proposed without having the wording before them, and usually when a substitute is offered the gentleman offering has it prepared beforehand, and it is possible to have some method arranged whereby we can all know precisely what it is.

The President put the question on the adoption of the resolution and the resolution was adopted.

Mr. Acker — Mr. President, I have just received a telegram asking me to come home to-morrow, and, therefore, I ask to be excused from sessions of the Convention the balance of the week.

There being no objection, Mr. Acker was excused.

Mr. Cochran — I have just received a telegram from Mr. Towns, stating that he is sick, and I would ask that he be excused for to-day and to-morrow.

There being no objection, Mr. Towns was excused.

Upon motion of Mr. Roche the Convention adjourned until Wednesday, July 11, at 10 A. M.

Wednesday, July 11, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber at the Capitol, Albany, N. Y., July 11, 1894, at ten o'clock in the morning.

President Choate called the Convention to order.

The Rev. Lyman E. Davis offered prayer.

The Secretary read the Journal of Tuesday, July 10.

Mr. Hawley — Mr. President, if I understand the reading of the Journal aright, it is not precisely correct. I offered yesterday two resolutions; one of them was a resolution to be considered by a committee and not to be passed by the Convention, and the other was a resolution referring that first resolution to a committee. As I understand the reading of the Journal it indicated that both resolutions were passed. Perhaps I misunderstood it.

The President — The Secretary states that it is as you think it should be.

The Journal was approved as read, and the President stated that the presentation of memorials is in order.

Mr. O'Brien presented a petition of the Iron Moulders Union, of Troy, in reference to the competition of prison labor with free labor.

Referred to the Committee on State Prisons.

The President stated that notices, motions and resolutions are in order. The Secretary called the list of districts.

Mr. Storm — Mr. President, I call up the resolution which was offered yesterday by Mr. Dean and move to lay the same on the table. I would further state that it is by request.

The President put the question on the motion of Mr. Storm to lay the resolution offered yesterday by Mr. Dean on the table, and it was determined in the affirmative.

Mr. Gilleran presented the petition of a number of citizens, that the word "male" be stricken from the Constitution.

Referred to the Committee on Suffrage.

Mr. Doty called up his resolution (No. 120) which was offered yesterday, and it was read by the Secretary, as follows:

"Resolved, If it be not already furnished, that the Secretary is hereby directed to obtain from the proper county officers the amount of the existing indebtedness of all the counties of the State,

and also obtain the amount of the existing indebtedness of each incorporated village in the State, and of the amount of assessed valuation of the real estate of such village as the same appears on the last assessment-roll of said village."

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

Mr. E. R. Brown — Mr. President, by inadvertence my district was passed. I have a resolution which I desire to offer.

The Secretary read Mr. Brown's resolution as follows:

R. 125.— "Resolved, That the Committee on Rules be and hereby are directed to report a rule providing that the Convention may cut off debate on any proposition not relating to the business of the Convention."

Mr. Gilbert rose to debate the question, and it was laid over under the rules until to-morrow.

Mr. Gilbert offered the following resolution:

"Whereas, The members lately received into this Convention are not fully provided with places upon committees,

R. 126.— "Resolved, That an additional member be added to the Special Committee on Civil Service."

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

The President — Mr. Putnam is added to the Committee on Civil Service.

Mr. Lincoln offered the following resolution:

R. 127.— "Resolved, That the Secretary procure to be printed for the use of the Convention 300 copies of the statement showing the population of the State by counties, classified as citizens and aliens, according to the enumeration of 1892; and also of the counties of Erie, Kings, Monroe, New York and Onondaga, by towns and wards, classified in the same manner."

Mr. Kerwin rose to debate the resolution, and it went over under the rules until to-morrow.

The President — Proposed amendments to the Constitution are now in order.

O. 299.— Mr. Holcomb offered a proposed amendment to section 2 of article 10 of the Constitution, relating to the choice or appointment of officers.

Referred to the Committee on Governor and State Officers.

O. 300.— Mr. Root offered a proposed amendment to section 16, article 3, so as to secure greater publicity and deliberation in the passage of private and local bills.

Referred to the Committee on Powers and Duties of the Legislature.

O. 301.— Also, a proposed amendment to amend article 6 of the Constitution, the judiciary article, by adding a section to secure more intelligent consideration of proposed legislative changes in practice and procedure in the courts of the State.

Referred to the Judiciary Committee.

O. 302.—Also, a proposed amendment, by adding to article 6 of the Constitution, the judiciary article, a section limiting the power of the courts of this State to admit persons to citizenship without due proof of their qualification.

Referred to the Judiciary Committee.

O. 303.— Mr. Hottenroth offered a proposed amendment to section 18, article 3, adding certain subjects as to which the Legislature is forbidden from passing special or local acts.

Referred to the Committee on Powers and Duties of the Legislature.

O. 304.— Mr. Peck offered a proposed amendment to article 9, relating to education.

Referred to the Committee on Education.

O. 305.— Mr. A. B. Steele offered a proposed amendment to article 6, section 2 of the Constitution, relating to the Court of Appeals and the terms of office of the judges thereof.

Referred to the Judiciary Committee.

O. 306.— Mr. Kellogg offered a proposed amendment to the article of the Constitution, in relation to the passage of laws providing for an equal and uniform rule in reference to assessment and taxation, and specifying what property shall be exempt from taxation in this State.

Referred to the Committee on State Finances and Taxation.

O. 307.— Mr. Goodelle offered a proposed amendment to article 2, by adding a new section after section 5, to be known and designated as section 6, in regard to eligibility to office.

Referred to the Committee on Suffrage.

O. 308.— Also, a proposed amendment to article 2 of the Constitution, by adding a new section after section 5, in regard to qualifications for office.

Referred to the Committee on Suffrage.

O. 309.— Mr. Hamlin offered a proposed amendment to article 1, section 5 of the Constitution, prohibiting the detention of witnesses after securing their depositions.

Referred to the Committee on Preamble and Bill of Rights.

The President announced the order of reports of standing committees, including reports upon resolutions referred to them for report, and the Secretary called the list of committees.

Mr. Parkhurst, from the Committee on County, Town and Village Government, to which was recommitted the proposed amendment introduced by Mr. Carter (introductory number 225), entitled "An amendment to amend section 18, article 6," reported back the same because it relates to judicial officers, and asked that the committee be discharged from further consideration of the same.

The President put the question on agreeing to the report of the committee and discharging the same from further consideration of the amendment, and it was determined in the affirmative.

Mr. Alvord, from the Committee on Salt Springs, to which was referred the proposed amendment introduced by Mr. Alvord (introductory number 9), entitled "Proposed constitutional amendment, to amend section 7 of article 7 of the Constitution, entitled salt springs," reported in favor of the passage of the same, with some amendments, which report was agreed to, and said proposed amendment committed to the Committee of the Whole.

Mr. Hirschberg — Mr. President; the Committee on Privileges and Elections yesterday heard arguments by the respective counsel in the contest in the Sixth Senatorial District, the one which is popularly known as the Gravesend district. There was evidenced from the discussion a wide difference of opinion as to the facts before the committee, and what those facts establish. It is so evident to me that the report of the committee, when presented, will require the printing of the evidence, that I venture to offer a resolution looking toward the printing of the evidence in the case, in anticipation of the report.

The Secretary read Mr. Hirschberg's resolution, as follows:

R. 128.— "Resolved, That the evidence taken in the contest in the Sixth Senatorial District, and so much of the exhibits as either party may desire, be printed under the supervision of the Printing Committee and the Sub-committee on Privileges and Elections.

"Resolved, That such printing be done by contract given to the bidder who will agree to do the work at the earliest date."

Mr. Bowers — Mr. President, I suppose this Convention is under a contract as to the whole of this printing, and unless we propose to depart from that contract or to abrogate it in certain essentials, I do not see how we can properly adopt this resolution by which we invite competitive bids. That part of the resolution, therefore, seems to me to be objectionable. As far as the printing is concerned, it ought to be done; it ought to be done promptly, and it ought to be done by the machinery which we have approved and are acting under, and not by any other course. I move to strike out all that part of the resolutions after the words "privileges and elections."

The President — There are two separate resolutions, and Mr. Bowers moves in effect, that the question be taken separately upon them. The question will be on the first resolution, that this evidence be printed under the direction of the Committee on Printing.

Mr. Cookinham — Mr. President, I hope the resolution will not be adopted in the form in which it is introduced. I believe if the stenographer's minutes should be printed it would be satisfactory to all. I may say that the stenographer's minutes, perhaps, would require the printing of two or three hundred pages. The printing of the exhibits is a very expensive matter and I can see no reason why they should be printed. I believe it would cost thousands of dollars to print the exhibits, and when I state what they are, I believe the Convention will be of the same opinion. In the first place, it is all of the poll lists, all of the registration. Now, it seems to me utterly useless to print that part of the evidence, and I would move as an amendment, or substitute, that the stenographer's minutes be printed, but not the exhibits; and I believe it will be perfectly satisfactory to the Convention.

Mr. Morton — Mr. President, I am opposed to the printing of this matter in the form proposed by this resolution. It is perfectly manifest that if the terms of this resolution are to prevail, the entire case, including the exhibits, is to be printed, because, as I understand, the reading of the resolution, it leaves it optional to either party to require any amount of printing that may be included in the case.

Now, sir, if there is any case ever likely to come before this Convention with which the members of the Convention are thoroughly acquainted, it is this case. It has been adjudicated in many forms in other places, and the exhibits and testimony substantially are already printed and accessible to the members of this Convention. Besides, sir, I am told that there are five typewritten copies

of this evidence in the hands of the committee; and it seems to me, sir, an entirely unnecessary expense to subject the State to printing this evidence. Besides, its volume is such, and the looseness with which this resolution is drawn is such, that it may occupy the entire time of this Convention before we can get at this case. I am perfectly willing, sir, that all the evidence that is necessary for the determination of the merits of this case should be printed, if it is thought advisable, by either of the contending parties, but that it should be left to their discretion, as to what shall be, and what shall not be, printed; I think it is a loose way of doing business.

I trust, sir, that the resolution may receive more careful attention at the hands of the sub-committee, and of the whole Committee on Privileges and Elections, and that this Convention may be spared the delay, the expense and labor that would be involved in printing this case.

Mr. Hirschberg — Mr. President, these resolutions have been offered by me in order that the question of printing this case may be determined now. There are two resolutions. The first resolution provides for the printing of the testimony, and so much of the exhibits as either party may desire. Of course, in dealing with the question it is safe for the Convention to assume that the parties will desire the printing of all the exhibits. The second resolution provides simply that the printing be given to whoever will do it the speediest. Of course, the object of that resolution is to secure the printing of the matter at a time when it will be useful and of some benefit to the Convention. The testimony in the case — that is the shorthand notes — is not extensive. It will not make one-half of the bulk of the evidence in the Buffalo case; and I do not believe that the evidence proper, and the exhibits, together, will make more than the entire testimony taken in the Buffalo case, which we were assured could have been printed for $500, and in the space of one week. I do not believe that testimony could have been printed in that time, and I do not believe that this evidence can be printed by the Convention printer during the session of the Convention. I do not agree with the gentleman from New York that this Convention is powerless, that it has no right to award a special contract for special printing to a bidder who will do the work the cheapest and the speediest. Now, there are many exhibits in the case, undoubtedly, which it would be unnecessary to print. I do not think that it is necessary to print any of the exhibits. I think that if the testimony itself is printed, as Mr. Cookinham has suggested, and the exhibits are left for

the inspection of the Convention, that every necessary purpose will be subserved. The exhibits — those that are of any importance — consist in the opinions of the judges, in the printed case against John Y. McKane, which was taken to the General Term, and which is now in the possession of the committee, printed, the confession of Sutherland, which is typewritten, bearing his signature, and other smaller documents.

If the Convention decides to print the evidence and not the exhibits, I am satisfied the members will have printed all that they will care to read, and, accessible in the form of exhibits, all which will be necessary that they should inspect; and I embrace the printing of so much of the exhibits as may be desired by the parties, in the resolution, only that the matter may be considered and decided now, so that we will not decide to-day to print the testimony, and have the matter brought up at a later day, at the close of the session on the question of printing the exhibits.

The President — Does Mr. Hirschberg accept Mr. Cookinham's amendment?

Mr. Hirschberg — If I accept his amendment, Mr. President, it will not be the action of the Convention. I would prefer that the Convention should adopt his amendment so that it will be their act and not mine.

Mr. Crosby — Mr. President, this matter presents several different questions, and as a member of the sub-committee, I am about to make a motion which will enable the Convention to vote more intelligently upon the subject. As has been stated by Mr. Cookinham, there is a large volume of testimony in the shape of exhibits that under no circumstances should be printed at large. Three copies, at least, of the testimony have been and now are on file with the clerk of the committee, which any gentleman can see and examine, or, if he desires, may procure, by instruction of the committee, a copy, receipting therefor, for examination. The documentary evidence which has been offered is also in the custody of the clerk, under the direction of the chairman of the sub-committee. Now, some time should be taken to examine and see whether there is any real necessity for incurring the expense of publishing this testimony and these exhibits and documents. The question whether it can be printed outside of the contract made for printing is an important one, because, Mr. President, when I read ——

The President — Mr. Crosby, that question is not now before the

house. The question is on Mr. Cookinham's substitute that the stenographer's minutes, without the exhibits, be printed.

Mr. Crosby — Mr. President, I am urging this simply as a reason for making a motion, which is not debatable or raising a question which is not debatable. That question should also be examined. There should also be, if there is to be a printing of these documents, an agreement, as far as possible between the gentlemen who represent the opposite sides of the question, as to what shall be published.

Now, Mr. President, in view of these considerations, I move you, sir, that this matter lie upon the table until an examination can be had and an intelligent vote be taken on the question.

The President put the question on Mr. Crosby's motion to lay the matter on the table, and it was determined in the negative.

Mr. Abbott — Mr. President, I desire to offer a substitute for Mr. Cookinham's amendment.

The President — What Mr. Cookinham offers is itself a substitute.

Mr. Abbott — An amendment then to his substitute. It is to provide that the testimony be printed, and such exhibits as may be certified to be necessary by the Committee on Privileges and Elections, instead of "as may be desired by the parties."

Mr. Jesse Johnson — Mr. President, I am opposed to the proposition to print this testimony and the exhibits. I understand it is conceded that such a course would be a denial of trial until after all cause for trial has ceased. I am also opposed to any printing in this matter unless the Convention can have some assurance from the committee, or from some authoritative source, of the time that will be consumed, and when it is that the testimony will be before the Convention. We disposed of the Buffalo case, Mr. President, by giving members the opportunity to read the minutes, and when that was done, I think it was agreed to, and felt on all hands, that the Convention had been fair and considerate, and had given every opportunity for members to investigate the case. Why should we do more, sir, in this case? We should consider, on this question of delay, the character of this proceeding. As to the incitement for us to act quickly, the record which has been made in courts and before legislative tribunals should be considered. There we have it by solemn decision, by printed testimony, by the confession of felons, given in judicial form, that the election at Gravesend was no ordinary wrong to the State, but that it was officials in a body, conspiring together by force and fraud, by ballot-stuffing and fraudulent counting, to hatch out

conspiracy against the State. Nothing worse, nothing more bald, nothing more dangerous, has been known in the annals of fraudulent manipulation of the ballot.

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

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

Mr. McClure — Mr. President, my point of order is that the gentleman is not discussing the resolution before the house, but is discussing the merits of the matter, which has not yet been reported upon by the committee.

The President — The Chair is of the opinion that the point of order is not well taken; that Mr. Johnson is properly stating the reasons why the evidence should not be printed.

Mr. Jesse Johnson — Mr. President, I had stated what had been proved and known, so far as knowledge can be gained by judicial and other investigation. I was about to add that I think there is no wrong that causes such a feeling of danger, of apprehension. I think, sir, with the investigation that has been had, with the decisions that have been reached, with the confessions that have been made, with the character of the whole transaction, that any delay further than is absolutely necessary beyond this present day, when the Convention is half over, would be a very great wrong to these contesting members. I am not yet convinced that it is any more necessary to print this testimony than it was to print the testimony in the Buffalo case. I believe, as the chairman of the committee has suggested, that he has offered this resolution that the Convention may take the responsibility of saying, and I believe they should take the responsibility of saying, that an early date should be fixed for the hearing and decision in this case, with opportunity in the meantime to examine the minutes, which are typewritten, which are legible, and that within a reasonable time this Convention should record what it believes as to this transaction, and the rights of the sitting delegates without further postponement.

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

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

Mr. Bowers — Mr. President, the remarks that have been made by the gentleman from Brooklyn (Mr. Johnson) would seem to indicate that in his mind, at least, this question was determined before we met. If that be the case, and if these five gentlemen who now hold the certificate of election were not entitled to their seats,

and that fact was perfectly well known to all the delegates in this Convention, we could have proceeded in very short order by moving at the outset that they should have been deprived of their seats, upon the judicial records to which the gentleman has referred. But I was under the impression that a certificate of election to this Convention imported something. I supposed it meant that each delegate who held it stood on an equality with his associates, and must continue to hold that position until, in the light of evidence properly taken, the Convention should otherwise decide. Now, this question will have to be met upon evidence and not upon judicial records, and will have to be met upon the evidence that has been taken before the Committee on Privileges and Elections. The chairman of that committee has said to this Convention this day that there were grave questions of fact in which different claims were made by the different sides, and for that reason he proposed that the evidence should be printed. If this be true, and we have the right to assume it to be true, that there is a difference of opinion as to the facts, how can we ever determine the question properly unless the evidence is before the Convention, and the whole evidence, or just so much of it, as either of the contesting parties may require? The fact, that the Convention in the Buffalo case finally consented to proceed to a determination of that case without having all the evidence printed, is no reason that such a course should be pursued in other cases. In that case the report came in against the sitting members. In that case it was moved that the evidence be printed, after the report came in, and the cry was then raised that we were wasting time needlessly. To-day the motion is made in advance of the report, made at a period which justifies the presumption that the evidence can be printed before the report is ever made; and more than that, the form of the resolution is such as to require, not absolutely the printing of all the exhibits, but only such of the exhibits as either of the contesting parties may require, and the presumption is that the contesting parties will at this time be reasonable in their requests, and not ask for the printing of any exhibits not necessary for the consideration and determination of the case.

Mr. Lester — Mr. President, I rise to a point of order. The resolution which has been offered here is not introduced by the Committee on Privileges and Elections. It is a resolution offered by Mr. Hirschberg, who is chairman of that committee, and, inasmuch as it gives rise to debate, it seems to me that it should lie over until to-morrow under the rules.

Mr. Bowers — I shall only take a moment more.

The President — The Chair is of the opinion that it does not apply to a resolution offered from a standing committee, and that the point of order is not well taken.

Mr. Bowers — Mr. President, if we adopt the resolution that has been presented to the house in the form in which it was first offered by the chairman of the Committee on Privileges and Elections, I have no doubt we shall save time. It is almost certain that when their report comes in the evidence will be asked for, its printing demanded. It is almost certain that this Convention will not refuse to print it if any considerable number of delegates require or request it, and I think the interests of the Convention demand that we should adopt this resolution and go ahead with the printing as rapidly as possible; that it will save time in the end, enable us to dispose of this question promptly and with the good judgment that has been shown by the Convention on all questions of moment that have thus far arisen. I, therefore, oppose both amendments, and hope that the original resolution may be adopted by the Convention.

Mr. Abbott — Mr. President, my object in offering this amendment is briefly this, I assume that the exhibits that have been offered contain the registration list and the poll list and many other exhibits of general but not of special interest. I believe that the committee, acting understandingly, could have the matter contained in these exhibits tabulated so as to save a great amount of time and large expense in the printing. Under the original resolution, if one of the counsel should insist upon it, all these exhibits will have to go to the printer. It is perfectly safe, as I look at it, to leave it with this committee and have them certify what is necessary to be printed, and then if either party feels aggrieved, they can attach these exhibits to their briefs and it can be presented in that way. My object in this amendment is to save this immense amount of printing and at the same time to see that everything necessary to a fair understanding and disposition of the case shall be before the Convention.

Mr. Crosby — Mr. President, I rise to a point of order. My point of order is that this is not a report of a committee and is not presented as such. Briefs were printed for the use of all members of the Convention by the attorneys representing the parties. No request has been made by either party to print the minutes. There has been no action of the committee looking towards the printing of these minutes. With due respect to the gentleman who has

moved the resolution, and believing that there should be deliberation in this matter, I make the point of order that this is an individual motion of Mr. Hirschberg, and under the rules should lie over a day.

The President — The Chair adheres to the ruling that, as he understood the presentation of the original motion by Mr. Hirschberg, it was from a standing committee and is in order.

Mr. Hirschberg — Mr. President, the resolution undoubtedly was offered by myself. I stated in offering it that, having heard the discussion before the committee, and being satisfied that the printing question would necessarily come up before the Convention, I ventured to offer the resolution. Those were the words I used in presenting it. I ventured to offer the resolution in order to have the matter presented to the Convention.

Mr. Crosby — I have the authority of the chairman of the committee, and I say now, upon Mr. Hirchberg's statement, that it is an individual motion and not the report of a committee.

Mr. Root — I rise to a point of order. It is that Mr. Crosby is too late in his point of order. It is not competent for gentlemen to remain in their seats while the consideration of a resolution is taken up by the Convention and then at their pleasure object to the consideration under the rules. That objection must be made when the resolution is first called up.

The President — The Chair is of the opinion that Mr. Root's point of order is well taken.

Mr. Mullen — Mr. President, may I be permitted to say a word or two in reference to the question at issue before the house? I did not intend to say a word or to be heard upon this question, but on behalf of my associates and myself I desire to say that we have full confidence in the integrity and honor of this committee. We think, in fairness to ourselves, in justice to the delegates here assembled, inasmuch as there is a fair, clean-cut question of fact on contradictory evidence involved in this case, that this testimony should be printed, and I can say for myself and for my associates that we have implicit confidence in the integrity of the committee having charge of this matter, and we are willing to submit the question to them to say what they deem necessary to be printed by way of exhibits, and we will abide by their decision.

Mr. Maybee — Mr. President, it is somewhat surprising to me, after the Committee on Privileges and Elections have submitted their report, by which they recommend the printing of this testi-

mony, that any fair-minded member of this Convention, belonging to the majority party, should oppose the adoption of that report, and oppose the printing of the testimony on which we are to act in passing upon the rights of these contestants to the seats claimed by them. Now, this is not a parallel case with the Buffalo case. The cases are not at all alike. In the Buffalo case the main facts were conceded by the contestees, admitted by their counsel in their argument, and admitted in their brief. This is not such a case. In this case there is a disputed question of fact upon which the right of these contestants depends, and it is upon that question of fact that this Convention is to act. The judicial records spoken of by the gentleman from Kings (Mr. Johnson) are not accessible to the members of this Convention. They have not been spread before us. It is not to be expected that the delegates to this Convention should go down to the court house, in Kings county, to examine the records of the courts made in the proceedings against John Y. McKane and his associates. What we are required to act upon is the testimony taken before the Committee on Privileges and Elections, and it is necessary for the enlightenment of this Convention, that it may act fairly, justly and equitably in the premises, that the evidence should be spread before it in printed form. I hope, therefore, that the report of the Committee on Privileges and Elections will be concurred in by the Convention.

Mr. Lester — Mr. President, this resolution calls for the printing of the evidence taken before the sub-committee of the Committee on Privileges and Elections. This evidence, sir, taken by this sub-committee, comprises about 500 pages of typewritten matter, and it could be readily printed within a reasonable space of time. But, sir, if the Convention should adopt a resolution looking to the printing of all the exhibits which were introduced, I venture to say that those exhibits could not be printed before the Convention had finally adjourned. It is utterly unnecessary for the consideration of any of the questions arising in this case that all these exhibits should be printed. They consist of the registry lists, the poll lists and the official canvass of the votes in six districts of the town of Gravesend, and in three districts of the town of Castleton. The real question in this case can only arise in a very limited number of those districts, and it would be necessary to print, in order that the Convention might be fully informed of all the questions arising, only a small fraction of these exhibits. It does not seem to me, sir, that any resolution ought to be adopted which, under any circumstances, would authorize this vast mass of exhibits which do not touch the case at all.

Mr. Hirschberg — Mr. President, I see no need of any further discussion of this matter. When asked by the President whether I would accept the amendment offered by Mr. Cookinham to strike out the printing of the exhibits, I refused to do so, because I desired that the Convention should settle the question and settle it now. But since Mr. Mullen, one of the contestees, on behalf of himself and his associates, consents before the Convention to leave to the committee the decision as to which of the exhibits it would be proper to print, I am willing, if Mr. Cookinham will withdraw his amendment, or substitute, to accept the amendment of Mr. Abbott, and the resolution will then read to print such of the evidence and such of the exhibits as the committee may certify to be necessary.

Mr. Cookinham — Mr. President, I was about to prepare an amendment to my own substitute, in substance the same as that of Mr. Abbott, but on the suggestion of Mr. Hirschberg, and particularly upon the statement made by Mr. Mullen, I will gladly withdraw my substitute and support the position taken by those two gentlemen.

The President — The Chair is of the opinion that the matter has got too far to be arranged by the movers and seconders, and that the question still is on Mr. Abbott's amendment, which is to add to Mr. Cookinham's amendment to print the stenographic minutes, the words "and such exhibits as the Committee on Privileges and Elections shall certify to be necessary."

Mr. Hirschberg moved the previous question, which was ordered.

The President put the question on Mr. Abbott's amendment, and it was adopted.

The President put the question on Mr. Cookinham's substitute, as amended, and it was determined in the affirmative.

The President — The second resolution will now be read by the Secretary.

The Secretary read the resolution, as follows:

"Resolved, That such printing be done by contract given to the bidder who will agree to do the work at the earliest date."

Mr. Lester — Mr. President, it seems to me that this resolution is not carefully drawn. The only test of the acceptability of the bid is the time within which the printing can be done. Now, a resolution of that sort, it seems to me, needs no comment. There should be something incorporated into it limiting somewhat the price which the printer is going to receive for doing his work.

Of course, it is possible, if a sufficient sum is received for doing the work, to do it in a very brief space of time. But I do not believe that the resources of the State should be unduly taxed by the operation of a resolution which leaves out of consideration the important element of price.

Mr. C. H. Truax — It seems to me that this matter has already been settled by the act of 1894. That act gave the Compiler power to authorize, upon conditions to be fixed by the Convention, all the printing and publishing of documents, proceedings, journals and other printing and publications of the Convention. I read from page 45 of the Secretary's Manual. If you will turn to page 11 of Document No. 8, you will find the contract that was entered into by the Compiler. I read from the document: "The Argus Company propose to do all the public and Constitutional Convention printing and binding." Then the rates are fixed and that proposition was accepted. That makes a contract, in my opinion, that binds the Convention.

Mr. Hamlin — Mr. President, I think there is no question under the act itself and under the contract made with the Comptroller, that all the printing of this Convention was placed in the hands of The Argus Company. It seems to me that this resolution would be futile under the circumstances of the case, both under the contract and the statute by which it was authorized.

The President — The question is on the adoption of the second resolution offered by Mr. Hirschberg.

Mr. Dickey — Mr. President, I move as an amendment that The Argus Company be requested to do the printing within ten days, and that they be given the printing.

Mr. Root — Mr. President, I seriously object to giving any printer ten days to print this testimony. I would undertake to have it printed and here next Monday without any trouble. I would undertake to have it printed and here the day after to-morrow. Do not let us spin out this business until the Convention is over. If this contest is not well founded let us know it. If it is well founded, then the people of the Sixth Senatorial District are not represented here, and men who have no right to speak for them are about to take part in altering the fundamental law of the State. Let us have the business done and no longer flounder idly in the net of form. Let us proceed to a conclusion in this matter and get the Convention organized finally for work.

Mr. Dickey — At the suggestion of some of the delegates, I

would like to change the amendment so that it shall read "five days" instead of "ten days."

Mr. Mereness — I move as an amendment that the company be required to produce the printing here on Tuesday morning next.

Mr. Dickey — I accept the amendment.

Mr. Hirschberg — Mr. President, I accept both amendments.

Mr. Bowers — Mr. President, this matter has already, so far as my recollection serves me, been disposed of. There was a resolution offered some time since that The Argus Company be required to do the printing within a certain time, to be fixed by the officers of this Convention as they sent the printing to them. There was an amendment made and the whole matter was well understood and well arranged, so that the Convention had it within its power to direct the precise time within which the work should be done, and not put work on the printer beyond the capacity of his office. It seems to me all we have to do is to direct the printing, as we have done, and leave it to the Convention in the ordinary course of business to work out its own ends. But when we attempt here, to-day, without knowing how much is to be provided, how many hundreds or thousands of pages, to say it should be done in two days or five days or ten days, we are moving entirely in the dark. Having everything already regulated, it seems to me that this motion should be defeated, and it should be left to the officers of the Convention to specify the time, when they get the copy, within which The Argus Company should deliver this printing to the Convention.

Mr. Hirschberg — I can assure the gentleman from New York (Mr. Bowers) that if he were correct in his statement made to the Convention that the Buffalo testimony could have been printed in a week for $500, that all this testimony and all these exhibits can be printed in five days and the printer may work very leisurely. There is no doubt about it.

Mr. McDonough — I move, as an amendment, that this work be given to The Argus, on the condition that it be printed within five days. Let the word "condition" be used. Under the statute we may fix the conditions of the printing.

Mr. Hirschberg — I would accept that amendment.

Mr. Lester — I move to amend by adding "after the copy is delivered."

Mr. Hirschberg — I accept the amendment.

The Secretary read the resolution, as amended, as follows:

" Resolved, That The Argus Company do the printing on condition that it is done within five days after the copy is delivered."

Mr. McClure — Mr. President, I rise to a point of order. I object to the acceptance by the mover of the original resolution, of Mr. McDonough's amendment, on the ground he has no right to accept it when it is once placed before the Convention. The Convention possesses the amendment then and can act upon it.

The President — The Chair is of the opinion that Mr. Hirschberg had a right to accept the amendment.

Mr. McClure — Then, Mr. President, I think Mr. McDonough's amendment ought not to prevail.

The President — That amendment has been accepted.

Mr. McClure — Well, I am arguing against the resolution, as amended by the acceptance of his amendment. It has been clearly settled here that The Argus Company is entitled to do this printing, and to do it within reasonable time. It is not within the power of this Convention to say that The Argus Company shall do this printing within any certain time now fixed by this Convention. I think the resolution, if adopted, will be entirely void and of no effect, by reason of Mr. McDonough's amendment. There is no doubt of the fact that The Argus Company will do it within a reasonable time. I am assured that they can print 125 pages a day, and that being so, and there being so little matter, the testimony can be placed before the Convention in ample time. But I insist upon it that this Convention, under the report of its Judiciary Committee and as a matter of law, cannot say that The Argus Company shall have this contract to do this printing, providing it does it within a certain time, because it already has the contract to do the printing for this Convention.

Mr. Hamlin — Mr. President, I would like to call the attention of this Convention to the contract. It specifically provides that The Argus Company may be required by the Convention to do work in extra haste. So that, I think, that this should not be put in the form of a condition, but that it be made a direction to The Argus Company under the contract made by the Comptroller with that company.

Mr. Becker — Mr. President, I desire to state for the information of the Convention, and it can be verified by an examination of the contract, that it is quite apparent that this little job will cost very nearly four dollars a page. If there are five hundred pages it would

involve an expense of $2,000 for this luxury. Under these circumstances I am very anxious, indeed, and think it only right, that extra haste should be indulged in by the company which has so fat a job.

Mr. Jesse Johnson — Mr. President, I think if it had been suggested before the first resolution was adopted that there was no way of having this testimony printed save through a single company, and no way of moving that company to haste, this Convention would have hesitated to adopt the resolution for this printing. That being done, on the obvious understanding of the Convention that it could be printed speedily, if it had been understood that matters could be protracted through any delay of the printing company, I think we should not have adopted the resolution. I think the gentleman who offered the resolution and urged its adoption could hardly have done so under any such understanding as is now presented. I think this condition should certainly be attached and if it then comes that it cannot be complied with, we may learn it early and early take measures accordingly. It is impossible to conceive that this Convention can be tied up as to the question of who are its proper delegates, throughout the entire term of its sitting.

Mr. Dean moved the previous question, which was ordered.

The President put the question on the adoption of the resolution, as amended, and it was determined in the affirmative.

Mr. Goodelle, from the Committee on Suffrage, to which was recommitted the proposed amendment introduced by Mr. Hill (introductory number 183), entitled, "Proposed constitutional amendment to amend section 5, article 2 of the Constitution, relating to the manner of elections," reported in favor of the passage of the same, with some amendments, which report was agreed to and the proposed amendment was committed to the Committee of the Whole.

The President announced the order of general orders.

Mr. Vedder— Mr. President, I move that propositions Nos. 73, 173 and 290, all the same propositions, and which were before the Committee of the Whole yesterday, be referred back to the Committee on Legislative Powers, with instructions to report at any time, retaining their place on general orders. Mr. President, my reason for this motion is this: A very sweeping amendment, so much so that in the first instance it was designated as a substitute, was offered yesterday in the Committee of the Whole. The amendment took me entirely by surprise, I being the mover of the original

proposition. A short time ago the gentleman who offered the amendment yesterday, prior to his leaving Albany for a day or so, desired that I should not move it in his absence. He wished to amend it in one particular only, to wit, to increase the time that a bill should be printed before it could be passed, from one day to three days. In the flurry yesterday I accepted his amendment, which, at a cursory glance, looks as if it might be the same in substance as the proposition itself, but in different language. If the delegates will look at the third subdivision they will see what a mistake we would have made if we had adopted the Root amendment. This is its language: "No bill shall be amended upon its last reading and no bill shall be presented to the Governor for his approval or become a law, unless the presiding officer of each house shall have first certified that in the passage thereof the provisions of this section have been obeyed." Gentlemen, think of this a moment. Under this provision, as it stands, the presiding officer of either house may prevent the passage of a bill by refusing to certify to it. That is the language of the section. I presume that this Convention does not desire to place the power of legislation absolutely in the hands of the presiding officer of the Assembly or the presiding officer of the Senate. But, according to this provision, if either one refuses to certify to the passage of the bill in the manner prescribed, what is the remedy of the house? Nothing but impeachment, and if the Assembly should be of the same political faith, and politics was running as high as it has at some times during the last three or four years, they would refuse to impeach, and legislation would be at a standstill. It is for these reasons, and in order that we may have more deliberation, that I ask that this be referred back to the committee which reported it, so that all carpenters, if I may use the expression, and artisans of every Constitutional trades union, may come before that committee and, in the calmness of its room and with a few present, may get the amendments in such shape that our legislation shall not be a nullity after both branches shall have concurred in it.

Mr. Root — Mr. President, I think it is very appropriate that this should go back to the Committee on Legislative Powers, and I hope the motion will prevail. I think that is the proper place to give full, deliberate consideration to constitutional amendments.

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

Mr. Cochran — Mr. President, I move that the Convention go into Committee of the Whole on general order No. 4.

The President — The amendment, as amended, not having been printed, is not yet ready for the action of the Committee of the Whole under the rules.

Mr. Root — Mr. President, a distinguished member of the Convention of 1867 is present in Albany, and is now within this chamber. I move that the privileges of the floor be extended to the Hon. Elbridge T. Gerry during his stay in Albany.

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

Mr. Morton offered the following resolution:

R. 130.— Resolved, That the contesting delegates of the Sixth Senatorial District be and they are hereby granted the privileges of the floor of the Convention pending the determination of said contest.

Mr. Bowers — I object.

The President — The resolution will have to stand over until to-morrow.

On motion of Mr. Root, the Convention adjourned until Thursday morning, July twelfth, at ten o'clock.

Thursday, July 12, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber at the Capitol, Albany, N. Y., July 12, 1894, at ten o'clock in the morning.

President Choate called the Convention to order.

The Rev. H. C. Searles offered prayer.

The Journal of July eleventh was read and approved.

The President — The Chair is of the opinion that an error was made yesterday in regard to the motion made by Mr. Morton to extend the privileges of the floor to the contestants from the Gravesend district. It was a question of privilege, and he had the right to have the motion taken immediately, and it was not proper to have it go over under objection. If Mr. Morton so desires, the question will now be put.

Mr. Bowers — Mr. President, I move that it be laid on the table.

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

The President put the question on the adoption of the resolution of Mr. Morton, and it was determined in the affirmative.

The President — The presentation of memorials is in order. A memorial has been received in respect to the civil service, which is referred to the Select Committee; another from Catharine A. Stebbins, in respect to the word "male" in the Constitution, which is referred to the Committee on Suffrage; another in respect to proportional representation, which is referred to the Suffrage Committee.

The President announced the order of notices, motions and resolutions, and the Secretary called the roll of the districts.

Mr. Smith — Mr. President, I have a memorial from the State Board of Trade and Transportation of New York, which I desire to present.

The President — Unless objection is made, the memorial will be received out of order and referred to the Judiciary Committee.

Mr. Speer offered the following resolution:

R. 131.— Resolved, That the Committee on Cities be directed to report to the Convention bill No. 299, to secure home rule for cities, with its action thereon.

Mr. Speer — Mr. President, this proposed constitutional amendment is one which has been pending in the Committee on Cities for three weeks. The Committee on Cities, two days ago, took a vote on it. That vote was seven to four. After, in this manner, refusing to report the amendment, and voting against it, the committee refused to report its action to this House. It seems to me, sir, that an amendment proposed to a committee, which is voted on there, and which received four votes, as this amendment did, the vote standing seven to four, should promptly be reported to this House in order that the minority of the committee may state their grounds for supporting the amendment and may have a full and fair hearing here.

The President — Does any gentleman desire to debate this resolution?

Mr. J. Johnson — I desire to debate it, Mr. President.

The President — It stands over until to-morrow, under the rules.

Mr. Speer — I rise to a point of order, Mr. Chairman. The objection came too late. The resolution was before the House.

The President — You had only stated its purport, Mr. Speer.

Mr. Dickey offered the following resolution:

R. 132.— Resolved, That after the regular routine is gone

through with, the Convention each day go into Committee of the Whole to consider general orders.

The President — Does any gentleman wish to debate this resolution?

Mr. Moore — Mr. President, ought not that to go to the Committee on Rules?

The President — The Chair is of the opinion that it should go to the Committee on Rules, and it is so referred.

Mr. Maybee offered the following resolution:

R. 133.— Resolved, That the Committee on Rules be instructed to inquire immediately into the reasons why, after a resolution of this Convention, passed some days since, directing the stenographer to furnish copy of the debates to the Convention printer, the latest printed debates upon the files of the members of this Convention are those of June twenty-eighth, and whether or not the Convention has any power or authority over the stenographer or printer.

The President — This seems to relate to the business before the House, and is open now for consideration.

Mr. Maybee — Mr. President, it is now some days since a resolution was passed by this Convention, directing the stenographer of the Convention to furnish daily reports of the proceedings to the Convention printer, but notwithstanding that resolution the latest printed debates upon the desks of the members of this Convention are those of June twenty-eighth. Now it does seem to me that something should be done to meet the necessities of the case so that the members may have the debates and proceedings before them in time.

Mr. Peck — Mr. President, it seems to me that some further explanation than has been given for the delay in furnishing the debates should be furnished to this Convention, because what has been said in regard to the debates is almost equally true of the Journal. We are without the Journal now for one whole week, which does not depend in any degree upon the stenographer. I simply call the attention of the Convention to this matter, because it seems to me that the excuse for not furnishing the debates is not entirely satisfactory.

Mr. Becker — Mr. President, the stenographer desires me to state that he has furnished the printer promptly with the work, as far as he is concerned.

The President put the question on the motion of Mr. Maybee, directing the Committee on Rules to make inquiry and report as to

the delay in furnishing printed copies of the debates, and it was determined in the affirmative.

Mr. Becker called up Mr. Lincoln's resolution (No. 127), heretofore offered, which was read by the Secretary as follows:

Resolved, That the Secretary procure to be printed for the use of the Convention, three hundred copies of a statement showing the population of the State by counties, classified as citizens and aliens, according to the enumeration of 1892; and also of the counties of Erie, Kings, Monroe, New York and Onondaga, by towns and wards, classified in the same manner.

Mr. Becker — Mr. President, the Committee on Legislative Organization is now engaged in the work of considering the apportionment of the State. After the census of 1892 was taken, the Secretary of State caused to be prepared some pamphlets containing this information and a mass of other information. The Committee on Legislative Organization made an effort to obtain those pamphlets, and received information from the Secretary of State that they were exhausted and that he had no more of them. The committee calculates that this will only occupy four or five pages of printed matter — a small matter to be printed. It would be very useful, not only to the committee but to the whole Convention. The expense, of course, will be small, and it is the wish of the committee, and they passed a resolution unanimously to that effect at the session of yesterday, that the Convention be requested to order this small number of 300 copies of this valuable information for its use and that of the members of the Convention.

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

The President announced the order of propositions for Constitutional amendment, and the Secretary called the roll of the districts.

O. 310.— Mr. J. Johnson offered a proposed amendment to article 8 of the Constitution, relative to elections in cities.

Referred to the Committee on Cities.

O. 311.— Mr. Davenport presented a proposed amendment to article 1, section 6 of the Constitution, relative to punishment for certain offenses.

Referred to the Judiciary Committee.

O. 312.— Mr. Goeller, on behalf of Mr. Tekulsky, presented a proposed amendment to section 18, article 3 of the Constitution, relating to home rule for cities.

Referred to the Committee on Cities.

O. 313.— Mr. Tucker offered a proposed amendment to section 1, article 8 of the Constitution, relative to the creating and limiting of corporations.

Referred to the Committee on Corporations.

O. 314.— Also a proposed amendment to section 2, article 8, to require payment of wages weekly to employes of corporations, and better to secure the same.

Referred to the Committee on Corporations.

O. 315.— Also a proposed amendment to article 1 of the Constitution, relating to a lawful day's work in the employment of women and minors, and to unsanitary labor in tenement houses.

Referred to the Committee on Industrial Interests.

O. 316.— Mr. Forbes presented a proposed amendment to article 8, section 1 of the Constitution, relating to corporations.

Referred to the Committee on Corporations.

O. 317.— Also a proposed amendment to section 1, article 8 of the Constitution, relating to corporations.

Referred to the Committee on Corporations.

O. 318.— Mr. Gilleran offered a proposed amendment to article 9 of the Constitution, relating to the school fund.

Referred to the Committee on Education.

O. 319.— Mr. Griswold offered a proposed amendment to article 8 of the Constitution, relating to parallel competing lines of railroad within this State.

Referred to the Committee on Railroads.

O. 320.— Also a proposed amendment to article 15 of the Constitution, relating to gifts by railroad corporations and companies to judges and members of the Legislature.

Referred to the Committee on Rules.

Mr. Griswold — Mr. President, I introduce, by request, this proposed amendment to the Constitution, making it obligatory upon the railroad corporations of this State to furnish passage free of charge to the judges of the Court of Appeals and of the Supreme Court and members of the Legislature, while in the performance of their duties. This is a very small matter, but with the mass of the people there is a good deal of suspicion and jealousy, and it makes a scandal, and we think those officers ought to be free from the suspicion of being influenced by any such consideration.

O. 321.— Mr. Gilbert offered a proposed amendment to article 3 of the Constitution, providing for the establishment of boards of arbitration.

Referred to the Committee on Industrial Interests.

O. 322.— Mr. W. H. Steele presented a proposed amendment to section 16, article 3, as to restriction on private and local bills.

Referred to the Committee on Powers and Duties of the Legislature.

O. 323.— Mr. Durfee (by request) presented a proposed amendment to article 2 of the Constitution, relating to the method of electing public officers.

Referred to the Committee on Suffrage.

O. 324.— Also (by request) a proposed amendment to section 3, article 4 of the Constitution, relating to the election of Governor and Lieutenant-Governor.

Referred to the Committee on Governor and State Officers.

O. 325.—Mr. Foote offered a proposed amendment to section 7 of article 1, to authorize the Legislature to provide for the construction of dams and reservoirs for the improvement of water powers, and to assess the expense thereof upon the property benefited.

Referred to the Committee on Powers and Duties of the Legislature.

O. 326.— Also a proposed amendment to section 4, article 2 of the Constitution, requiring the Legislature to provide for the regulation of primary meetings and conventions of political parties, and to restrict the use of money and prevent corrupt practices at such meetings and at elections.

Referred to the Committee on Powers and Duties of the Legislature.

O. 327.—Mr. Parker offered a proposed amendment to article 1, section 7 of the Constitution, relating to the drainage of agricultural lands.

Referred to the Committee on Preamble and Bill of Rights.

O. 328.— Mr. Doty offered a proposed amendment to section 6, article 6 of the Constitution, relating to the creation of a second division of the Court of Appeals.

Referred to the Judiciary Committee.

O. 329.— Mr. Becker offered a proposed amendment to article 10, section 1, so as to prevent removals by the Governor of public officers, except for good cause.

Referred to the Judiciary Committee.

O. 330.— Mr. Vedder offered a proposed amendment to section 1, article 6 of the Constitution, in relation to impeachment.

Mr. Vedder — I think, Mr. President, this proposition should be

referred to the Committee on Legislative Powers and Duties, as there are some others on the same subject.

Referred to the Committee on Powers and Duties of the Legislature.

Mr. Foote — Mr. President, I am informed that a number of similar measures, pertaining to the same subject as the second proposition introduced by me this morning, were sent to the Judiciary Committee, and, if there is no objection, I would like to have the same disposition made of that.

The President — The matter will be so disposed of.

The President announced the order of reports of standing committees, including reports upon resolutions referred to them, and the Secretary called the list of committees.

Mr. Speer — Mr. President, under this order of business I offer a resolution affecting the business before the House.

The President — Is it a report of a standing committee?

Mr. Speer — No, sir; it is for the discharge of a committee.

The President — I do not think that is in order. I do not think the call of the committees can be interrupted by that.

Mr. Speer — In the Legislature, Mr. President, it has been the custom to take such action upon this order.

The President — The Chair is of the opinion that it is not now in order.

Mr. Speer — May I ask, Mr. President, whether the minority of the committee have the power to report?

The President — I presume they have.

Mr. Lyon, from the Committee on Contingent Expenses, presented two reports; one in regard to the compensation of the stenographer of the Convention, and the other in reference to the supply of spring water for the use of the Convention.

The Secretary read the first report as follows:

The Committee on Contingent Expenses, to which was referred the annexed resolution (No. 46), requesting the Committee on Contingent Expenses to take into consideration and report upon the question of the compensation of the stenographer of the Convention for his attendance and the taking of stenographic notes of debates and proceedings of the Convention, and for the performance of such other duties as are prescribed by the rules of the Convention, reports as follows:

That the stenographer of the Convention, in addition to taking

stenographic notes of the debates and proceedings of the Convention, is required by rule 66 to transcribe and file with the Secretary of the Convention, prior to the opening of each day's session, his notes of the debates and proceedings of the preceding Convention day; and that he is further required, pursuant to the resolution of July tenth, to prepare an additional copy and deliver the same to The Argus Company from which to print the debates of the Convention, that copy of The Argus Company must, excepting upon the last day of the week's session, be delivered throughout the afternoon in order that the same may be put in type, printed and ready to be placed upon the desks of members the following morning, and that the stenographer will be obliged to employ several assistants in order to get out such copy to The Argus Company promptly; the Committee on Contingent Expenses, therefore, recommends that the compensation of the stenographer for his attendance and the taking of stenographic notes of all the debates and proceedings of the Convention, from the opening to the final adjournment of the Convention, and for the performance of all other duties prescribed by the rules of the Convention, be fixed at the sum of $1,500, which is the sum paid to the stenographer of the Senate, as well as the stenographer of the Assembly, for taking stenographic notes of the debates and proceedings of the annual session of each body; and that the stenographer of this Convention be further paid, for transcripts of the debates and proceedings of the Convention heretofore or hereafter prepared or furnished by him pursuant to the rules or resolutions of the Convention, the sum of twenty cents per folio for the first copy and five cents per folio for each additional copy.

The President — This report from the Committee on Contingent Expenses having been received and read, the question is upon the adoption of the recommendations contained in it.

Mr. Durfee — Mr. President, I should like to have the question divided.

The President — The first question will be upon the compensation of $1,500, as salary, from the beginning to the end of the session.

The President put the question on the adoption of that part of the committee's report referring to a salary of $1,500, and it was determined in the affirmative.

The President put the question on the adoption of the balance of the report, providing a rate per folio for copies of proceedings furnished, and it was determined in the affirmative.

The Secretary read the second report of the Committee on Con-

tingent Expenses, to which was referred resolution No. 99, requesting the Superintendent of the Capitol to have the water tanks in the Convention chamber supplied with pure spring water, at an expense not to exceed two dollars per day of the session, by which the committee report in favor of the adoption of such resolution.

The President put the question on agreeing to the last recommendation of the Committee on Contingent Expenses, and it was determined in the affirmative.

Mr. Goodelle, from the Committee on Suffrage, to which was referred the proposed amendment introduced by Mr. Lauterbach (introductory No. 258), entitled "Proposed constitutional amendment to amend article 2 of the Constitution, relative to suffrage," reported in favor of the passage of the same, with some amendments, which report was agreed to, and the same was committed to the Committee of the Whole.

Mr. Goodelle, from the Committee on Suffrage, to which was referred the proposed amendment, introduced by Mr. Holls (introductory No. 64), entitled "Proposed constitutional amendment to amend section 4 of article 2 of the Constitution, empowering the Legislature to enforce by law the duty of voting," reported in favor of the passage of the same, with some amendments, which report was agreed to, and the same was committed to the Committee of the Whole.

Mr. Goodelle — Mr. President, I move that we now go into Committee of the Whole on general order No. 4.

Mr. A. H. Green — Mr. President, I would like to add No. 5 also.

The President — One at a time, Mr. Green.

Mr. Green — I supposed it was proper, Mr. President, to go into Committee of the Whole on three different propositions.

Mr. Holls — Mr. President, has either of these bills been printed?

The President — Nos. 4 and 5 have both been printed.

Mr. E. R. Brown — Mr. President, the printing of the Convention has been so unsatisfactory of late that it has been practically impossible for the members to become informed in regard to the reports of committees and I believe that it would be much better to adjourn at this time until we get the printing in proper shape. I, therefore, move that the Convention do now adjourn.

Mr. Dickey called for the ayes and noes on the motion to adjourn, and the call was sustained.

Mr. E. R. Brown — Mr. President, it is not my desire to in any way interrupt the business of this Convention. The call of the roll will be an interruption of it, and, if I may be permitted, I will withdraw my motion.

Mr. Alvord — Mr. President, I rise to a point of order, that the gentleman is too late, the roll-call having been ordered.

The President — The motion can only be withdrawn with unanimous consent. Does any gentleman object to Mr. Brown's withdrawing his motion? No objection being made, the motion is withdrawn.

Mr. Alvord — Then, Mr. President, I rise to a question of privilege. I certainly rose in my place and stated distinctly that the gentleman was out of order, because of the fact that the roll-call had been ordered. Now, sir, I insist that the business of the Convention shall proceed in order, in a parliamentary manner.

The President — Does the gentleman object to Mr. Brown's withdrawing his motion?

Mr. Alvord — I do object, Mr. President.

Mr. Cochran — Mr. President, I move a reconsideration of the vote calling for the ayes and noes.

The President — It is the right of fifteen members who have voted to have a call by ayes and noes.

The Secretary proceeded to call the roll.

Mr. Dickey — Mr. President, I ask to be excused from voting, and take this occasion to say that we have some business on general orders, and I think we ought to remain in session and make progress by doing our work. That is the reason I am opposing this adjournment, because we can just as well stay in session until one o'clock each day, for, if we adjourn earlier, most of us do not know what to do with ourselves, and we had better stay here and do the work and make progress rather than adjourn so early. I withdraw my request to be excused from voting and vote no.

Mr. Peck — Mr. President, I ask to be excused from voting and will briefly state my reasons. We have no debates on our files for two weeks. We have no Journal for one week. We have no calendar at all of general orders. And because going into this order of business will enable us to determine what two of these general orders are, I now withdraw my request to be excused from voting and vote no.

Mr. Root — Mr. President, I ask to be excused from voting, and will briefly state my reasons. I think, sir, that the work of this

Convention is now being done with expedition and expediency in the rooms of the various standing committees. In my judgment, that is the way in which it should now be prosecuted. I think the true course for this Convention to follow is to occupy as few moments as possible each day in the transaction of its necessary routine business and then adjourn, in order that the committees may do the important work which is before them, and that that course of transacting business should be continued until the standing committees have substantially performed their work. I think that this Convention remaining in session now is an obstruction to its business, because its committees ought now to be in their rooms performing their duties in preparing their report of proposed constitutional amendments. I know that is true of the committees to which I have the honor to belong. Nevertheless, sir, as the great majority of the members of the Convention evidently prefer to remain here and do such work as may be before us, I withdraw my request to be excused and vote no.

The motion to adjourn was determined in the negative by the following vote:

Ayes — Messrs. Banks, E. R. Brown, Bush, Crosby, Gilleran, Holcomb, Lincoln, Nicoll, Schumaker, Titus, C. H., Truax, Veeder — 12.

Noes — Messrs. Abbott, Acker, Ackerly, Allaben, Alvord, Arnold, Baker, Barhite, Barnum, Barrow, Becker, Bigelow, Blake, Bowers, E. A. Brown, Burr, Cady, Chipp, Jr., Church, G. W. Clark, H. A. Clark, Cochran, Coleman, Cookinham, Cornwell, Curran, Davenport, G. A. Davis, Deady, Dean, Deyo, Dickey, Doty, Durnin, Emmet, Faber, Farrell, Fields, Floyd, Foote, Forbes, Francis, Andrew Frank, Augustus Frank, Fraser, C. A. Fuller, O. A. Fuller, Gallinger, Gibney, Giegrich, Goeller, Goodelle, A. H. Green, J. I. Green, Griswold, Hawley, Hecker, Hedges, A. Herzberg, Hill, M. H. Hirschberg, Holls, Hottenroth, Jacobs, Jenks, I. Sam Johnson, Johnston, Kellogg, Kerwin, Lauterbach, Lester, C. H. Lewis, M. E. Lewis, Lyon, Manley, Mantanye, Marks, Marshall, Maybee, McArthur, McClure, McCurdy, McDonough, McIntyre, McKinstry, McMillan, Meyenborg, Moore, Morton, Nichols, O'Brien, Ohmeis, Parker, Parkhurst, Peck, Phipps, Platzek, Pool, Porter, Pratt, Putnam, Root, Sandford, Speer, Spencer, Springweiler, A B. Steele, W. H. Steele, Storm, T. A. Sullivan, W. Sullivan, Towns, Turner, Vedder, Vogt, Wellington, Whitmyer, Williams, President — 116.

The President — The question is now on going into Committee of the Whole on general orders Nos. 4 and 5.

Mr. Marks — Mr. President, I would like to know what general order No. 5 is before voting upon it. It is not printed in the book.

The President — No. 5 is the report of the Special Committee on the Transfer of Land Titles, Document No. 27.

Mr. Crosby — Mr. President, I rise for information. I find two propositions marked general orders No. 4. I should like to know which one is correct.

The President — No. 4 is for authorizing the Legislature to provide laws for voting by ballot or other method. It has been amended and reprinted and is on file in the Convention overtures, so-called, as No. 289, and 303 in the printed files.

Mr. McMillan — Mr. President, I move to lay the resolution, to go into Committee of the Whole, on the table.

The President put the question on the motion of Mr. McMillan to lay the matter upon the table.

The President — The motion seems to be lost.

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

Mr. Goodelle — Mr. President, I would like to have the ayes and noes upon that proposition.

Mr. McMillan — Mr. President, I desire to say a few words upon this proposition, to explain the reason for making the motion.

The President — It is not debatable, Mr. McMillan, a motion to lay upon the table.

Mr. McMillan — It is in explanation of the motion, Mr. President. The mover of a motion has a right to explain.

The President — It is not in order.

A rising vote being taken, the motion to lay upon the table was determined in the affirmative — ayes, 67; noes, 51.

Mr. McMillan — Mr. President, I ask unanimous consent at this time to offer a resolution.

The Secretary read the resolution as follows:

R. 134.— Resolved, That the Sergeant-at-Arms cause to be placed on the desk of each delegate a file for general orders, and that all general orders be placed on said files daily in numerical order.

The President — Does any gentleman object to the consideration of this resolution?

Mr. W. H. Steele — Mr. President, I would like to inquire of the mover of the resolution just what is intended. As I look over my files I find that I have an empty file here marked "Convention Calendar." It seems to me that this file should have certain documents placed within it. I also find upon looking over my files for documents, that I have a number of documents that are marked general orders, which, it strikes me, should go in the file for calendars.

Mr. McMillan — Mr. President, it was upon that proposition that I desired to make the explanation on my motion to lay the resolution to go into Committee of the Whole on the table. Delegates will see by referring to the files marked "Convention Overtures," that there are but two general orders of the six that have been reported to the Convention, on file. By turning to the files marked "Convention Documents," it will be found that one of the general orders is on file there. It is absolutely essential, in order to discharge the business in Committee of the Whole, that we should have the general orders upon one calendar where they can be found in numerical order, and can be taken up and discussed intelligently, after having been printed.

The President — The Secretary informs the Chair that the file marked "Convention Calendar" is intended for general orders.

Mr. McMillan — Then, Mr. President, so much of the resolution as applies to placing general orders in that calendar and keeping them in numerical order, will apply.

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

Mr. Maybee — Mr. President, I move that the Convention go into Committee of the Whole on general order No. 4.

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

Mr. Dickey called for the ayes and noes upon the motion to adjourn.

The call for the ayes and noes was not supported.

The President put the question on the motion to adjourn, and it was determined in the affirmative; whereupon the Convention adjourned to July thirteenth at ten o'clock A. M.

Friday, July 13, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber at the Capitol, Albany, N. Y., July 13, 1894.

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

The Rev. C. P. Evans offered prayer.

The Journal of Thursday, July twelfth, was read and approved.

The President — The presentation of memorials is in order. The Chair has received a memorial from citizens of Brooklyn in respect to the appropriation of moneys for sectarian purposes. It is referred to the Committee on Charities. The Chair has also received a memorial from the New York Association for Improving the Condition of the Poor, in reference to a proposed census of public school children in the city of New York. It is referred to the Committee on Education.

Mr. Tucker presented a petition from the National Christian League for the Promotion of Social Purity, asking that the word "male" be stricken from the Constitution.

Referred to the Committee on Suffrage.

The President — If there are no other memorials to be presented, notices, motions and resolutions are in order. The Secretary will call the list of districts.

Mr. Hottenroth offered the following resolution:

R. 135.— Resolved, That the Secretary communicate with the State Engineer and Superintendent of Public Works to obtain, as soon as possible, approximate detailed estimates of the cost of improving the various canals of this State, specifying each separately:

1. Of the probable cost of deepening the canals to a depth of nine feet, with or without raising the banks or lowering the reservoirs or conduits thereof, and also the probable extent of the land damages that might result therefrom.

2. Of the probable cost of clearing the canals so as to give full use for navigation to the depth of seven feet.

3. Of the probable cost of lengthening all locks, not already lengthened, to a uniform length.

4. Of the probable cost of building retaining walls wherever necessary for the most effectual service.

5. Of the probable cost of constructing a suitable ship canal in place of and along the route of the present Erie canal, together with an estimate of the probable extent of land or other damages that would result from such construction.

Referred to the Committee on Canals.

Mr. Moore offered the following resolution:

R. 136.— Resolved, That the final reports of all standing or special committees shall embody in them the respective amendments, by number only, considered by them in arriving at the conclusion mentioned in such report, and in substance such report shall always state that said committee has had under consideration amendments Nos. ——, and does report on them as follows:

The President — The resolution is open for consideration. Does any gentleman wish to be heard?

Mr. Moore — Mr. President, I move the passage of the resolution.

Mr. Cochran — I suggest that the resolution be heard again.

The Secretary again read the resolution.

The President — Does any gentleman wish to debate this resolution?

Mr. Cochran — Mr. President, I suppose it should be referred to the Committee on Rules.

Mr. Root — I suppose it should go there, as of course.

The resolution was referred to the Committee on Rules.

Mr. Moore also offered the following resolution:

R. 137.— Resolved, That on the coming in of a final report of any committee, if such report be not unanimous, a minority report shall be always in order at any time before the final disposition of such report by the Convention, or at such other time as the Convention may decide.

The President — This resolution touches the rules, and is also referred to the Committee on Rules.

Mr. Hill — Mr. Goodelle, chairman of the Committee on Suffrage, has been called away and wishes to be excused from attendance from to-day's session.

No objection being made, Mr. Goodelle was excused.

The President — Constitutional amendments are now in order. The Secretary will call the districts.

O. 331.— Mr. Ackerly, through Mr. Floyd, offered a proposed Constitutional amendment to amend section 1, article 2 of the Con-

stitution, providing that female citizens may vote for election of school officers, school commissioners and appropriations for maintaining and conducting public schools.

Referred to the Committee on Suffrage.

O. 332.— Mr. Floyd (by request) offered a proposed Constitutional amendment to amend section 22, article 3 of the Constitution, so as to provide for the organization of town governments.

Referred to the Committee on County, Town and Village Government.

O. 333.— Mr. Cochran offered a proposed Constitutional amendment to article 11, relating to the militia.

Referred to the Committee on Military Affairs.

O. 334.— Mr. Cochran also offered a proposed Constitutional amendment to section 3 of article 2, so as to provide for the voting of inmates of soldiers' homes.

The President — The same committee, Mr. Cochran?

Mr. Cochran — I think it should more properly go to the Committee on Suffrage, as there are other measures on the subject before that committee.

Referred to the Committee on Suffrage.

O. 335.— Mr. J. Johnson offered a proposed Constitutional amendment to amend article 8 of the Constitution, relative to the power of appointment of certain officers in cities.

Referred to the Committee on Cities.

O. 336.— Mr. Holcomb offered a proposed Constitutional amendment to secure minority representation in the board of directors in an incorporated company.

Referred to the Committee on Corporations.

O. 337.— Mr. Sandford offered a proposed Constitutional amendment to article 9, by adding a new section relating to common schools.

Referred to the Committee on Education.

O. 338.— Mr. Tekulsky offered a proposed Constitutional amendment to section —— of article —— of the Constitution, relating to damages in actions involving the death of any citizen of this State.

Referred to the Committee on Judiciary.

O. 339.— Mr. C. S. Truax offered a proposed Constitutional amendment, relating to the public schools, and to prevent all sectarian appropriations, and amending article 8 of the Constitution.

Referred to the Committee on Education.

O. 340.— Mr. Osborn offered a proposed Constitutional amendment to article 1, as to delegation of the powers of the State.

The President — To what committee, Mr. Osborn, do you desire to have that referred?

Mr. Osborn — The Committee on Preamble and Bill of Rights.

Referred to the Committee on Preamble and Bill of Rights.

O. 341.— Mr. Gibney offered a proposed Constitutional amendment to article 3 of the Constitution, relating to arbitration, strikes and lockouts.

Mr. Dickey — I would like to have that read through, if there is no objection.

The President — Unless objection is made, the proposed amendment by Mr. Gibney will be read.

The amendment was read by the Secretary, and referred to the Committee on Industrials.

O. 342.— Mr. Gibney also offered a proposed Constitutional amendment to article 7 of the Constitution, relating to local taxation.

Referred to the Committee on State Finances and Taxation.

O. 343.— Mr. Hottenroth offered a proposed Constitutional amendment to section 6 of article 1 of the Constitution, as to taking of property for public use.

Referred to the Committee on Preamble and Bill of Rights.

O. 344.— Mr. Hottenroth also offered a proposed amendment to amend the Constitution, by adding a new clause to section 9, article 8, as to assessments for improvements.

Referred to the Committee on State Finances and Taxation.

O. 345.— Mr. Hottenroth also offered a proposed amendment to amend the Constitution by adding certain new sections after article 3, section 18, relating to railway franchises.

Referred to the Committee on Railroads.

O. 346.— Mr. Banks offered a proposed Constitutional amendment to article 7 of the Constitution, relative to State contracts.

Mr. Banks — Mr. President, I suggest that should go to the Committee on Finances.

Referred to the Committee on State Finances and Taxation.

O. 347.— Mr. Moore offered a proposed Constitutional amendment to amend section 1 of article 12, so as to further prevent bribery and corruption in election campaigns and at elections.

Mr. Moore — Mr. President, I ask that that be referred to the Committee on Suffrage.

Referred to the Committee on Suffrage.

O. 348.— Mr. Roche offered a proposed Constitutional amendment to amend section 1, article 8, relating to corporations.

Referred to the Committee on Corporations.

O. 349.— Mr. Roche also offered a proposed Constitutional amendment to section 1, article 10, relating to county officers.

Referred to the Committee on County, Town and Village Officers.

O. 350.— Mr. Peck offered a proposed Constitutional amendment to sections 2, 3, 4 and 5 of article 3 of the Constitution, to provide for the future organization of the Senate and Assembly.

Referred to the Committee on Legislative Organization.

O. 351.— Mr. H. A. Clark offered a proposed Constitutional amendment as to the powers and duties of the Legislature in forming and dividing counties, and to add a new section to article 3 of the Constitution.

The President — Mr. Clark, does that go to the Committee on Legislative Organization or Powers and Duties?

Mr. H. A. Clark — Powers and Duties of the Legislature.

Referred to the Committee on Powers and Duties of the Legislature.

O. 352.— Mr. Nichols offered a proposed Constitutional amendment by adding a new article, relating to New York State Soldiers and Sailors' Home.

Mr. Nichols — I would like to ask that that be referred to the Committee on Powers and Duties of the Legislature.

Referred to the Committee on Powers and Duties of the Legislature.

O. 353.— Mr. Andrew Frank offered a proposed Constitutional amendment to section 1, article 5 of the Constitution, relating to election of State officers.

Referred to the Committee on Governor and State Officers.

The President announced the order of reports of standing committees, including reports on resolutions.

Mr. Abbott — In the absence of Mr. McMillan, the chairman, I am requested to present the following resolution:

The Committee on Governor and State Officers respectfully reports that, having had proposed amendment No. 305 under consideration, and believing that the subject-matter thereof properly

comes within the province of the Committee on County, Town and Village Officers, therefore asks to be excused from its further consideration, and that the said proposed amendment be referred to said Committee on County, Town and Village Officers.

The President put the question on discharging the committee and referring the proposed amendment to the Committee on County Officers, and it was determined in the affirmative.

Mr. Root, from the Committee on Judiciary, to which have been referred the proposed Constitutional amendments, Nos. 7, 17, 28, 36, 53, 75 and 184, printed No. 185, relating to the subject of trial by jury, respectfully report, four members dissenting, that it has fully considered the proposed amendments, and that in the judgment of the committee no amendment should be made to the provisions of the existing Constitution relating to that subject.

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

Mr. Platzek — Mr. President, I move to disagree with the report of the committee, and especially as to No. 28, which applies to the unanimity rule, and which I introduced, and I ask to have the report set down as a special order for Tuesday week. The matter is exceedingly important; there was a division of opinion in the Judiciary Committee, and there are a number of delegates who desire to discuss the question with care and after examination, and I ask, therefore, that the matter be set down for that time.

Mr. J. I. Green — Mr. President, I move to amend by inserting the words so that the whole report of the committee, including all the proposed amendments, on which this adverse report is rendered, be considered on Tuesday week.

Mr. Platzek — I accept that amendment.

The President — Will you please put that in writing, Mr. Platzek? The Chair will call attention to the rule on this subject, which has not hitherto come up, that when a committee has reported that no amendment should be made to the provisions of the existing Constitution relating to any specific subject, and such report is agreed to, all propositions for Constitutional amendment relating to that subject, which have been referred to that committee, shall be considered as rejected. The question is on the motion made by Mr. Platzek, as amended by Mr. J. I. Green, that this subject be made a special order for Tuesday week.

Mr. Root — Mr. President, I have no objection to this being made a special order, but I think it should not be postponed until

Tuesday week. I think it should be made a special order for Tuesday. To postpone it until Tuesday week will be putting it down at a time when we will have other business to attend to. Next Tuesday we probably will have but little else to look after. Let us take things up as they come, and not postpone everything until the very close of the session. I hope, sir, that this special order will be made for next Tuesday. There is no reason why we should not discuss it then. I move to amend to that effect.

Mr. Mulqueen — I move to further amend to make it next Thursday. It seems fair that we should wait until this report is printed. We ought to have the report and the proposed amendments so that we can discuss the report intelligently. I think it is only fair to the members who have proposed the amendments that they should be given at least three or four days in order to prepare themselves for a proper discussion of the question.

The President — The question is on Mr. Mulqueen's amendment.

Mr. Alvord — Mr. President, I desire to say but very few words in addition to what has been said. We are getting into a position where we shall drive the whole of our business to the last few days in which we are paid for being in session as members of the Constitutional Convention. We now have some matters before us which we can argue upon and settle early in the time which is still to elapse before our final adjournment. I trust that the old-fashioned legislative rule will not obtain here, a practice of pushing everything down to the last few days, when men, in utter confusion as to what they do, undertake to do public business. We shall have a ragged and miserable result in the end, by such a course, and we shall not have done ourselves or our constituents that justice which we ought to have done in reference to our action here. I trust, therefore, that the motion of the gentleman from New York (Mr. Root) will prevail, to have this upon the tapis as early as Tuesday. There is no doubt in regard to the fact that it will be fully printed and before the members.

Mr. Root — Mr. President, may I say a single word upon this motion, which relates to the general business of the Convention? There are a large number of measures before the Convention and before the various committees, which bear such a relation to each other that we cannot, with benefit, discuss any one until the various committees have acted upon the others. They are so interlaced in relation to the various measures relating to the same subjects, that we ought to wait until we get the whole subject before us, and for that reason there is much that we cannot profitably discuss,

But it seems to me that where we have a single subject, disconnected from all other subjects, upon which the committees to which it has been referred have given deliberate consideration, and on which they have made their report, we ought to take that up and dispose of it while we have a clear calendar, and leave all the time we can for the consideration of the complicated matters which are to come afterward. Therefore, sir, I think that Tuesday, the next legislative day, is the time to dispose of this single and simple question whether we shall undertake to interfere with the system of jury trials in this State.

Mr. Bowers — Mr. President, I am sorry that I cannot agree with the chairman of the Committee on Rules, that we should proceed to the discussion of a report from that committee before it is even printed. We may just as well come to some general understanding, at this time, as to whether the long delay that has, of necessity, and doubtless with propriety, taken place in the deliberations of this Convention, is to result in our being called upon to pass on reports of committees of the importance of this present report, as to whether a change shall be made in the jury system of the State or not, on one day's notice, and before we have the report printed. I do not think anything will be gained by such haste. I do not think that the members of the Convention ought to think for a moment of refusing the fair request that has been made by those gentlemen, who introduced these resolutions, that they shall have only until next Thursday in which to prepare to say what they may desire in favor of their resolutions. It should not be forgotten that these resolutions, many of them, have been in the hands of the Judiciary Committee for many weeks. If the Judiciary Committee had been so anxious that these subjects, which are considered simple, should have been disposed of and gotten out of the way, it was within the power of the chairman of that committee to have had these matters acted upon weeks ago, and disposed of in this body. I shall, at all times, protest against our being called upon to act in haste or without deliberation, because it has been essential for the committees to give a long amount of time to the consideration of questions that are before them. If the delay that has thus far taken place in the presentation of reports is to be urged as a reason in the future for the Convention acting without the deliberation with which they ought to act, then, sir, I cannot agree with the statement made on the floor of this House yesterday that the Convention has not wasted its time. I hope, therefore, that the chairman of the Committee on Rules and his associates in this Convention will see fit to give to these gentlemen who introduced these resolutions an

opportunity to read our report and have it in hand a day or two before we force the discussion of the question; and I think it is quite right that they should have until next Thursday.

Mr. Griswold — Mr. President, I wish to say a word. The necessity of hastening the business of this Convention has been already stated, and with regard to the suggestion of the gentleman from New York (Mr. Bowers) that there should be opportunity generally given, and that the report should be printed, I may say that I approve of that suggestion. But, upon this question as to how many jurors must concur in a verdict, it seems to me the large majority of this Convention, of lawyers, must be as well prepared for that question as they can be at any other time. The question is of that nature that it will necessarily take up some time. Many want to speak upon it. It does seem to me that upon this question we can proceed at an early day, and thus save the time for the future.

Mr. Root — Mr. President, may I say one further word?

The President — If others do not wish to be heard.

Mr. Root — I wish simply to make the suggestion that there is nothing in the rules for the printing of this report. The report will not be printed unless the Convention orders.

Mr. Veeder — Mr. President, I would like the floor. This subject has been referred to the Committee on Preamble and Bill of Rights, and that committee is considering this question. If it is to be considered by the whole Convention, perhaps it would be as well to wait until Thursday, and let our committee be discharged from the further consideration of the measure. It would not be exactly the thing to discuss it now on its merits, while it is still being considered by another committee. Let our committee be discharged or give us some opportunity to report upon it, one way or the other, or put it over until next Thursday.

The President — The question is on Mr. Mulqueen's amendment.

Mr. Arnold moved the previous question, which was ordered.

The President put the question on the adoption of Mr. Mulqueen's amendment to substitute Thursday, the nineteenth, instead of the seventeenth, as proposed by Mr. Root, or the twenty-fourth, as proposed by the original mover, and it was determined in the affirmative by a rising vote — 61 ayes, 48 noes.

The President — The question will now be upon the resolution of Mr. Platzek as it stands amended, to make this a special order

for Thursday, the nineteenth, and the gentlemen will understand that this requires a two-thirds vote.

Mr. McDonough — Mr. President, I move to amend by making it Wednesday.

The President — The previous question has been ordered.

Mr. McDonough — I withdraw my motion.

The President put the question upon the resolution, as amended, that the matter be made a special order for Thursday, the nineteenth, and it was determined in the negative by a rising vote.

The President — The question now is on agreeing with the adverse report of the Committee on Rules.

Mr. Roche — Mr. President, I move that the report be made a special order for Wednesday next. In that connection, I desire to say that in order to meet the objection which was presented by Mr. Root and that the Convention may lose no time in its work, on Tuesday, if there is no objection, I will move that we go into Committee of the Whole on the amendment relative to pensions for civil officers, and I think that that will bring out a good deal of discussion and take perhaps the best time of the morning, so that no time will be lost, and if we do not take that up we certainly can take up the amendment relative to the use of voting machines and other apparatus in connection with elections, so that the Convention will have something to do on Tuesday and that we, therefore, will lose no time, and might postpone this very important matter until Wednesday.

Mr. Vedder — Mr. President, we ought to have an evening session for the discussion of this question and have it disconnected from all and every other kind of business. You make this a special order for Tuesday or for Wednesday during our day's session; the first thing is the reading of the Journal, then the calling of committees and going through the regular routine of business. Then there are some resolutions put in and they are debated and discussed. The Convention gets tired. Someone gets up and makes a motion to adjourn, and the Convention adjourns, and the special order is lost. Here is a clean-cut question. It ought to be deliberately discussed by the Convention, and the only way to do that is to have an evening session and to have that and nothing else done, a session expressly and only for that purpose. Members will come here for that one especial purpose. Their minds will be directed towards it. They will have nothing else in the world to confuse them and we will get through with the discussion in one evening; whereas, if you make it a special order from day to day, it may

drag along for weeks. The large majority of committees have their sessions in the afternoon. I move that this matter be made a special order for Tuesday evening next, at eight o'clock, and that no other business be done that evening; that we have a session that evening for this especial matter.

The President — Does Mr. Roche accept that amendment?

Mr. Roche — I accept the amendment, Mr. President.

Mr. Platzek — Mr. President, I want to say that so far as I am individually concerned, I would have been prepared and will be prepared to discuss amendment No. 28 on Tuesday. I stated yesterday to Mr. Root that there were several other gentlemen who had heard that this adverse report was coming in who were interested in the question and were not aware of the time when the report was coming in, and who asked that when the time arrived when the report was presented, that I should ask for a few days in order to enable them to prepare for the discussion of the amendment. I want it distinctly understood that so far as I am concerned I am not pleading for time on my own behalf. I see the temper, however, of this Convention. There is a desire to go to work, probably stimulated by some newspaper articles that have been published. I am not so sensitive on that score. I prefer intelligent discussion after ample investigation. However, I am agreed, so far as I am concerned, to the amendment of Mr. Vedder, that the question shall be set down and be argued either Tuesday or Wednesday night, and that it be continued until completed, because I regard it as a question of the utmost importance.

Mr. Bowers — Mr. President, it seems to me that the suggestion of the gentleman from Cattaraugus is a very proper one, that we have an evening session Tuesday. The matter can be discussed, and I hope the suggestion will be accepted and carried out.

Mr. Root — Mr. President, that will be quite satisfactory to me, and I think generally to the committee, to have an evening session on Tuesday or Wednesday. Anything will be satisfactory that will secure an early consideration of the matter.

Mr. Mereness — Mr. President, I deny that there is any necessity for the printing of this report. The propositions themselves have been printed and upon the desks of the members for at least a month, and there is to be no printing of the adverse report. I believe that this Convention, composed of more than 130 lawyers out of 170 members, is as well qualified now as it will be at any time to pass its judgment upon the question of whether an institution like this, that has stood for centuries, shall be disposed of or not. Therefore,

I favor the proposition of the gentleman from Cattaraugus to make it Tuesday evening and dispose of it at the earliest practicable moment.

The President put the question on the amendment of Mr. Vedder substituting Tuesday evening next, at eight o'clock, and making it a special order for that time, and it was determined in the affirmative.

The President then put the question on the resolution as amended, that the adverse report be made a special order for Tuesday evening next, at eight o'clock, and that no other business be transacted at that time, and it was determined in the affirmative.

Mr. Mulqueen — Mr. President, I move that the report be printed.

Mr. Mereness — Mr. President, I move to lay the motion on the table.

The President — The Chair would ask the chairman of the Judiciary Committee whether there is any report except the report that it should not be accepted.

Mr. Root — Mr. President, there is no report to print, except that we do not think there should be any amendment to the provisions of the Constitution upon that subject.

The President — What has been read by the Secretary contains the whole report?

Mr. Root — Yes, sir.

Mr. Mulqueen — I withdraw my motion.

Mr. Root, from the Committee on Judiciary, to which was referred the proposed constitutional amendment (introductory number 76), entitled, "Proposed constitutional amendment to amend section 6, article 1 of the Constitution, in reference to the abolition of capital punishment and discharge of persons imprisoned after indictment and awaiting trial ten months," respectfully reports that, in the judgment of the committee, no amendment should be made to the provisions of the existing Constitution on that subject.

Mr. J. I. Green — Mr. President, I ask that that take the same course pursued in reference to the previous report.

The President — It cannot be done under the order of the House, which is, that no other business shall be done at that time.

Mr. Green — Then on Wednesday evening next, at eight o'clock, Mr. President?

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

Mr. Bowers — Mr. President, I move that this be made a special order for Wednesday morning, and I make the motion for this reason: I think it will be disposed of in a very few minutes. I do not think we need give up the entire evening to it. May I inquire if this was a unanimous report of the Judiciary Committee?

Mr. Root — Mr. President, this is a unanimous report.

Mr. Bowers — Mr. President, it probably will be disposed of very shortly, and I think, without interfering with the business, we could let it stand until Wednesday morning and yet give the mover of the resolution an opportunity to be heard.

Mr. Root — Is there any reason why it should not be put down for Tuesday?

Mr. Bowers — None whatever, if the mover will accept Tuesday, I think we ought to give the mover one legislative day's time.

Mr. J. I. Green — Mr. President, I have no objection to Tuesday.

The President put the question on the amendment, making the report a special order for Tuesday next, and it was determined in the affirmative.

Mr. Root, from the Committee on Judiciary, to which was referred proposed constitutional amendment, introductory number 15, entitled, "Proposed constitutional amendment to amend section 7 of article 1, referring to taking private property for public use," respectfully reports that in the opinion of the committee no amendment should be made to the provisions of the existing Constitution relating to that subject.

Mr. Marks — Mr. President, I propose to disagree with the report of the committee, and ask that that be made a special order for next Tuesday.

The President — Immediately after the last report?

Mr. Marks — No; in the morning.

Mr. Bigelow — Mr. President, this question has been for some time under consideration in the Committee on Preamble and Bill of Rights, and I think we are about united on a report on that subject. Perhaps it differs from the report that has just been made by the Judiciary Committee, and I would suggest that this subject wait until the Committee on Preamble is prepared to report, and then the two reports may be reconciled the best way they can.

Mr. Marks — Mr. President, I will be satisfied to have the Committee on Preamble discharged from the further consideration of that report, and bring the matter up on Tuesday.

Mr. Bigelow — I think, Mr. President, that the Committee on Preamble have pretty much agreed upon a report which does not go so far as the report of the Judiciary Committee.

The President — Does Mr. Bigelow make any motion? The proper motion, if he wishes to have it take that course, would be to have it lie upon the table.

Mr. Bigelow — I will make that motion, Mr. President.

The President put the question on the motion of Mr. Bigelow to lay this report upon the table, and it was determined in the affirmative.

Mr. Root, from the Committee on Judiciary, to which was referred proposed constitutional amendment (introductory number 36), entitled, "Proposed constitutional amendment to amend section 3, article 1 of the Constitution, in regard to judgments on appeal, protection of witnesses, etc.," respectfully reports that in the opinion of the committee no amendment should be made to the provisions of the existing Constitution relating to that subject, two members dissenting.

Mr. Giegerich — Mr. President, Mr. Lauterbach, the introducer of this amendment, is absent with the Committee on Charities, and I ask that this report lie on the table until his return.

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

Mr. Root, from the Committee on Judiciary, to which was referred proposed constitutional amendment (introductory number 174), entitled, "Proposed constitutional amendment to amend the judiciary article of the Constitution," reports adversely thereto.

Mr. Root — Mr. President, that was introduced by request. I do not think that Mr. Deyo will feel aggrieved if I ask for a vote upon that report now.

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

Mr. Root, from the Committee on Judiciary, to which was referred proposed amendment (introductory number 39), entitled, "Proposed constitutional amendment to add a new article to the Constitution, in regard to presidential electors," reported adversely thereto.

Mr. Giegerich — Mr. President, in view of the absence of Mr. Lauterbach, the introducer of this proposed amendment, I ask that the same course be taken with this amendment as was taken with the other, and that the report lie upon the table.

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

Mr. Root, from the Committee on Judiciary, to which was referred proposed constitutional amendment, introductory number 214, entitled, "Proposed constitutional amendment to amend article 6 of the Constitution by inserting therein a new section, providing for electing referees," reported adversely thereto.

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

Mr. Root, from the Committee on Judiciary, to which was referred proposed constitutional amendment, introductory number 195, entitled, "Proposed constitutional amendment to amend section 10 of article 1 of the Constitution, providing that divorce proceedings be had in open court, before a judge thereof," reported adversely thereto.

Mr. Blake — Mr. President, I had the honor to offer that amendment. I offered it upon the suggestion of a distinguished member of the New York bar. I presume the idea was based upon certain proceedings that have occurred in our courts in the city of New York one or more times. Inasmuch as this committee, which is composed of some of the best minds, has given it careful attention and consideration, and report unanimously that there is no necessity for the passage of such an amendment, I do not think, sir, that I have any such information as will warrant me in requesting any further consideration of this amendment. Therefore, I, myself, am perfectly satisfied that the Convention should approve of the report.

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

Mr. Root, from the Committee on Judiciary, to which was referred proposed constitutional amendment (introductory number 196), entitled, "Proposed constitutional amendment to amend section 3 of article 15 of the Constitution," reported adversely thereto.

Mr. J. I. Green — Mr. President, I move that that be made a special order for Tuesday morning, immediately after those already assigned for that date.

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

Mr. Root, from the Committee on Judiciary, to which was referred proposed constitutional amendment (introductory number 213), entitled, "Proposed constitutional amendment to amend article 6 of the Constitution," being the judiciary article, by adding a new section thereto, reported adversely thereto.

The President — The question is on agreeing with this report. The amendment was introduced by Mr. Titus, who is present.

Mr. Titus — Mr. President, I move that that be made a special order for Tuesday next, immediately after those already assigned for that date.

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

Mr. Parkhurst, from the Committee on County, Town and Village Officers, to which was referred proposed constitutional amendment, introduced by Mr. Dickey (introductory number 6), entitled "Proposed constitutional amendment to amend article 10 of the Constitution, to do away with the office of coroner as a Constitutional officer," one member dissenting, reported in favor of the passage of the same without amendment, which report was agreed to and the same was committed to the Committee of the Whole.

Mr. Davies, from the Committee on Railroads, to which was recommitted the resolution (No. 56) introduced by Mr. Hottenroth, reported in favor of the adoption of the same without amendment, as follows:

Resolved, That the Secretary of this Convention communicate with the Secretary of State, with the mayors of cities and the railroad commissioners, to obtain:

1. A list of railroads and elevated and street surface railways in this State, for the construction and operation of which franchises have been granted, which have not been constructed, or if partly constructed, the extent of such construction.

2. A list of railroads and elevated and street surface railways in this State, for the construction and operation of which franchises have been granted, and which have been constructed, but which are not operated, or, if partly operated, the portions operated.

And also the location of the routes, the dates of the granting of the franchises, by whom granted, and whether the corporations controlling them were organized under general or special statutes.

The President put the question on the adoption of the said report, and it was determined in the affirmative.

Mr. Peck — Mr. President, I rise to a question of privilege. It is well known, probably, in this Convention that I represent in part the city of Troy. It is also represented, among the delegates-at-large to this Convention, by a gentleman who has represented his whole country in foreign parts, and this State in a prior Constitutional Convention. He is a man whose position and dignity have thus been certified, both by the government of the United States and by the people of this State twice electing him to represent them in the formation of its fundamental law. (Applause.) This Convention on the first day of its meeting further dignified him by standing one side and asking him to select his own seat.

This gentleman has been attacked editorially this morning in a manner which has excited, morally, the most intense feeling in this Convention, as an offense against moral decency. He has been attacked in a manner that it is impossible to designate otherwise than as offensive, vicious, brutal. I have no word of eulogy to speak. His record speaks for itself. But I do think that the dignity of this Convention will be asserted by a united voice, unanimously expressing the feeling which I know animates its individual members. I am not here, mind you, to defend any party associate. We never have agreed in partisan politics. I am here defending very feebly a fellow-citizen. I, therefore, ask this Convention to adopt unanimously a resolution which I will read:

Resolved, That this Convention has heard with indignation and regret that editorial attack has been made this morning upon a venerable and distinguished member of this Convention, also a member of the Convention of 1867; that the Convention condemns its publication, and hereby extends to the Hon. John M. Francis a most cordial expression of its confidence and respect, and refrains from dignifying the attack by taking further action. (Applause.)

Mr. Bigelow — Mr. President, it was with inexpressible pain and disgust that I read the article to which this resolution refers. In the whole history of our country, I can recollect of but one outrage more brutal, more inexcusable, from every point of view, than this. You will all of you recognize that it was the brutal attack of a ruffian upon Charles Sumner in the Senate of the United States.

I am persuaded, myself, that the writer of that article was not in an entirely responsible condition of mind, and, therefore, I am not disposed here to say anything in criticism of his act personally, whoever it may be. I hope, I do not know, but I would like to say I expect that he will, upon calm reflection, make such apologies, make such indemnity as it is possible now to make for this outrage upon the feelings of one of our most respected and distinguished

members. But, whether he does or not, I think it is proper that this Convention should treat this article as a menace to each individual member here, and an attack upon the liberty of deliberation in this body (applause), and resent it in the only way that we can, consistently with our own dignity, which is, I think, by a prompt and unanimous adoption of the resolution which has been offered by the gentleman, the delegate from Troy.

Mr. Root — Mr. President, I beg to most heartily second the resolution of the gentleman from Troy, Mr. Peck, and would ask that a rising vote be taken upon it.

Mr. J. Johnson — Mr. President, I desire to join in seconding the resolution that has been offered. It has been one of my greatest privileges to be associated in the committee work of this Convention with the Hon. John M. Francis, of Troy. I have felt, sir, the touch of his kindly disposition, of his enkindling patriotism, of his broad views; and I desire, sir, to add the testimony of my appreciation of his character, venerable in years and service, and to express my detestation of the attack that has been made upon him as a member of this Convention.

Mr. Alvord — Mr. President, I desire to briefly say, sir, that I have had the honor and pleasure to sit with the distinguished gentleman from Rensselaer in both the Convention of 1867-8 and this. A man who stands higher, or has shown in his life a purer atmosphere surrounding him than John M. Francis does not exist within the borders of this State. (Applause.) So far as I am concerned, I cordially and warmly give my approbation to this proposed resolution, but in addition thereto, sir, I call upon my fellow-members of this Constitutional Convention to follow me, or at least in equal rank, to send to Coventry the man whom we suspect of having committed this great wrong.

The President put the question on the motion of Mr. Peck's resolution, and it was determined in the affirmative by a rising vote.

The President — It is with the greatest pleasure that the Chair announces that the resolution has been unanimously adopted. (Applause.)

On motion of Mr. Cookinham the Convention adjourned until Tuesday morning next at ten o'clock.

Tuesday, July 17, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber at the Capitol, Albany, N. Y., July 17, 1894, at ten o'clock in the morning.

President Choate called the Convention to order.

The Rev. A. Kennedy Duff offered prayer.

The Journal of July 13, 1894, was read and approved.

Mr. Francis — Mr. President, I rise to a question of privilege. Referring to the closing proceedings of this Convention at its last session, I have to say that its unanimous action, in a matter wherein my name was made conspicuously prominent, has deeply touched my heart. This cordial expression of confidence and respect, under trying circumstances that need no exposition from me, I shall cherish as a testimonial to be considered as very sacred in memory. Democratic colleagues, with Republican representatives here uniting, as of one mind, with all the fervor of moral will power aroused to intense expression, was a manifestation unprecedented; illustrative, too, of the poetic apothegm: "One touch of nature makes the whole world kin." Mr. President and gentlemen of the Convention, while fully recognizing that personality should always be subordinate to principle and dignity, I tender to you the best I can give from this place, the offering of sincere and hearty thanks. (Applause.)

The President — The statement of Mr. Francis may be entered upon the Journal of this day's proceedings.

Mr. Bowers — Mr. President, I would like to move a correction of the Journal of July tenth, on page 350, I think, Mr. Kerwin's resolution, appearing upon that page, was that the stenographer of the Convention furnish to the Convention printer a copy of the proceedings daily. That is made to read in the Journal that the stenographer of the Convention furnish to this Convention, printed, a copy of the proceedings daily. You could scarcely imagine a change of two or three letters making a greater change in substance, and I ask that the Journal be corrected to read in accordance with the resolution.

The President — This is an obvious error, either in writing or printing.

The President put the question on the motion of Mr. Bowers to correct the Journal, and it was determined in the affirmative.

The President announced the order of presentation of memorials and stated that the Chair had received a memorial in respect to the civil service, which was referred to the Committee on Civil Service; also a memorial from the Bank of Savings of the city of New York, in respect to unreclaimed deposits, which was referred to the Committee on Banking and Insurance.

Mr. Springweiler presented a memorial from 75,125 organized wage workers of the State of New York, in favor of the proposed amendments to the Constitution, in reference to anti-conspiracy, employers' liability to employes, home rule for cities and direct legislation.

Referred to the Committee on Industrial Interests.

Mr. Hill presented the petition of Emily Gowans Sikes, Lena L. Severance, Mary M. Wardell, the educational committee of the western branch of the Association of Collegiate Alumnae, in relation to education.

Referred to the Committee on Education.

The President — A memorial from Manhattan Single Tax Club has been received requesting the Convention to consider the propriety of a constitutional amendment providing that the tax department of the various counties be compelled to publish a list containing the names of the owners of property assessed, which is referred to the Committee on State Finances and Taxation.

Mr. McDonough — Mr. President, I have a memorial from Elmer Winters, F. D. Durand and thirty other citizens of West Troy and vicinity, praying for an amendment to the Constitution providing for a commission to visit reformatories, asylums, nunneries and monasteries, wherein it is alleged people are detained against their will. I have no doubt there are many reformatories in this State where they are so detained, and it is possible that it may be well to visit them.

Referred to the Committee on Charities.

Mr. Putnam presented a petition of citizens of Buffalo in reference to civil service reform.

Referred to the Committee on Civil Service.

The President announced the order of communications from State officers.

The Secretary read a communication from the Secretary of State in reply to the resolution of Mr. Van Denbergh, reported favorably by the Judiciary Committee, of date July tenth.

Referred to the Judiciary Committee.

The President announced the order of notices, motions and resolutions.

Mr. Marks — Mr. President, I offered an amendment, which is No. 15 of the constitutional amendments, and afterwards amended that amendment. The Judiciary Committee had reported adversely upon that amendment, and I should like to have it before the Convention, in the form in which I have submitted it to that committee, printed and placed on the files of the delegates.

Mr. Bowers — Mr. President, was not that originally printed?

Mr. Marks — The amendment was originally printed, Mr. President, but I changed it very materially and then submitted it to the committee without offering it again to the Convention, simply in the type-written form. The committee passed upon it in that form, and I should like to have it before the Convenion when the matter comes up for discussion.

The President put the question on the adoption of Mr. Marks's resolution, and it was determined in the negative.

Mr. Osborn — Mr. President, on the last legislative day of the Convention I introduced a proposed amendment which was referred to the Committee on Preamble and Bill of Rights. Inasmuch as it proposes to limit the powers of the Legislature, I would suggest and request that it be also referred to the Committee on Powers and Duties of the Legislature. It is No. 349, introduced as No. 340.

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

Mr. Cookinham asked to be excused from attendance upon the session of the Convention this evening and to-morrow.

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

Mr. Hill — Mr. President, I am in receipt of a telegram from Mr. Gilbert, requesting that he be excused from attendance upon the sessions of the Convention to-day, and I move, sir, that the request be granted.

The President put the question upon the motion of Mr. Hill that Mr. Gilbert be excused from attendance, and it was determined in the affirmative.

The President stated that a telegram had been received from Mr. Peabody, requesting to be excused on account of illness until his recovery, one or two days.

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

Mr. E. A. Brown asked to be excused from attendance upon the sessions of the Convention to-morrow.

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

O. 354.— Mr. Pratt — Mr. President, I ask unanimous consent to introduce an amendment to the Constitution, and will state, as excusing my delay, that I was not aware of the defect in the Constitution which this proposed amendment seems to remedy until yesterday. The amendment is referable to the Judiciary Committee. It will not interfere with any proposed amendments that are now before that committee, and its consideration will take but a brief period of time, whether it is accepted or rejected by that committee.

No objection being made the amendment was referred to the Judiciary Committee.

Mr. Van Denbergh moved that the communication received to-day from the Secretary of State in respect to moneys paid to judges be printed.

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

Mr. Andrew Frank — Mr. President, I find, in looking over the proposed amendments that the amendment proposed by myself on Friday does not appear among the amendments, and I would like to ask the Secretary to examine the matter and see what has become of it.

The President announced the order of reports of standing committees.

Mr. Root, from the Committee on Rules, to which was referred the resolution (No. 97) introduced by Mr. Nichols June 22, 1894, concerning adverse reports of standing committees, reported in favor of the passage of the same, with one amendment.

The President — The Secretary will read the resolution.

The Secretary read the resolution as follows:

Resolved, That whenever a committee shall have acted adversely on any proposed amendment to the Constitution, such committee need not report such adverse determination unless requested in writing by the member introducing such amendment so to do.

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

Mr. Root, from the Committee on Rules, to which was referred the resolution (No. 132) introduced by Mr. Dickey, July 12, 1894,

relating to general orders, reported that, in the opinion of the committee, the subject is sufficiently covered by the standing rules, in which they deem it inexpedient to make any change at the present time.

The President — The Secretary will read the resolution.

The Secretary read the resolution as follows:

" Resolved, That after the regular routine is gone through with, the Convention go into Committee of the Whole to consider general orders."

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

Mr. Root, from the Committee on Rules, to which was referred the resolution (No. 124) introduced by Mr. Barhite July 10, 1894, requesting the Committee on Rules to report a rule concerning printing of amendments to proposed amendments, reported adversely thereto.

The President — The Secretary will read the resolution.

The Secretary read the resolution as follows:

Resolved, That it be referred to the Committee on Rules to report to this Convention a rule which shall provide for the printing, or placing in the hands of members, substitutes for proposed amendments to the Constitution, or amendments to proposed amendments exceeding twenty-five words in length, which may be offered in Committee of the Whole or in Convention.

Mr. Barhite — Mr. President, I may have forgotten the scope of my resolution, but, as I remember it, the Committee on Rules were directed to prepare a rule in accordance with that resolution, and it was not left to their discretion. I may be mistaken in that, but that is my present remembrance.

Mr. Root — Mr. President, the Committee on Rules did not understand that the Convention had done anything but refer the subject to them. If the action of the Convention was to direct the committee to prepare such a rule, I would ask that the matter be referred back to the committee. I did not so understand the action of the Convention, and I am quite sure the members of the committee did not.

The President put the question on referring the matter back to the Committee on Rules to report as it was required of them to do, and it was determined in the affirmative.

Mr. Francis — Mr. President, if in order, I have a matter which I wish to present from the Committee on Preamble and Bill of

Rights. The committee asks to be discharged from the further consideration of proposed amendment No. 266, and requests that it be referred to the Committee on State Prisons. It relates to the punishment of convicts in prisons, asylums, alms-houses, etc.

The President put the question on the motion to discharge the committee and refer the amendment to the Committee on State Prisons, and it was determined in the affirmative.

The President announced the special order, the report of the Committee on the Judiciary, which was read by the Secretary, as follows:

Mr. Root, from the Committee on the Judiciary, to which was referred the proposed constitutional amendment (introductory No. 76), entitled, "Proposed constitutional amendment to amend section 6, article 1 of the Constitution, in reference to the abolition of capital punishment and discharge of persons imprisoned after indictment and awaiting trial ten months," respectfully reports that in the judgment of the committee no amendment should be made to the provisions of the existing Constitution relating to that subject.

The President — The question is on agreeing with the report of the committee.

Mr. J. I. Green — As the proposer of that amendment, I desire to say that I understand there is another amendment before the Convention in regard to capital punishment and so I, the mover of this amendment, withdraw any objection that I may have to agreeing with the report of the committee.

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

The President announced as a special order the report of the Committee on the Judiciary, which was read by the Secretary as follows:

Mr. Root, from the Committee on the Judiciary, to which was referred the proposed constitutional amendment (No. 196) introduced by Mr. J. I. Green, entitled, "Proposed constitutional amendment to amend section 3, article 15 of the Constitution," reports adversely thereon.

The President — The question is on agreeing with the report of the committee.

Mr. J. I. Green — Mr. President, I simply desire to say, in behalf of this amendment, that the amendment was a creature born out of the recent investigations which were had in the city of New York. I desired, if possible, by this amendment, to provide that all

such investigations had before a committee of either branch of the Legislature, or before the Legislature itself, should be conducted according to the legal rules of evidence, and that a person summoned or appearing shall have the right to appear with counsel. Of course it must be evident to those gentlemen of the Convention who have followed the course of that investigation that the vilest testimony, or the vilest evidence of facts which was called testimony, was permitted to be introduced. This is simply throwing a safeguard around the innocent, and throwing a legal protection around those who may be charged or may be guilty of any offense. I desire, also, to call the attention of the delegates of this Convention to the fact that counsel who appear for persons summoned or charged with offenses before such committees, simply are there by the courtesy of the investigator. It is for that reason that I think this amendment ought to prevail and that the report of the committee should not be agreed to.

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

The President announced as a special order the report of the Committee on the Judiciary, which was read by the Secretary, as follows:

Mr. Root, from the Committee on the Judiciary, to which was referred the proposed constitutional amendment (introductory No. 123), entitled "Proposed constitutional amendment to amend article 6 of the Constitution, being the judiciary article, by adding a new section thereto," reports adversely thereon.

Mr. Titus — Mr. President, I would ask the Secretary whether or not he has received a report from the various county clerks throughout the State, as by resolution offered on June fourteenth, at the time that this amendment was introduced.

The President — The Secretary informs the Chair that he has received a large number of reports from such counties, which are on file.

Mr. Titus — I have listened to reports which have been presented morning after morning. I expected to hear reports as to this resolution, but have failed to hear them. I expected, when I had such reports, that the committee would make use of them before making an adverse report upon this amendment. I would offer the motion to recommit.

The President — Mr. Titus offers a resolution to recommit the report, which will be read by the Secretary.

The Secretary read the resolution, as follows:

Resolved, That the proposed constitutional amendment (printed No. 215, introductory No. 213), to amend article 6 of the Constitution, being the judiciary article, by adding a new section thereto, be recommitted to the Committee on Judiciary, with instructions to investigate and consider whether such amendment should not be so altered as to give the Legislature power to create such a court whenever they deem the public need requires it, and to report to this Convention with all convenient speed.

The President — The question is on the motion to recommit.

Mr. Root — Mr. President, the Judiciary Committee considered this question very carefully. They heard the gentleman who introduced the proposed amendment and gave weight to the arguments and the expression of opinion from him, as they were bound to do, and as he was entitled to have weight given to his expression. The committee were unanimous in their conclusion that we should not undertake to create or provide for a separate court of criminal appeal. If the Convention differs from the committee, why, of course, we would be perfectly satisfied with any action that the Convention should take, but I do not think it would be useful to refer the matter back to the committee. As to the information which the gentleman refers to, the information called for from the county clerk, the committee were of the opinion that, no matter what that information was, they would not think it advisable to create a separate court of criminal appeals, and, therefore, they acted without waiting for that information. The gentlemen of the committee and the gentlemen of the Convention have a good deal of information now about criminal appeals, and it hardly seemed to the committee necessary to wait. I do not see any advantage to be gained by recommitting.

Mr. Titus — Mr. President and gentlemen of the Convention, I think at least the Judiciary Committee should have waited until the information was furnished to this Convention as called for by the resolution. I appeared before that committee on their invitation, in reference to this resolution, and they reported the resolution favorably. Of course, if the chairman of the Judiciary Committee states that it makes no difference what information they received, or how much it was needed by the people, that they would report in the same way, if that is the condition of the facts, it is of no use to say anything further. But I offer this motion to recommit, that they may place it in the hands of the Legislature, should it ever deem it avisable hereafter to create such a court. In my opinion,

which may go for very little, I think there is great need for such a court. The calendar of the Court of Appeals, to be sure, now is somewhat clear, owing to an extra court that was established in 1889, and which got through with its labors here a year ago, to relieve that calendar. The law has been changed, and I think it makes it very difficult for the Court of Appeals to attend to the criminal cases on appeal and not neglect the other buisness. They no longer have to review the exceptions, alone, but a judge of that court is in duty bound to read the entire evidence which, in many cases, amounts to six or seven thousand pages. I hope the motion to recommit will prevail.

Mr. Root — Mr. President, may I make a suggestion? If the gentleman from New York, who introduced the resolution, wishes to use this information in urging upon the Convention a disagreement with the conclusions of the committee, it would, perhaps, be but fair that this matter should stand until that information is received. If he would like to have that disposition made of it, I would suggest that this matter lie upon the table until that information comes, and then he can make such use of it as he sees fit, if he wishes that disposition made.

The President — Do you make that motion?

Mr. Root — I make the suggestion if the gentleman chooses to avail himself of it.

Mr. Titus — Mr. President, I make this motion to recommit, and it is all that is necessary; and if they consider the question whether it is expedient or proper to give the Legislature that power, I will be perfectly satisfied.

Mr. C. H. Truax — Mr. President, it was stated in the Judiciary Committee, by a member of that committee who at one time occupied an office in the county of New York, that in one year there were but nine appeals in criminal actions from that county to the Court of Appeals, and, taking the usual proportion of criminal appeals and civil appeals, there would not be in the whole year more than twenty-five or twenty-six criminal appeals in the Court of Appeals. I, for one, did not consider it worth while to create a new court for the purpose of hearing twenty-five criminal appeals in the course of a year.

Mr. Marshall — Mr. Chairman, in 1890, I had occasion to examine returns in some 1,490 cases that went to the Court of Appeals, and for the purpose of ascertaining whether or not the business of the Court of Appeals was capable of subdivision in such manner as to have a court of criminal appeals, or a court which should have

given to it certain classes of business which came to the Court of Appeals. I found that in a total of 1,490 cases there were only fifty-four appeals in criminal cases. Therefore, but about three per cent of the business which came to the Court of Appeals were appeals in cases involving the criminal law. That being the proportion of business, it seems that it would be utterly unnecessary to create a new court of five judges for the purpose of taking care of that small percentage of the criminal business which would come to the Court of Appeals. Subsequent examination has indicated to me that the proportion, which was maintained among the cases which I considered at that time, was the proportion which still exists; so that, with those facts before the committee, it was thought entirely unnecessary to create a new tribunal for the purpose of taking care of the appeals in this class of cases.

The President — The question now is on the recommitting to the Judiciary Committee. The gentlemen will understand that this motion precludes debate on the main question.

Mr. Blake — I have not given the subject any consideration since the introduction of the amendment, but at that time it occurred to me to be a very meritorious one. Whilst the Judiciary Committee is composed of very able lawyers, it occurs to me, speaking now off-hand, that perhaps there are very few, if any, on the committee, who have had experience in the trial of criminal cases, at least to any considerable extent. In answer to the objection made by Mr. Truax and Mr. Marshall, I think there would be a far greater number of appeals if these poor prisoners, who are sometimes convicted innocently, knew that their appeals could be prosecuted speedily and effectually.

Mr. Maybee — I rise to a point of order, that on a motion to recommit to a standing committee, debate on the main question is not proper.

The President — Mr. Maybee's point of order is certainly well taken, that general discussion is not proper on a motion to recommit. If the motion to recommit is voted down, the discussion comes on the main question.

The President put the question on the motion to recommit, and it was determined in the negative.

The President — The question now is on agreeing to the report of the committee.

Mr. Titus — I move to lay the report on the table.

The President put the question on laying the report on the table, and it was determined in the negative.

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

Mr. Barhite — Mr. President, when the report of the Committee on the Judiciary was made on the proposed amendment, No. 76, I was not able to find that amendment and catch its import until the report of the committee had been agreed to. Upon examination, I find that it is a proposed amendment to article 6, section 1, and I desire to call the attention of the Convention to the fact that there is a proposed amendment to the same section now under consideration by the Committee on Legislative Powers and Duties, which proposed amendment has been referred to a sub-committee and reported favorably to the Committee on Legislative Powers and Duties by that sub-committee. While I cannot foreshadow the action of the committee upon the proposed amendment, I would desire to have action upon the report of the Judiciary Committee held until the Committee on Legislative Powers and Duties can pass upon the proposed amendment. I call attention to the fact that under rule 32, the report of the Committee on the Judiciary having been agreed to, all other proposed amendments for that section are considered as rejected. I, therefore, desire to move that the vote agreeing to the report of the Committee on the Judiciary on proposed amendment No. 76 be reconsidered, and that report be laid upon the table until action upon No. 120 by the Committee on Legislative Powers and Duties.

The President — I suppose that Mr. Barhite means that his motion to reconsider be laid upon the table.

Mr. Barhite — No, my motion is that the vote on the adoption of the report of the Committee on the Judiciary be reconsidered, and then that the report itself be laid upon the table until final action by the Committee on Legislative Powers and Duties.

The President — The Chair is of the opinion that those are two separate motions; that the motion must first be made to reconsider.

Mr. Root — Mr. President, I beg to call attention to what seems to be a slight misunderstanding on the part of the gentleman from Monroe (Mr. Barhite) as to the effect of rule 32. The effect of this action is merely to dispose of the proposed constitutional amendments which have gone to the Judiciary Committee, and it does not in any way whatever affect the amendment referred to the Committee on Legislative Powers.

Mr. Barhite — Mr. President, I see by again reading the rule, that the gentleman from New York (Mr. Root) is correct, and that it does not interfere with this proposed amendment. I, therefore, would withdraw my amendment.

Mr. Goodelle — Mr. President, I don't know whether it is proper at this time to call the attention of the Convention to a certain matter; on Friday, I understand, that a bill which I had the honor to propose by request was reported adversely. That was a bill (introductory No. 53), and that was put down among other bills reported as a special order for this evening. That bill was introduced, as I say, by request, and I have just received a dispatch from eminent gentlemen in New York interested in that bill, asking that it be held and not disposed of this evening. Inasmuch as there are several other questions involving the jury system to be taken up this evening, I apprehend that there will be enough work without taking up this matter, which is almost entirely independent in its character. If proper I would like to make a motion that the report of the committee on No. 53 be not considered this evening, but be taken out of the special order.

The President — That has been made a special order for this evening by a two-thirds vote. The Chair is of the opinion that it cannot be disposed of now by majority vote, but that the motion must be made this evening, when it come up on special order. The general calendar of proposed amendments on general orders will now be taken up. The clerk will proceed to state them in order, and it will be for the Convention to vote or not, to go into the Committee of the Whole upon them as they are read.

The Secretary proceeded to call the calendar, and called as far as general order No. 4.

Mr. Goodelle — I intended to move this this morning, but at the request of parties interested I do not move it now. I desire to call it up to-morrow morning.

Mr. Alvord moved that the Convention go into Committee of the Whole upon general order No. 6.

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

The Convention resolved itself into Committee of the Whole, Mr. W. H. Steele in the chair.

The Chairman — The Convention is now in Committee of the Whole on proposed constitutional amendment, general order No. 6, introductory No. 9, introduced by Mr. Alvord, read twice, and

referred to the Committee on Salt Springs, reported from said committee, with amendments, ordered reprinted, and referred to the Committee of the Whole. There is but one section, which the Secretary will read.

The Secretary then read the proposed amendment.

Mr. Alvord — Mr. Chairman, for the purpose of making an explanation, which hardly seems necessary in this matter, I move to strike out this section. Mr. Chairman, the Onondaga Salt Springs — I will endeavor to be very brief in what I have to say — were originally, under the Constitution of the State, even before the commencement of this century, taken from the sale of lands generally in the State and made a special constitutional reservation for the benefit of the people thereof. The result was, sir, in various ways and at various rates of duty for the use of the salt springs by individuals, there accumulated a large amount of money in the treasury from that source. In 1817, upon the inception of the canal policy of this State, there was a transaction by means of which the duties upon salt were raised to twelve and a half cents per bushel of fifty-six pounds. Upon the incoming of the Convention of 1821, this was made a Constitutional provision, and these various amounts of money collected from that source were placed in a fund pledged to the payment of the original Erie and Champlain canal debt. In 1834 it was found that this fund was in the treasury, so far as money was concerned, to pay the creditors of the State. Then, under a Constitutional provision, the duties were put down to six cents per bushel of fifty-six pounds. This ran along until the Constitution of 1846, and in that Constitution all power upon the part of the Constitution was taken away, and the Legislature was left to control the question of duty. They fixed it, under the plea that this was a great necessity for all people, that it should be fixed at the lowest possible rate for the purpose of simply remunerating the State for the business which it transacted in the management of the salt springs. It was reduced to one cent a bushel. Under these various combinations, alterations of prices, those Onondaga Salt Springs have paid almost a fabulous sum into the treasury of this State, running up largely into the millions of dollars over and above all the expense which it has cost the people of this State for those salt springs. Recently, sir, God, in His mercy, has shown to us that even in our own county, in its remote southern part and extending thence until it crosses the broad Mississippi and goes into Kansas, Idaho and Montana, there underlies, all the way from the Shawangunk mountains in this State even

to the borders so far as explored of Canada, and west to the extreme regions of Montana, an abundance of salt, but a very little ways under the earth's surface. The result has been that this business in our locality has actually gone down and must necessarily, in the course of human events, sooner or later, be entirely extinguished. Under these circumstances, sir, and knowing the fact that the incubus of one cent per bushel duty now placed upon our salt by the State is more than it would cost us as individuals to produce the same article for our own purposes, and believing that we should not be a hanger-on and a pauper of the State government, in the face and eyes of the last ten years, instead of paying into the treasury a surplus of large abundance, we have absolutely taken from the State Treasurer of this State over two hundred thousand dollars above and beyond any amount which has been placed in the treasury. We, under these circumstances, sir, knowing that in the very last fiscal year of which we have a report, that two hundred thousand dollars has been increased by almost forty-four thousand dollars in excess of all receipts, have come to the conclusion in our locality that it is best for us to sever our connections with the State, let the State realize what it can from this locality in the way of selling lands which now surround the salt springs, and which, under the Constitution, are protected, and leave us to go on in our course as we shall see fit and proper. Sir, under these circumstances, believing, as we do, that it is to the interest of the State to take this step at least in this Constitutional Convention, saying to all members who know, as well as I do, that this question was submitted to the people three years ago, and, owing to a mistake — whether intentional or not we know not and care not — it apparently was defeated at the polls through the State Board of Canvassers, although in reality, coming to look at the returns from Queens county and Long Island, it did absolutely pass the people of the State as a Constitutional amendment. Under these circumstances, we present this case to the Convention; and, having said all I desire to say, unless I am called forth by some person in the Convention or in the committee to say more, I desire to withdraw my motion to strike out this section, and to move, in lieu thereof, if no one else desires to speak, that the committee do now rise and report this Constitutional amendment to the Convention and recommend its passage.

Mr. Cookinham — Mr. Chairman, may I ask the gentleman one question? I desire to ask the gentleman whether or not this amendment would revive claims that had been barred by the Statute of Limitations, or by the State Constitution?

Mr. Alvord — Not in any case, Mr. Chairman, does it do any such thing in any way, shape or manner.

Mr. I. Sam. Johnson — Mr. President, I desire to ask the gentleman from Onondaga (Mr. Alvord), if he has considered the question as to whether, if this amendment is submitted to the people and it should be defeated, it would, in effect, do away with the amendment which was in fact passed three years ago. I understand that there is no question now but that that amendment was passed by the people, and that probably any person could go to the courts and ask for a mandamus compelling the State Board of Canvassers to re-canvass the vote, and thus declare the amendment carried. I have not myself considered it, and I wish to ask the gentleman if he has considered what effect this would have upon that, Mr. Chairman, in case this amendment should be defeated by the people?

Mr. Alvord — I desire to say to the gentleman that in that case if there are any rights remaining in reference to the vote of the people three years ago, they would still remain notwithstanding the defeat of this proposition. But I also desire to state to the gentleman that this question has veen very carefully examined, and the canvassing board of the State were willing and anxious to correct the error, but upon investigation of the matter, and taking the opinion of some of the soundest jurists of the State, judges as well as lawyers, they came to the conclusion that their power had utterly departed, and that we must stand by and could only recognize the final result of their canvass, and could not correct in any manner the error. But whether we could or not there is no question whatever, if it was an error, which can be by the State rectified, the passage of this resolution and its defeat by the people will not affect that.

Mr. Mereness — It seems to me, Mr. Chairman, that the remedy by mandamus has been lost by delay. I think it is a well-settled principle that, where an application is made to the court for the extraordinary remedy by mandamus, it must be made promptly. I think it has been held in a number of cases that a delay of one year has been considered sufficient reason for denying the application. As this has been allowed to slumber for about two years, it seems to me that no court could be found that would grant this extraordinary remedy. So that I think the question of the gentleman from Wyoming (Mr. Johnson), upon that subject, will be considered sufficiently answered by this suggestion.

Mr. Durfee — I will ask the gentleman from Onondaga (Mr.

Alvord) to withdraw his motion, "that the committee now rise and report progress," for the purpose of offering an amendment to the proposed constitutional amendment.

Mr. Alvord — I will withdraw it with pleasure at the request of the gentleman from Wayne (Mr. Durfee).

Mr. Durfee — I observe in reading this proposed constitutional amendment that it provides that the Legislature shall proceed to the equitable adjustment and settlement, etc., under the direction of the Commissioners of the Land Office. It seems to me a little singular that the Legislature as a Legislature, as a body, should be required to proceed to the adjustment and settlement of claims, and particularly that they should be so required to act or be required to act under the direction of the Commissioners of the Land Office. And, therefore, Mr. Chairman, I move to amend this amendment so that it shall read "the Legislature may provide by law for the equitable adjustment and settlement, under the direction of the Commissioners of the Land Office, of all claims," etc.

Mr. Alvord — I desire to say to the gentleman that he need not go any further. I accept with a great deal of pleasure his amendment, for I think it is better than my original proposition.

Mr. Barhite — Mr. Chairman, I am not very well informed as to the status of this salt industry, and I, therefore, desire to ask the gentleman from Onondaga a question which I have no doubt that he can readily answer, and in explanation of that question I desire to say that, some days before this Convention convened, I was honored by a visit from a gentleman from Syracuse who was interested in the manufacture of salt, and that gentleman stated to me that this amendment which is now under discussion would be introduced for the consideration of this Convention, and desired me to impress upon my mind the fact that it was for the interest of the State that it should be adopted. In fact his conversation was directed so exclusively to the fact that the gentleman from Syracuse desired this amendment solely for the benefit of the State, that he impressed upon my mind the fact that these gentlemen from Onondaga are much more patriotic than they are in some other portions of the State. He stated to me that there are two characters of leases of the salt reservation, and if his information was wrong the gentleman from Onondaga will correct me, that the coarse salt leases are perpetual leases in which the State pumps the water to the lessees and in consideration therefor gets in return one cent a bushel for every

bushel of salt which is manufactured. He further stated that he knew, according to the report of the superintendent of the reservation, there was a deficit last year of something like forty-three or forty-four thousand dollars, and that deficit arose from the fact that that salt reservation is, as he termed it — the words are not mine — a vast political job; that the money which is used there is expended in paying for political superintendents and assistant superintendents and assistants to assistants and other workmen who may be needed, and that that was where the money went. I turned to the report and found that the sum paid for salaries only amounted to about twenty-one thousand dollars per year, so there was a deficit of twenty-two or twenty-three thousand dollars which that gentleman could not explain to me. He further could not explain to me why the State could pump the water and get a cent a bushel for the salt and lose money and why the lessees could pump for half a cent a bushel and make money on it, as he stated to me they could do. As I said in the beginning, I do not thoroughly understand the status or why this is so, and before I vote upon this proposed amendment I would like to have the gentleman from Onondaga (Mr. Alvord) more fully explain the situation.

Mr. Alvord — I do not know, Mr. Chairman, that I could elucidate this matter any better than I have. All I can say to the gentleman who has last addressed the committee is that this is (as has been stated to him), or has been, more or less of a simple political football of each party without any distinction, when they got the place, for the purpose of affecting more or less the politics of the surrounding country, and, sir, he will find that they have various charges if he will look at the bills as sent here to Albany for pumps and boilers and coal and various other materials necessary to produce the water. It is true, sir, that all the interest we have in this matter, we who are engaged in the manufacture of salt in that locality, is the fact that we can do the same work which is supposed to be done by the State, without any difficulty whatever for one-third of a cent a bushel. Two-thirds of a cent in the manufacture of salt in our locality may keep us alive a little longer, but a very short time, in my humble opinion, and it is for this reason, sir, that we press this measure on behalf of those who are engaged in this industry in our locality. We do not desire to be an incubus upon the State treasury any longer. We do not desire it because if we are to breathe the breath of life for a few years in the future, we shall breathe it easier with the saving of two-thirds of a cent over and above what we now have to pay to the

State. But I desire to say in this connection that I own the fee of the land on which all my wells are situated. They were dug by me; all the State does is simply to pump the water so that it will run into my vats; they charge me one cent a bushel. I have done all the work necessary except merely the elevating of the water and putting it into my vats; I make the conduits to do that. It is for that reason that we desire to excise our position from the State and let the State go on its way rejoicing with no further incubus upon it in the way of having money to pay on account of the maintenance of these salt springs, and that we may have a little more of the breath of life left in us before we shall depart.

Mr. Lester — Mr. President, the most prominent thing which I notice in this proposed amendment is the provision for equitable adjustment and settlement of a certain class of claims. I have not yet heard it suggested what these claims are that are considered necessary for the insertion of an amendment in the Constitution in order to protect them. It seems to me that this is a question which ought to receive some attention. The present Constitution says nothing about any claims. What claims are these, sir, that the Legislature is incapable of equitably adjusting without the aid of constitutional amendment? This is a branch of the question that I would like to be enlightened upon.

Mr. Alvord — Mr. Chairman, it seems that I am to be catechised here from every portion of the committee. I am ready and willing to answer any question. I would tell my friend from Saratoga (Mr. Lester) in very brief words the reason of this position in reference to this amendment. The coarse salt lands are held by a perpetual lease. No Constitution can take from these people the power that they have of compelling the State to furnish them according to their contract, with water for all time to come, providing they make salt upon their lands. It is for the reason of the adjustment fairly of these perpetual leases which cannot be abrogated by this Constitutional Convention and the vote of the people, that we have put this language therein. That is all the reason. It is simply to give the right and power to settle, as that will, unquestionably, harmoniously, these questions with reference to the interest that the parties holding these perpetual leases have as against the interests of the State.

Mr. E. R. Brown — Mr. Chairman, in relation to this proposed amendment, it seems to me, so far as claims exist on account of perpetual leases or other contracts made between the manufacturers of salt and the State, that it would be impossible for us to

do anything which would affect the validity of these contracts by constitutional enactment here, as it would be in violation of the Constitution of the United States and it would require an exercise of the right of eminent domain on the part of the State to acquire that interest in real estate. But my main objection to the proposed amendment before the committee is that it is not brief enough. The Constitution for a long time has contained this section in relation to salt springs, the main provision of which was that the salt springs should not be disposed of by the State. It seems to me that if the proposed amendment had read "the present section 7, article 7, is hereby abrogated," and the whole matter had thus been remitted to the Legislature for such disposition as might seem to be wise, the case would have been covered; but, according to the terms of the proposed amendment, we lay the foundation for claims which we do not know will exist and which may have no other foundation than its provisions. We make it mandatory that the springs shall be sold, when, I believe, there is no one in this committee who knows anything about the advisability of selling them. It ought to be left to those who can investigate, properly consider and pass upon the terms to be fixed and the rights of parties who may have leases or other interests in the real estate determined. I will make this suggestion for the consideration of the gentleman who has this matter in charge, and, unless there is some explanation which will render such a motion unnecessary, I shall, at some future time, move to amend in that respect

Mr. Alvord — I have nothing more to say.

The Chairman — The question is now on the motion of Mr. Durfee.

Mr. Hotchkiss — Mr. Chairman, wouldn't it be well and in the interests of more correct expression for the last word of the fifth line to be stricken out and the word "improvements" substituted? I have no doubt that anyone who might read the section in its present form should understand what the draughtsman referred to, but it is possibly subject to two forms of interpretation, and I think the word "improvements" would rather better the wording.

The Chairman — The Chair would state that that amendment appears not to be germane to the amendment already before the committee. It would be a proper amendment for the subject of some further action.

Mr. Foote — Mr. Chairman, I desire to inquire of the gentleman from Onondaga as to the form of amendment voted upon three

years ago, or the amendment that was submitted to the people, whenever it was.

Mr. E. R. Brown — Mr. Chairman, I would like to ask what question is before the committee?

The Chairman — The question is on the amendment offered by Mr. Durfee and accepted by Mr. Alvord. The question just asked by Mr. Foote was one addressed to the Chair, but intended for the gentleman from Onondaga (Mr. Alvord), in reference to the proposed amendments to the Constitution that was not adopted two years ago.

Mr. Foote — I would like to know the form of that amendment, the form in which it was submitted for the vote of the people.

Mr. E. R. Brown — Mr. Chairman, I desire to move to amend, so as to strike out the words in the proposed amendment after the word "abrogate" in line one.

Mr. Alvord — I object to that, Mr. Chairman.

The Chairman — Does the gentleman offer that as an amendment to Mr. Durfee's amendment?

Mr. C. H. Lewis — I most certainly fail to agree with my friend from Jefferson county (Mr. Brown), in regard to his proposed amendment to strike out everything in the proposed amendment of the gentleman from Onondaga (Mr. Alvord) after the word "abrogate." There can be no doubt in the mind of any man, it seems to me, in this Convention, that the appropriate place and the appropriate form in which to reach the disposition of the salt lands are the Commissioners of the Land Office. In the section of the statute which we propose to amend, the exchange of the salt lands was left emphatically with the Commissioners of the Land Office, and the question of the exchange of salt lands has very frequently come before and been determined by that commission. I am opposed to leaving this exclusively with the Legislature, but it seems to me that the proper place and the proper officers to handle the disposition of lands under the direction of the Legislature, are the Commissioners of the Land Office. It is of but very little moment, Mr. Chairman, to the city of Syracuse whether the salt lands are or are not to be disposed of, but it is of great moment to the people of the State of New York, as has been stated here. They have been in the past a gold mine for the people of the State of New York, but under the present geological conditions that have been recently discovered, from the fact that salt is to-day being manufactured in the State of Kansas, in the State of Michigan, and along all the western States, embracing the belt that the

Onondaga salt lands cover, it is to-day impossible to manufacture salt in the city of Syracuse to any advantage to the people of the State of New York. It is time that the people of this State cease to engage in the business of salt manufacture, and I am heartily in favor of leaving this, as has been proposed by the gentleman from Onondaga, exclusively to the Commissioners of the Land Office, under the direction of the Legislature.

The Chairman — The question, as it appears to the Chair, is still upon the amendment offered by Mr. Durfee. The amendment as offered by the gentleman from the Twenty-second District, Mr. Brown, is more in the nature of a substitute than an amendment, and under our rules a substitute cannot properly be acted upon until the proposed constitutional amendment is perfected. Therefore, the Chair decides that the question before the committee is still upon the amendment offered by Mr. Durfee. Then the question would follow upon the substitute as offered by Mr. Brown, which in reality strikes out the whole section, defeats the section as it stands. If there is no other amendment to be offered, the question is now upon the amendment offered by Mr. Durfee and accepted by Mr. Alvord, the mover of the proposition.

Mr. Abbott — Mr. Chairman, I ask for the reading of the amendment as it now stands.

The Secretary read the amendment as follows:

"The present section of article 7 is hereby abrogated, and the Legislature may provide for the equitable adjustment and settlement, under the direction of the Commissioners of the Land Office, of any claim relating to the lands set apart for the use of salt springs, or erections thereon, whether such lands have been held by grant, lease or otherwise, and for the absolute sale and disposition in such manner as it shall deem equitable and proper, of all the right, interest and property of the State in such lands and salt springs."

Mr. Abbott — Mr. Chairman, I move as an amendment that we strike out all before "the Legislature may provide," etc. Strike that out, so as to leave the section as suggested by Mr. Durfee, "the Legislature may provide," etc. It seems to me it would make a more harmonious reading of the constitution with that out. My proposition is to strike out "the present section 7 of article 7 is hereby abrogated," leaving the amendment as proposed by Mr. Durfee so that the section shall read as he proposes, striking out the whole of section 7 as it now stands in the Constitution.

The Chairman — The Chair would ask the gentleman from Onon-

daga if he would accept that proposition as to the verbiage of the first three lines. If not, the question is on the amendment.

Mr. Goodelle — Mr. Chairman, I would like to inquire of the proposer of the amendment if the change is simply to make it permissive on the part of the Legislature instead of mandatory. It was difficult to hear the proposed amendment in this part of the house.

Mr. Durfee — Mr. Chairman, I would state that it does make it permissive; it leaves it within the power of the Legislature. I suppose it may indicate to the Legislature also the wish of the people that that power shall be exercised; but it occurred to me that it would be desirable to leave some discretion in the Legislature in respect to this matter rather than to make their action imperative.

Mr. Goodelle — Mr. Chairman, may I ask if there is anything involved in the proposed amendment other than making it permissive instead of mandatory? I do not think, Mr. Chairman, that this amendment should prevail. I think this Convention is as able to dispose of this question as the Legislature, and a great deal more so. I have to disagree with my colleague in that regard, and I hope that my friend from Onondaga will not accept the amendment. I think it should be mandatory instead of permissive, and I do not believe that my friend understood the proposed amendment when he said he would accept it.

Mr. Alvord — Mr. Chairman, I did not understand the amendment of the gentleman from Wayne, Mr. Durfee, as making it permissive on the part of the Legislature. I did not understand that he was changing the amendment in that respect, but that he was simply changing the phraseology of the amendment as originally proposed by me. I desire to say once for all, and then leave this to the tender mercies of the committee, that there is this fact, and it is an indisputable one, that most of the lands now utilized in the manufacture of salt and all that will be utilized after this in the manufacture of salt are held under a perpetual grant, and you cannot by any possibility take them away from the parties who occupy those lands as long as they have a mind to make salt upon them. The State has no power whatever to take from the owners, those lands. Under these circumstances we have made in this amendment a proposition that the Legislature shall have the power, and be compelled, if possible, to make arrangements with the parties by means of which the partnership which has heretofore existed between the State on the one side and the people there manufacturing salt on the other, shall be dissolved, to the mutual

benefit of both, and it is for this reason and this only that I insist upon this proposition as originally introduced by myself, with the amendment of the gentleman from Wayne, so far as it relates to the position of the language, providing that amendment does not make it permissive, but still leaves it mandatory.

Mr. Goodelle — Mr. Chairman, I think this question above all questions is one that should not be submitted to the Legislature, to leave it permissive with them. As has been stated by my colleague from Onondaga, it is well known that these springs have been used for the last fifteen or twenty years, not only by the Republican party but by the Democratic party as well, as a football which has been kicked back and forth, and that each party, when in power, has used them and sought to use them simply for its own purpose. I think to throw this subject into the Legislature and to make it permissive with them, and not mandatory, will not be progress one step in the direction in which this Convention wishes to go. I do not see how the submission of a question of this kind to the Legislature by the party in power would subserve any good purpose, for the reason that the inclination would be to retain the patronage for political ends. I think, therefore, this amendment should not prevail.

Mr. Dickey — Mr. Chairman, I think in this matter, in connection with salt matters, we may safely follow the lead of the gentleman from Onondaga, whose long familiarity with the subject has gained for him the endearing name of " Old Salt." (Laughter.)

Mr. Durfee — Mr. Chairman, I do not know of any power which can compel the Legislature to act. It seems to me, with all deference to my friend from Onondaga (Mr. Alvord), that a mandatory provision in the organic law is, to a great extent, nugatory, because I do not discover any method of enforcing it, and that the permissive language, indicating, as it will, the wish of the people, will have all the force and all the effect, in inducing action of the Legislature, that mandatory language will have. At the same time, if gentlemen think that this is a political question, or may become so in the Legislature, about which I have no knowledge whatever, and that it is desirable to change " may " to " shall," I have no special objection to that. But I put it in the permissive, rather than the mandatory form, because, as it seemed to me, that is the manner in which a provision of the Constitution ought to be put, and that we ought not to undertake to command where we cannot enforce, or where the people, whom we represent, have no means of enforcing their commands.

Mr. Abbott — Mr. Chairman, when I offered my amendment I did it with the idea that section 7 should be a new section, a substitute for the section as it exists in the Constitution, and that the first line of this proposed amendment would be surplusage. But having consulted with my friends from Onondaga, who have given this considerable thought, in deference to their views I desire to withdraw my amendment, if I may be permitted.

Mr. Spencer — Mr. Chairman, this amendment seems to be a somewhat complicated one. I confess that I have very little knowledge in respect to it, and must depend upon the information which I get here to govern me in my vote upon the subject. From what has already been said it seems to me that the directions contained in this proposed amendment, save that which abrogates the old, or the present, section of the Constitution, should not be adopted.

For one, I am not prepared to vote in favor of directing the Legislature, or any board belonging to the State, to go to work and adjust claims of which we have no knowledge, and to sell lands that are complicated by perpetual leases, and, it would seem from the reading of this amendment, by the erection of buildings or structures thereon. I think, sir, that the allusions made to the Legislature as not being the proper body to deal with this subject are not to be entertained by this committtee or Convention. It seems to me that the Legislature is the proper body to deal with this subject, and may deal with it much more properly and intelligently than a Constitutional Convention. In my judgment, this matter, save the abrogation of the present section, is one that a Constitutional Convention should not deal with; and, if we cannot leave this question of the adjustment of these claims, if there be any such, and of the sale of these lands, to the representatives of the people of this State in the Legislature, I do not know to whom we can submit it. For one, sir, I do not arrogate to myself as a member of this Convention, any greater knowledge or insight, or intelligence, than is possessed by the average member of the Legislature; and, for one, I am in favor of the proposition of the gentleman from Jefferson, to confine this amendment to the abrogation of the present section of the Constitution. His proposed amendment would leave the section not in proper form, but I am in favor of the principle contained in that proposed amendment.

Mr. Hill — Mr. Chairman, we are all agreed that the salt springs should be disposed of. It appears that the people have expressed their willingness that this course be taken, but that the record of their votes has not been properly canvassed. I do not know why the people of the State of New York should care to retain control

over these salt springs, if it be a loss to the State so to do. I have here a report of one of the officers of the State, viz., the Superintendent of the Salt Springs, and from that it appears that in the year 1893 the revenue derived from the salt springs was $34,487.40; that the expenditures were $67,581.11; that the deficiency was $33,093.71. It thus appears, Mr. Chairman, that every year the State retains control of the salt springs it is doing so at a loss. There seems to be considerable difference of opinion as to the phraseology of the proposed amendment, and it seems to me that if there be any doubt as to the meaning of the language used in this provision as it now stands, and that if we are liable to indicate that there are or may be claims to be presented, upon the strength of this amendment, against the State, then it would be well to have this matter again committed to the proper committee for further consideration. I, for one, am not ready to act, if our action is to be taken as a criterion that claims are to be revived. I cannot believe that such will be the case; but there seems to be an opinion that our action here may be taken as a basis on which to revive claims against the State. As the gentleman from Onondaga has said, it is unquestionably true that there are some existing claims which must be settled; that there are rights which must be extinguished, and that some tribunal must do it. The hour has arrived when this committee should rise and report progress and ask leave to sit again, and then the matter may be recommitted to the proper committee for further consideration of the suggestions which have been made by gentlemen from various parts of the State, and I would make that motion.

Mr. Alvord — Mr. Chairman ——

The Chairman — A motion to rise and report progress is not debatable.

Mr. Hill — Mr. Chairman, I will withdraw that motion as there is a gentleman who wishes to speak upon the proposed amendment.

Mr. I. Sam Johnson — I fully agree with the gentleman from Erie (Mr. Hill), that this committee should rise and report progress, but, possibly, before we do so, we should understand just the situation we are in, and the question asked by the gentleman on the opposite side should be answered, in reference to the constitutional amendment which was, in fact, passed by the people, which was simpler than the one introduced by the gentleman, and, with the permission of the Convention, I will read it, for it is only a few lines: " The Legislature may provide by law for the sale and disposition of the salt springs and lands adjacent thereto, belonging to this State, making just compensation to all persons having any rights

therein." That is all there was to the constitutional amendment which was submitted and which was finally passed. I am in full accord with the gentleman from Onondaga (Mr. Alvord), so far as the disposition of the State salt springs is concerned. As representing a district which furnishes more salt than any other district in the country, we have been anxious that every part of the country should go into business on its own account and not in partnership with the State. We furnish our own brine. We pay nothing to the State, and we get no benefits from the State, and we want Onondaga placed upon the same basis, but, before we do so, I think we should fully understand the effect of this amendment — whether we are making some arrangement by which, while cutting off an annual appropriation, we shall make it necessary for an appropriation of immense sums of money to pay for some supposed contracts. I am not yet prepared to agree with the gentleman from Onondaga that these perpetual contracts exist. I am inclined to the opinion, and I think, if this body makes the investigation, they will find that there are no perpetual rights, unless they may be some that have been recently secured. Hence, I think, we should act with a great deal of caution. I am of the opinion that before we pass any such amendment as this we should insert in it some clause requiring that the rights should be extinguished before the sale takes place. There is a vast amount of property, much of it lying in the city of Syracuse, which is of great value and will bring a large amount of revenue to this State providing a title can be given to it, but, if they are sold, and, when the sale is made, these gentlemen from Onondaga stand and say: "If you buy a portion of this land, you are buying a law-suit, back of the law-suit a combination of salt manufacturers in the city of Syracuse," it is easy to be seen that there will be no person who will bid to any considerable extent, and, hence, I think, that some provision should be made for extinguishing the rights before the sale takes place, and it is for the purpose of having some provision made and for the reason, suggested by myself when upon the floor, that it is doubtful whether this would not revive this constitutional provision which had been once passed, that I think it should go over, and, instead of acting upon any of these amendments, that the committee should rise, report progress and ask leave to sit again. I, therefore, make that motion, unless someone desires to speak.

Mr. Marshall — Mr. Chairman ——

The Chairman — The question is not debatable. The motion is to rise and report progress.

Mr. I. Sam Johnson — I will withdraw it, Mr. Chairman.

Mr. Marshall — Mr. Chairman, after consulting with the chairman of the Committee on Salt Springs and the representatives from Onondaga county, it has been concluded by us to offer as a substitute for the proposed constitutional amendment which is before the Committee of the Whole, the constitutional amendment which was voted upon by the people in November, 1892, and which was, in fact, carried by the people by a majority of some two thousand, although, by reason of an error in the returns from one of the counties on Long Island, Queens county, I believe, an apparent majority of some six or seven hundred was cast against the amendment. Our proposed substitute is as follows: "Resolved, That section 7 of article 7 of the Constitution be amended so as to read as follows: The Legislature shall provide by law for the sale and disposition of the salt springs and the lands adjacent thereto, belonging to this State, making just compensation to all persons having any rights therein."

It will be observed that I have substituted for the word "may," as contained in the proposition voted upon in 1892, the word "shall," so that it shall be made a mandatory provision and not a mere permissive clause in the Constitution. This form will avoid any questions which have been raised in this debate and will indicate, what the people themselves had indicated by their vote, a desire on the part of this Convention to dispose of these lands which are no longer necessary for the State, from which no revenue is now received, which, on the contrary, are the source of great expenditure over and above all revenues which may be received by the State. And, besides that, it will end a system which has become a most injurious one, from a political standpoint, in the community in which the salt springs exist. There are many useless employes paid for by the State, men who are absolutely idle during a greater part of the year, who are not needed and who are put in office merely for the purpose of helping along some political organization which is temporarily in charge of affairs. We feel, with this amendment, that the interests of the State are subserved and the protection, which those who are interested in the salt springs to-day have a right to demand, is also abundantly afforded and the Legislature is not in any way directed how it shall proceed, but it is left to its just discretion to make such provisions as shall be proper and necessary for the protection of vested rights and interests.

Mr. Augustus Frank — Mr. Chairman, it seems to me that the proposition made by the gentleman from Syracuse (Mr. Marshall) is the proper one for us to adopt. As you are all aware, Syracuse furnished the salt for the whole country almost, not only

our own State, but for the United States, to a great extent, for many years, down to about ten or twelve years ago. Then very extensive salt deposits were found in Western New York, now known as the Warsaw Salt District, where many times the amount of salt is made that is made at present in Syracuse. The people of the western part of the State have felt that it was unfair to them that in any way the State should assist the people of Syracuse in making their salt, and the people of Western New York be at their own expense entirely. For that reason, to a great extent, this amendment to the Constitution was proposed and was carried by the people three years ago. It seems to me that this can readily be settled, and in the best way, by entirely doing away with section 7 of the present Constitution and adopting the proposed amendment just offered by Mr. Marshall. It would cover the whole ground. It would do what is right and proper with everyone, and we would be relieved of the whole difficulty. The present Constitution provides that the salt springs of this State shall never be sold. If we do away with this present section 7, it settles that matter. Then the next question, and the only one, it seems to me, is to do what is right and fair and just and proper with the present Syracuse owners of the land or the lessees of the land. That covers the whole ground, and, I think, by adopting the one as proposed by Mr. Marshall we will cover it and do right by all the interests in the State.

Mr. Bowers — Mr. Chairman, it is very probable that this last amendment offered may settle a dispute which has been going on now for some considerable period, but it seems to me it creates so important a change that it ought to be printed; that we ought to have an opportunity to examine the question somewhat more fully, and for that reason I move that the committee rise, report progress and ask leave to sit again.

Mr. Cookinham — Mr. Chairman ——

The Chairman — The question is not debatable. A motion to rise, report progress and ask leave to sit again is always in order and without debate.

Mr. Cookinham — I hope the gentleman will withdraw that motion for just one moment.

The Chairman — Does Mr. Bowers do so?

Mr. Bowers — Certainly.

The Chairman — The question is withdrawn. Mr. Cookinham has the floor.

Mr. Cookinham — I do not understand the significance of using the word "shall" instead of "may." I am in accord with the views

of the gentleman, Mr. Marshall, who offered the substitute, but I do not think that the word "shall" should be used. I prefer the word "may," and will briefly state my reasons. It has been repeatedly held in our Supreme Court and also in the Court of Appeals that the word "shall" should be construed as directory, and, although the word "shall" should be used in this section, it would be no more effective than the word "may." I call the attention of the Convention to several cases. One is a case where the Constitution provides that a journal shall be kept and that the ayes and noes shall be entered in the journal. The Court of Appeals held that even though the ayes and noes were not entered, the bill was legally passed, because the word "shall" was simply directory and not mandatory. Again, they held that where the Legislature was directed by the word "shall" to take an enumeration of the inhabitants of the State and the Legislature did not take the enumeration, as directed by the Constitution, that the word "shall" was simply directory and not mandatory. It was held by the present Court of Appeals in the famous cases upon the apportionment of the State into senatorial and assembly districts that the word "shall" was simply directory and not mandatory. Now, gentlemen of the Convention, the reason I object to the word "shall" and desire that the word "may" be substituted, is this: I have introduced a measure which is now before the Judiciary Committee, construing the word "shall." I do not ask even the committee to consider that amendment yet, but when we have progressed with our business so far that we may know just what the effect will be of construing the Constitution in the way that I shall ask this Convention to provide for, then I desire to bring, first before the committee and then this Convention, the matter of construing the word "shall." That is, I propose that, when the Constitution says that any officer of this State or the Legislature of the State shall perform an act, there shall be in the Constitution a means of compelling obedience to that mandate. Under those circumstances, if the Convention adopt that view, and the Legislature meets and the Constitution provides that they shall sell these salt springs, then they shall sell them, although there shall be no purchaser, at a fair price, and, I think, the Convention would better consider that proposition. Let us suppose that the Constitution directs the Legislature to sell and that that word is mandatory, as the gentleman would have us believe it to be; then, if the establishment at Syracuse, which declares a thirty-six-per-cent dividend, offers one dollar for these lands, shall they be sold? I think, gentlemen of the Convention, that the word

" may " should be substituted for the word " shall," and, yet, I am in full accord with the substitute offered by Mr. Marshall.

Mr. Bowers — Mr. Chairman, I renew the motion which I made when I gave way to Mr. Cookinham, that the committee now rise, report progress and ask leave to sit again.

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

The committee rose and President Choate resumed the chair.

Chairman W. H. Steele — Mr. President, the Committee of the Whole have had under consideration proposed amendment to section 7 of article 7 of the Constitution, entitled " Salt Springs," have made some progress, but not having gone through with the same, have directed me, as their chairman, to report that fact to the Convention and ask leave to sit again.

The President put the question on granting leave to sit again, and it was determined in the affirmative.

Mr. Platzek — Mr. President, may I ask whether it is necessary to make a motion here that the substitute be printed?

The President — It is necessary. There is no provision now for printing.

Mr. Platzek — I make that motion, Mr. President.

The President — Mr. Platzek moves that the substitute to No. 5, offered in the Committee of the Whole, be printed.

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

Mr. Pratt — Mr. President, I move that we now adjourn.

Mr. Dickey — Mr. President, on the motion to adjourn, I call for the ayes and noes.

The ayes and noes were ordered, and the Secretary proceeded to call the roll.

Mr. Becker — Mr. President, I ask to be excused from voting, and desire to state my reasons. It is now fifteen minutes past twelve, there are several other general orders pending on the calendar which it will do no harm to consider. If we arrive at no better results than have been arrived at this morning, the mutual interchanging of views for the enlightenment of the Convention on some of these matters, we will be making a great deal of progress. Another hour of sitting will accomplish much. For these reasons, Mr. President, I withdraw my request to be excused from voting, and vote no.

The President — Before the roll is called further the Chair would inform the Convention that a motion to adjourn would carry the Convention over until to-morrow; that the proper form of the motion should be to take a recess.

Mr. Dickey — Mr. President, I ask to be excused from voting, and will state my reasons. I wish to say that in calling for the ayes and noes upon this motion to adjourn I do not wish it to be considered in any sense offensive to the members of the Convention. All I desire, as the motion to adjourn is not debatable, is to have the Convention pause and consider whether they will remain in session or go on with their work. I am fully convinced that the work we do not do now we will have to do late in September, or, possibly, in October, and when the Convention comes to reflect, all of us, I take it, would rather stay here for a little time now and work rather than to wait until late in the fall. I withdraw my request to be excused from voting, and vote no.

Mr. Durfee — Mr. President, the Committee on Privileges and Elections, of which I am a member, made an appointment for a hearing in a contested election case to-day, immediately upon the adjournment, a case in which counsel, and, very probably, witnesses, are expected from the city of New York, and which it is extremely desirable, in the view of the committee, to have disposed of as speedily as possible. I would be very glad to sit here as long as any gentleman in the Convention, to consider general orders, excepting for this engagement of the committee, which seems to be quite imperative. I, therefore, withdraw my request to be excused from voting, and vote aye.

Mr. Hotchkiss — Mr. President, a question of information. If this motion carries, does it do away with the special order, which, I understand, is fixed for this evening?

The President — The Chair understands that a motion to adjourn carries it to the next regular session day.

Mr. Hotchkiss — Then I vote no.

Mr. Pratt — Mr. President, I wish to be excused from voting, and will state that at the time I made the motion to adjourn I was not aware that the effect of the carrying of such a motion would be to put the Convention over until to-morrow. I, therefore, withdraw my request to be excused from voting, and vote no.

Mr. Bowers — In view of the announcement made by the Chair to the effect that this motion would prevent meeting this evening, I desire to change my vote from the affirmative to the negative.

Mr. Herzberg — Mr. President, I desire to change my vote from no to yes, for the same reasons.

Mr. Blake — Mr. President, for the same reasons, I desire to be recorded in the negative.

Mr. Roderick — I desire, Mr. President, to have my vote recorded in the negative.

The motion to adjourn was lost by the following vote:

Ayes — Messrs. Abbott, Allaben, Barhite, Barrow, Campbell, Cookinham, Countryman, Davies, Deady, Durfee, Faber, Francis, Frank, Andrew, Gilleran, Smith, Wiggins — 16.

Noes — Messrs. Alvord, Arnold, Becker, Blake, Bowers, Brown, E. A., Brown, E. R., Cady, Carter, Cassidy, Chipp, Jr., Church, Clark, G. W., Clark, H. A., Cochran, Coleman, Cornwell, Crosby, Curran, Danforth, Davenport, Davis, Dean, Deyo, Dickey, Doty, Durnin, Emmet, Fields, Floyd, Foote, Frank, Augustus, Fuller, C. A., Fuller, O. A., Galinger, Gibney, Giegerich, Goeller, Green, A. H., Green, J. I., Hamlin, Hawley, Hecker, Hedges, Hill, Hirschberg, Holcomb, Holls, Hotchkiss, Hottenroth, Jacobs, Johnson, I. Sam, Johnson, J., Kellogg, Kerwin, Kimmey, Lauterbach, Lester, Lewis, C. H., Lewis, M. E., Lincoln, Lyon, Manley, Mantanye, Marks, Marshall, McArthur, McCurdy, McIntyre, McKinstry, McLaughlin, C. B., McLaughlin, J. W., Mereness, Meyenborg, Moore, Morton, Mullen, Mulqueen, Nichols, Nicoll, O'Brien, Ohmeis, Osborn, Parker, Parkhurst, Peck, Phipps, Platzek, Pool, Porter, Powell, Pratt, Putnam, Redman, Riggs, Roche, Roderick, Rogers, Root, Rowley, Sandford, Schumaker, Speer, Spencer, Springweiler, Steele, A. B., Steele, W. H., Storm, Sullivan, T. A., Sullivan, W., Tekulsky, Tibbetts, Titus, Towns, Truax, C. H., Truax, C. S., Tucker, Turner, Van Denbergh, Vedder, Veeder, Vogt, Wellington, Whitmyer, Williams, Woodward, President — 126.

Mr. Hawley — Mr. President, I move that this Convention now take a recess until eight o'clock this evening, then to take up the special order.

Mr. Dickey — Mr. President, on that I ask a rising vote.

The President put the question, and it was determined in the affirmative. Ayes, 76; noes, 49.

Whereupon, the Convention took a recess until eight o'clock this evening.

EVENING SESSION.

Tuesday Evening, July 17, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber of the Capitol, Albany, N. Y., Tuesday, July 17, 1894, at eight o'clock P. M.

President Choate called the Convention to order.

The President — The question before the Convention to-night, and the only question, is whether the Convention will agree to the report of the Judiciary Committee, which will be read by the Secretary.

The Secretary read the report as follows:

Mr. Root, from the Committee on Judiciary, submits the following report:

To the Convention:

The Committee on Judiciary, to which has been referred the proposed constitutional amendments, Nos. 7, 17, 28, 36, 53, 75 and 185, relating to the subject of trial by jury, respectfully reports, four members dissenting, that it has fully considered the proposed amendments, and that in the judgment of the committee no amendments should be made to the provisions of the existing Constitution relating to that subject."

Mr. Goodelle — Mr. President, I desire to make this time a motion in reference to No. 53. This is a proposed amendment which is wholly independent of any question that occurs in the other amendments included in this report. This proposed amendment was introduced by myself, by request, and there was an understanding that I would notify the parties interested before the matter was taken up. Quite a number of gentlemen, as I understand, and distinguished gentlemen, too, are interested in this proposed amendment. I was not in the Convention on Friday, and, consequently, was not aware of the Judiciary Committee having made a report upon this proposition. During the morning session I received a dispatch asking that action upon this part of the report be suspended, and, therefore, consider it but fair and just that delay be had. I, therefore, move you, Mr. President, and I hope there will be no question over it, that the report, so far as that proposed amendment is concerned, be laid upon the table, to be brought up at some future time. I am entirely satisfied that there is enough to occupy

the attention of the Convention this evening without taking up this question.

The President — Inasmuch as Mr. Goodelle gave notice of what he proposed to do this morning, the Chair has considered the matter, and is of the opinion that the motion is not in order; that the only question before the House is on agreeing or disagreeing with this report. If it is agreed to in any particular, it goes, as matter of course, the whole report, with all the amendments referred to in it, to the Committee of the Whole.

Mr. Platzek — Mr. President, I desire to be heard on the proposition of disagreeing with the report of the Judiciary Committee, especially the amendment No. 28, which I introduced, and which refers particularly to the unanimity rule.

Realizing the experience and the wisdom of the gentlemen who compose the Judiciary Committee and the impartiality and study that they have devoted to the question, I shall be heard more particularly through the writings and sayings of jurists and law writers, rather than attempt to impress upon this Convention my own experience, notwithstanding the fact that I may have grown bald and gray in the service of our chosen profession.

Hume, the historian, speaking of the jury system, says:

"An institution admirable in itself, and the best calculated for the preservation of liberty and the administration of justice that was ever devised by wit of man."

With this I agree entirely, and at the outset assert that it is not my purpose to attack or belittle the ancient and well-worn system of trial by jury. On the contrary, it is my intention to preserve it for future generations, as it has been maintained for us, but in the light of past and present experience, to improve it by wiping out the unanimity rule and substitute the provision that nine out of twelve, or three-fourths of a jury, whatever the number may be, shall be entitled to render a verdict, in civil cases only:

Pope said:

> "The hungry judges soon a sentence sign,
> And wretches hang, that jurymen may dine;"

and this is what I want to avoid.

The propriety of the rule of unanimity has been a subject of grave doubt for more than a century.

Emlyn, as early as 1730, in his preface to the second edition of Howell's "State Trials," makes an eloquent appeal for the abolition of the rule.

Hallam, in the supplemental notes to his "Middle Ages," designates it "a preposterous relic of barbarism."

Dr. Francis Lieber, in his "Civil Liberty and Self-Government," and more particularly in an article in the American Law Register for 1867, is outspoken in his condemnation of the practice of requiring unanimous verdicts.

Bentham, in his "Essay on the Art of Packing Juries," says it could not have been the work of calm reflection, working by the light of experience, and calls it "no less extraordinary than barbarous."

Judge Cooley, in his edition of Blackstone, characterizes it as "repugnant to all experience of human conduct, passions and understandings." And, further, says that "it could hardly, in any age, have been introduced into practice by a deliberate act of the Legislature."

Ex-Governor Keorner, of Illinois, calls it "the illogical unanimity system which has become a great source of corruption, and consequent denial of justice."

In 1876 Governor Carpenter, of Iowa, in a message to the Legislature of the State, called it "an antique absurdity which has too long fettered the administration of justice."

Mr. Justice Miller, of the United States Supreme Court, in an elaborate and learned article, says: "I am of opinion that the system of trial by jury would be much more valuable, much shorn of many of its evils and much more entitled to the confidence of the public, as well as of the legal and judicial minds of the country, if some number less than the whole should be authorized to render a verdict. I would not myself be willing that a bare majority should be willing to do this. There could be but little difference in the confidence which would be reposed by the court, the public or the parties, in the opinion of five men or of seven. It should be something more than a bare majority. If the jury is to consist of twelve men, I certainly would not be willing that its verdict should represent less than eight, which is two-thirds, or, preferably, nine, which is three-fourths. Many of what are called mistrials, produced by a failure of the jury to render a verdict, would be avoided if the power were given to nine or eight to render a verdict, instead of requiring them all to unite in it, and such a verdict would be entitled to as much confidence as if it were unanimous. In respect to civil actions, where the question at issue is the right to specific property, or to damages for failure to fulfil a contract, or tax torts against the person or property of the plaintiff, this approach to perfect justice is, perhaps, as near as the fallibility of human

nature permits, and the change removes a serious objection to the trial by jury, the one which stands out as almost without support and reason or experience."

Mr. Justice Cockburn remarked: "Our ancestors insisted on unanimity as the essence of a verdict, but were unscrupulous how that unanimity was obtained; whether the minority gave way to the majority or the reverse, appeared to them a matter of indifference."

Within the last few days Congressman Bryan has introduced a bill in Congress providing that in civil cases in Federal courts, a verdict of three-fourths of the jurors constituting the jury shall stand as the verdict of the jury; and in an editorial in the American Lawyer of June, the measure is advocated. It is stated, editorially, in that journal: "A similar measure ought also to be adopted in every State, because such a measure ought to be generally adopted. It will some day be so adopted, and to have the above-mentioned bill passed will be a mighty gain for the principles it involves. The fourteen years' experience which California has had under a law operating on this principle demonstrates its value in the cause of justice."

A commission on the courts of common law, appointed in 1830, as a result of the English law reform movement, led by Bentham, Brougham and others, commented on the unanimity rule as follows:

"It is difficult to defend the justice or wisdom of the principle (of unanimity). It seems absurd that the rights of a party in questions of a doubtful and complicated nature should depend on his being able to satisfy twelve persons that one particular set of facts is the true one. This necessity must frequently lead to improper compromise (among the jurors) of their respective opinions. The interests of justice seem manifestly to require a change of our law upon this subject. We propose that the jury shall not be kept in deliberation longer than twelve hours, unless at the end of that period they unanimously concur to apply for further time. At the expiration of the twelve hours of such prolonged time, if any nine of them concur in giving a verdict, such verdict shall be entered on record and shall entitle the party in whose favor it is given to judgment."

I shall now call attention to the rule which governs in all foreign nations on the face of the earth, except England and America. The jury system is, undoubtedly, of Saxon origin, and England and America stand alone in support of the unanimity rule, of all the countries on the earth. In Scotland, prior to 1815, an agreement of two-thirds of the jury was sufficient. Then the English system was introduced and went into effect in 1830, but gave such general

dissatisfaction that in 1854 the unanimity rule was relaxed by a constitutional provision that if, after six hours' deliberation, a verdict was returned by nine of the twelve jurors, it should be effectual.

In France the jury system was established in 1771, after the French Revolution, and requires only a majority of two-thirds to render a verdict in both criminal and civil cases.

In Italy and in Germany, a majority verdict is sufficient, while in Austria the requisite number is eight, or two-thirds.

The Code of Criminal Procedure for British India, reported by Sir James Stephens, provides that if the jury are not unanimous, the judge may require them to retire for further deliberation, and, after such period as the judge considers reasonable, the jury may deliver their verdict, though they are not unanimous. When, in a case tried before the high court, the jury are unanimous in their opinion, or where as many as six are of the same opinion and the judge agrees with them, the judge shall give judgment in accordance with that opinion.

By the Code of Bahama Islands it is provided that in all criminal cases, other than capital, and in all civil cases, a verdict may be returned by two-thirds of the jury.

I shall now refer to constitutional provisions within these United States, where the unanimity rule has been broken:

In Louisiana, whose jurisprudence is based on the civil law, the Constitutional Convention in that State, held in 1879, provided that three-fourths of the jury may render a verdict; and, in 1880, the Legislature of that State so ordered.

The new Constitution of the State of California, passed in 1879, also provided that three-fourths of the jurors may render a verdict in civil cases.

Three-fourths of the jury may also render verdicts in civil cases in Idaho, Nevada and South Dakota. The territory of Montana provided in 1869, allowing two-thirds of the jury to render a verdict.

The new Constitution of the State of Kentucky, adopted in 1892, allows three-fourths of the jury to render a verdict.

In Wyoming, trial by jury is only guaranteed in criminal cases.

Texas has passed a constitutional amendment allowing three-fourths of the jury to render a verdict.

The Code of Civil Procedure of the State of New York, section 1009, provides that a party may waive his rights on trial of a question of fact by jury, first, by non-appearance at the trial; second, by written waiver; third, by oral consent in open court; fourth, by acquiescing in adverse party moving to proceed to trial without a

jury; and that has been sanctioned by the Court of Appeals in the 109 New York, page 468.

I shall now, Mr. President and gentlemen, read the opinions of two judges, in States where less than a unanimous verdict has been in operation; and then read opinions for and against the proposition by judges of the Court of Appeals of this State, of the Supreme Court of this State, and of county judges in this State. But, before I do so, I desire to add that we are here, not for the purpose of riding our own hobbies, but of giving our best thought to the interests of the people; and, therefore, I deem it a solemn and conscientious duty that, whether I have gathered information favorable to the propositions, I am arguing them as a servant of the State, and it is my duty to tell the whole truth and nothing but the truth, and allow you, as the representatives of the people, to determine whether I may be right or wrong. I will also say that I am very much indebted to Mr. Justice M. L. Wright, of the Supreme Court of this State, for his kindness in having afforded me the opportunity of presenting to you the opinions of the judges of the State to which I refer. All of these letters are here present. I have made merely abstracts from them in the briefest possible manner, which are subject to the inspection of any delegate who may desire to look at the original documents.

Judge Lorenzo Sawyer, United States Circuit judge, Ninth Judicial Circuit, comprising California, Oregon, Nevada, said: "All who have spoken of the operation of these provisions in California and Nevada, lawyers, judges and laymen, have commended the change, and I have often heard conversation on the subject. I should be glad to have the provision applicable to national courts, and this is the view of some of the district judges in my circuit."

Chief Justice Cawley, of Nevada, said: "The verdict of nine out of twelve has worked well in this State. It is approved by the people, as well as by the members of the bar and judges of the courts. It aids in the administration of justice by preventing one obstinate man, whose natural disposition is to differ from his fellow-men, from hanging a jury and preventing a verdict solely upon that ground: If nine men out of twelve impartial men, upon fair and honest reasoning, and all influenced by proper motives in their desire to reach the justice of the case, agree upon a verdict, is not the end impartially attained by accepting such a verdict? We do not require unanimity in decisions of courts; why require it from juries?"

Mr. Justice M. L. Wright, to whom I referred a moment ago, at

the time of the meeting of the Constitutional Revision Commission, of which you, Mr. President, and several other members of this body were members, issued to the judges of this State the following inquiry and received the replies which I shall read:

"Resolved, That the sixth article of the Constitution be amended by adding thereto the following provision:

"'In courts of record the agreement of ten or more jurors, and in courts not of record the agreement of five or more jurors, shall constitute the verdict of a trial jury.'"

In answer, Judge Peckham, of the Court of Appeals, said: "I am heartily in favor of a provision for a verdict by a less number that twelve."

Judge Gray said: "It would greatly forward the interests of the people. It is a step in the right direction, which should long since have been taken."

Judge Earl said: "I agree that in civil and minor criminal cases unanimous verdicts should not be required. In such cases I think it would be safe to allow the judge to receive a verdict from nine out of twelve. I say 'allow the judge.' He should not receive such a verdict, unless it also has his concurrence. Unless he thinks it is just and right to take such a verdict, then the verdict should be unanimous. In the case of felonies, I think it would be safe and wise to let the judge, in his discretion, take the verdict of eleven jurors, so that one stubborn or corrupt juror cannot defeat a verdict."

Chief Justice Ruger wrote that his time had been so occupied that he could not find the leisure to devote the necessary time to consideration of the subject.

Judge Martin, of the Supreme Court of the State of New York, said: "I am quite strongly of the opinion that a unanimous verdict should not be required in civil actions. The number required to agree should be not less than eight nor more than ten. That there should be a change in the system I am quite certain. The verdict of ten jurors should be sufficient in criminal cases, except where the punishment is death."

Judge Edwards said: "There is no sound reason for the rule requiring a unanimous verdict in civil actions. It is not consistent with the genius of our institutions. Experience has shown it to be at times pernicious in practice. In civil actions the proposed amendment would greatly conduce to the proper administration of justice."

Judge Forbes said: "The amendment ought to make the concurrence of nine jurors sufficient in courts of record, and four in courts not of record in all civil actions."

Judge Dykman said: "I am very strongly in favor of the amendment providing for a majority verdict in all cases. I would place the number at ten and six, as you have done."

Judge Putnam said: "Your resolution entirely agrees with my views, and I hope it will be adopted by the revision commission. It is possible that it would be well to make an exception in the cases of murder in the first and second degrees, requiring in such cases the agreement of twelve jurors."

Judge Williams said: "In all cases, nine jurors should be permitted to render the verdict, except criminal cases punishable by imprisonment for life or by death."

Judge Landon said: "The requirement of unanimity affords a delay and denial of justice, tempts evil practices, and, therefore, is unworthy a free government."

Judge Fish said: "I cordially approve the proposed change, if we can have a modification of the present plan of selecting jurors, so that they will come from a higher plane of intelligence and education."

Judge Tappan said: "I approve, provided a system of selection is devised which will insure intelligent jurors. Unless a qualification of jurymen can be approved, I am opposed to allowing less than twelve men to render a verdict."

Judge Churchill said: "The proposed majority verdict should be received after the jury has been in deliberation six, eight or twelve hours."

Judge Van Brunt said: "I am of the opinion, however, that the rule might be so modified as to permit a verdict to be entered if less than twelve jurors agree, provided the court approves the verdict, but no such approval should be necessary where the jury is unanimous. In other words, the court should have a veto power as to the verdict, except where all the jurors agree. I think that some such safe-guard is necessary, as the two or three dissenting jurors are not always, by any means, wrong."

Judge Rumsey said: "Theoretically, of course, the requirement of unanimity has very little to sustain it, and the rule requiring only a majority of jurors to render a verdict is quite enticing. I have no doubt that if we were now about to establish the institution of trial by jury, we would provide that the verdict should be rendered by a majority of jurors. But the question is not whether the institution is theoretically approved or whether the men who advised it were wise or cultured, but whether, upon the whole, it has worked reasonably well and has resulted satisfactorily, and whether there is reason to believe that the proposed change will

make it more useful or more satisfactory. * * * If it is advisable to make any change, your proposition strikes me as a very sensible one. I certainly would not permit a verdict to be rendered by a bare majority, but would require so large a number to concur in it as to insure that there was a careful and conscientious discussion among the jurors where there was considerable contradiction of evidence. Above all, if the change is made it should apply to criminal as well as civil cases. I can conceive of no reason for retaining it in one and abandoning it in the other."

Judge Learned said: "The present system seems to work out about as much justice as can be expected in this world. Jurors often bring in verdicts which are illogical, yet right."

Judge Daniels said: "The common-law requirement of unanimity seems to have arisen out of the conviction that a claim to what appears to belong to another ought not to succeed on any less measure of proof than that which will convince twelve men that it is well founded. The stability of personal rights and the rights of property should not lightly be disturbed or set aside."

Judge Kennedy said: "My own judgment is that it would not be prudent to make any change in the jury system."

Judge Lewis said: "The matter referred to has been much discussed in the public press and by the profession. There are some reasons which favor your plan and some argument urged against it. My prejudices are quite strong in favor of the existing state of things."

Judge Bradley said: "While the change suggested may have its merits, I am not prepared to say that, on the whole, it would be any improvement on the present system."

Judge Pratt said: "I do not think that any change in the jury system is feasible or wise. I regard the present jury system the best ever known."

Judge Childs said: "I favor a unanimous verdict, and am opposed to the change suggested."

Judge Ramsey said: "Disagreements are injurious, but the verdict of ten out of twelve would not lessen the evil. Average judgment of twelve men desired."

Now, I shall read the opinions of county judges:

Judge Cady said: "I decidedly approve of the plan which calls for an amendment to the Constitution which shall provide for a majority. * * * Much delay, vexation and expense necessarily follow unanimous verdicts. The change should be carefully considered in its details."

Judge McCartin said: "I consider the resolution a wise provision."

Judge Garretson, of Queens county, said: "It will facilitate the disposition of business and promote justice."

Judge Taylor, of Chemung county, said: "I am in hearty accord with your proposed amendment."

Judge Hazleton, of Seneca county, said: "The change will add much to the proper disposition of cases."

Judge Sanderson, of Greene county, said: "It would reduce the hardships of disagreements to a minimum."

Judge Cowles, of Wayne county, said: "No other method will avoid prejudice, passion and favoritism. Every judge has disagreements which can be accounted for only by the fixing of one juror."

Judge Weiant, of Rockland county, said: "Have no hesitation in indorsing the proposed change. The present system often leads to miscarriage of justice."

Judge Wendell, of Montgomery county, said: "I desire to say that I am for the resolution."

Judge Underwood, of Cayuga county, said: "I am clearly of the opinion that the modification which your resolution contemplates might safely and properly be extended to the trial of civil actions."

Judge Kennedy, of Madison county, said: "No objections to change, but would except felonies."

Judge Sewell, of Delaware county, said: "I consider the proposed amendment a positive necessity."

Judge Turner, of Lewis county, said: "The proposed change has many strong and weighty reasons in its favor. The majority of our lawyers favor it."

Judge Norton, of Allegany county, said: "The resolution meets my most cordial approval. The members of the bar of this county favor this resolution."

Judge Young, of Suffolk county, approves, except in criminal cases punishable by ten years' imprisonment or death.

Judge Millar, Niagara county, said: "Old rule should be changed. Amend the Constitution by giving the Legislature power to reduce number necessary to form a verdict, to ten or nine jurors."

Judge Beattie, of Orange county, said: "The proposed amendment would be beneficial."

Judge Evans, of Oneida county, said: "Possibly in civil jurisdiction it might be advisable."

Judge Beaman, of Franklin county, said: "Have firm belief that change will meet hearty approval of the bar and litigants."

Judge Northrup, of Onondaga county, approves in civil cases. Says: "The wise administration of justice will be furthered by the change."

Judge Lamont, of Schoharie county, approves and says: "The practice of jury fixing would receive its quietus by this amendment."

Judge Metcalf, of Ontario county, says: "I am heartily in favor of it and hope the Convention will adopt it."

Judge Smith, of Essex county, says: "I am in favor of the change."

Judge Lillie, of Washington county, says: "I approve to the end that one or two men shall not produce a miscarriage of justice."

Judge Signor, of Orleans county, says: "The amendment would promote the ends of justice. It would make jury fixing a lost art."

Judge Guernsey, Dutchess county, says: "One or two ought not to be able to set at naught the views of ten or eleven."

Ex-Judge Riegel, Onondaga county: "The change would correct great and crying evils without producing new ones. The unanimous rule has been a great obstacle in the administration of justice."

Contra opinions of county judges:

Judge Kellogg, of St. Lawrence county, says: "Have felt that there was something wrong about requiring a unanimity of jury to make a verdict. I have grave doubts about the advisability of changing the law, and, especially, in criminal cases, believe that it is as well as it is."

Judge Seaver, of Erie county: "The old rule should not be changed. Disagreements I have had were justified."

Judge Nash, of Livingston county, says: "I believe that improper influence would be more likely to succeed if a majority of the jurors were allowed to make up a verdict. With all its defects, I do not believe that any better method could be devised."

Judge Werner, of Monroe county, says: "It seems to me that there should be no change in the rule requiring unanimity of decision in criminal cases. I am further of the opinion that the question, as related to the trial of civil cases, should be very carefully examined before any change is made."

Judge Vreeland, of Cattaraugus county, says: "All things considered, I am in favor of the proposed change."

Judge Clearwater, of Ulster county, says: "The present system has worked well for many generations, and, in comparison with the good accomplished by its aid, the resultant harm has been so insignificant that it may fairly be said to have been practically inappreciable."

I have, therefore, read opinions *pro* and *con* from judges where the unanimous rule has been abolished, who have had the practical experience of presiding over juries, and they tell us that the rule has worked in the interest of justice, and has prevented miscarriage of justice time and again. I have read considerable on this question; I know the thought and written expression of jurists and writers for more than a century, and I can say, as the result of that study, that those men who have elevated our profession, who have made the law a science, are all agreed that the rule requiring the unanimous verdict is wrong, and not intended to mete out justice, but more frequently to defeat it. I have read and reasoned upon the causes for and against, assigned by writers and jurists. I may be wrong, and, certainly, I shall not claim that I am infallible, but, as that study and reasoning addresses itself to my understanding, I do not find a single substantial reason assigned by those men who have written or spoken in favor of the rule requiring a unanimous verdict, which seems consistent. The strongest argument which appears to run throughout the whole current of writings upon this question, and which the opponents hammer at, and talk at, and write about, is that where the rule requires a unanimous verdict, it impresses a solitary individual with the importance of his position and imposes upon him a more sacred obligation. I cannot acquiesce in any such opinion. I believe that the juror is impressed with the sacredness of his obligation, if he be a man entitled or fit to serve as a juror, by the oath that is administered to him when he enters the jury-box, and that individual who requires additionally his self-aggrandizement and importance, that he, one of twelve, is there to discharge a sacred trust, and could not perform that duty conscientiously and according to law, if three men had a right to disagree with him and nine men had a right to render a verdict, I say that such a man is unfit to serve as a juror in these free United States and in our enlightened age. And whatever that argument may have been worth in days gone by, before we had advanced in civilization and culture, as we boast we have, and in particular in these United States, it falls to the ground now when analyzed in the light of reason and philosophy and justice.

Now, need I call attention to the fact, notwithstanding what some of our friends of the press have seen fit to say in regard to the large majority of us here being members of the legal profession, that it is the experience of those men who have practiced law for many years, that when a jury retires to the jury-room, time and again men will cast their ballots blank or otherwise, knowing that

the ballot is not final, but merely for the purpose of calling out the opinion of some other juryman, and then changing their views as necessity requires to complete the contract with which they entered that jury-room? Besides, I insist that the rule which requires a unanimous verdict often calls out a verdict which is not the conscientious determination of jurors. It is frequently a compromise, not alone of opinion, but of the rights of the litigants in the cause tried before those men. It becomes very frequently a question of the best-fed man, the one who can stand hunger longest, the one who has not a social engagement for dinner or to make an after-dinner speech, or who is free from business engagements. It is the experience of all that many a juryman in the jury-room will forget his duty, fail to recall that he took an oath when he entered the jury-box, in his desire either to keep a social engagement or to get his meal or to go about his own business. I say that that brings about compromise, and I always regard compromise as failure. I think the history of the world has been, and law and legislation will bear me out, that the position I have taken is the correct one.

Another suggestion: Destroy the rule of unanimity, and, in my humble opinion, jury fixing will be a lost art; and, so far as I am concerned, I will not endeavor to find any other avocation for those gentlemen who are engaged in it, but will be willing to have them shift for themselves, as they have corrupted justice in the past.

Another word: Has there been a case that has excited popular comment, one which the papers took up, a case that was advertised and written about all over the country, where it was possible to empanel a jury that was absolutely free from prejudice? I mean twelve men, or, if you please, eleven men; and is it not our experience that as a result of such trials, more frequently mistrials, public indignation has risen high, and in many instances properly so, because of the miscarriage of justice, due, at times, to the prejudice of a few men in the jury-box who will allow themselves to be controlled frequently by the obstinacy of one juror who would stand out against eleven?

I say that if you wipe out the rule requiring a unanimous verdict, the jury-fixer will have lost his avocation. It is harder and dearer to buy three men than to buy one; and, besides, I cannot see the wisdom of the argument that this one man can mete out justice, but that eleven cannot. Does it not look queer to you that if nine men, on their oaths, listening to a state of facts presented to them solemnly in court when they are in the jury-box have practically made up their minds before they leave that jury-box what their verdict will be, that it should be within the power of one man to

cause a mistrial, a miscarriage of justice? Is it not fair to assume that, if nine men reach a conclusion based upon facts, from their own consciences, that should be enough in a civil action and that no one, or two, or three men should be enabled or empowered to stand in the way of the rendition of a verdict by nine? And I say that, in the light that there shall be twelve honest men in the jury-room, eliminating entirely, for the purposes of the argument, the element of corruption or influence, dishonestly exerted.

Now, we all know how weak human nature is; and I always endeavor to draw a very broad distinction between stubbornness and courage of one's convictions. A stubborn man in the jury-room will never yield. Reason cannot be addressed to his mind. I do not know who made the statement, but I read it somewhere, that a strong-headed man is a weak-minded man; and so he is, because he is not susceptible of reasoning. And, while speaking of the distinction between stubborness and earnestness, I recall an anecdote that was related some time ago. This is supposed to have taken place on a farm — I don't know whose farm. The farm ran along the line of the railroad, and the farmer was the happy possessor of a very valuable imported ox. On this particular day the ox jumped the fence upon the railroad track. A train came along, with the locmotive puffing and blowing, the engineer whistling and making all the noise he could, and, yet, there stood that ox unterrified and undismayed. The farmer in the field stood looking with pride at his favorite beast, applauding him for his courage. There stood the ox, with nostrils distended, defying everything, and, particularly, the engine. In a few minutes along came the locomotive, swept the ox away and scattered him into a thousand pieces. Then the farmer realized the situation, and remarked: "Well, Jerry, I admire your courage, but I damn your judgment."

That is precisely the distinction that I want to draw between the honest man who goes into the jury-room stubborn, and the intelligent and conscientious man who is susceptible to reason and argument; and, as I said before, eliminating entirely the element of dishonesty and corruption, which is frequently known to take place in a jury-room.

Now, there is one other suggestion that I desire to urge. Congress adopts laws for these great United States by a majority of the persons elected to both Houses. Every State Legislature within our country adopts laws by a majority of those who are elected to both branches thereof. The Supreme Court of the United States renders decisions by a majority of its judges. The General Terms of the Supreme Court and the Court of Appeals of this State render

decisions by a majority vote. This Convention will adopt every amendment which it will present to the people by a majority of the votes of all the delegates elected, and, when our work is presented to the people for their vote, a majority of the votes cast will determine the question of the adoption of the Constitution we shall present.

Now, I ask, in all fairness and in all reason, why, if courts decide upon questions of law and fact by a bare majority verdict, should the rule require that the verdict of a jury can be rendered only upon the unanimous vote of every man in the jury-box? I insist that it is against the spirit of our republican form of government; and, much as I am attached to the jury system and always shall be, I am not in favor of the rule requiring a unanimous verdict.

I have other statistics, Mr. President, which I will not read, because I have already taken up considerable time of this Convention, and those are matters easily ascertained, from me or anyone else; and it is not expedient that so much time should be devoted to the mere reading of statistics.

Now, Mr. President, I do not ask any radical change. I am not attempting to destroy the jury system, to undermine or weaken it. I want to strengthen and improve it, to hand it down to future generations, sacred, but in an improved state, in the light of the present age, education and experience. I know of but one reason to-day that will prevent this Convention from adopting this amendment, destroying the unanimity rule, and that is this: Ancient history, sacred tradition. It has worked well for 1,200 years, and, therefore, it must go on forever. I revere everything that is old, provided it is right; and even if it is not entirely right, and I can find no substitute for it, I am willing to stand by and approve of it, because of the trial it has had. But, if it possible to improve that which is old and which is sacred, which is traditionary, why should we hesitate because it is old?

I believe that we are sent here by the people of this State to give them and the State our best thought; that they assumed when we were chosen that we were abreast of the thought of the age, and that we would so conduct ourselves as to meet the demands of a progressive civilization, and that we would have the courage and the manhood to break away from tradition and to suggest and adopt something that is new, but not revolutionary; a law which is an improvement and not a disadvantage.

In conclusion, Mr. President, I would only add that I believe we will break away from this rule, if not to-day, not far hence. Suppose the great emancipator, Lincoln, had looked upon the

question of slavery in this light? It was old, it was justified by law, it was preached as right from the pulpit. It had law and religion with it. Yet Lincoln and the men who were behind him had the courage to say "though old, it is wrong," and the slave was emancipated and enfranchised. The great emancipator broke the shackles of millions of slaves and made them freemen. If those men had expressed the opinion and taken the position of the men who are wedded to this jury system, because the system of slavery was old, that it was sacred because it was favored by law and not opposed by the church, millions of men would have been slaves to-day, who, thank God, are now free. I can see no distinction, on principle, between the emancipation of the negro and taking a step forward in the direction of law reform in the line of jury reform.

Therefore, I hope that the report of the Judiciary Committee, headed by my very good and distinguished friend — whose license I have to be at this bar — for had he said "no" in 1875 or 1876, I should not have been here, and it might have been a good thing for this Convention — that the report of the Judiciary Committee will be disagreed with here, and that this question shall go to the Committee of the Whole. That is all that we can ask for here. There it may be considered again, fought out again and spoken about again, and, if the Committee of the Whole rejects it, then we will have to be content, and, if the Committee of the Whole adopts it, we still come back to this Convention for another hearing.

I regard this as an important question, one of the most important in my humble judgment, that will be presented to this Convention. Therefore, I say to you that this motion to disagree with the report of the Judiciary Committee should prevail here. It does not mean the final adoption of the amendment, it merely means that we should have an expression of judgment here now. We have some information before us, with time to consider it again and to talk upon it again, and I hope that will be the result of this discussion to-night.

Mr. President and gentlemen, I thank you for your attention. (Applause.)

Mr. Dickey — The fact that the people of this State voted for the holding of this Convention, argues that in their opinion there were matters in which the Constitution needed amending. Having been elected, our duty is to inquire and see how the Constitution can be altered or improved, to hunt up defects, if any there are, and to correct them. One of the most important is the question of jury duty. I fear that my bump of veneration is not very well developed. I prefer the modern to the antique; the electric light to the tallow

dip; the new to the old. The present generation has harnessed lightning to its uses. The world moves; and I prefer to keep up with the procession, if possible. I expect to live long enough to travel to Europe and back in my own balloon, and all inside of twenty-four hours. (Applause.) Some people are very conservative, so wedded to the past that they fear and oppose any change because it is a change. We all know the present jury system is not a perfect one. It is very hard to get any twelve men honestly to agree on any question. It is true, in practice, under threat of starvation, or to promote their personal comfort they do agree, but what respect can be entertained for the verdict of a juror, who, after listening to the testimony and arguments of counsel, makes up his mind that one side is right and the other side is wrong, and to get his supper or to get home changes his vote, thus sacrificing life, liberty or property? You, gentlemen, know these things do happen in practice many a time. You have all heard of the eleven stubborn jurors. By accident or design there frequently gets on the jury some "smart Aleck" who hangs the jury, and boasts of it the rest of his life. Nine out of twelve jurors to make a verdict will be a very good average, and nine out of twelve will do away with this stubborn, smart juror and all his kind. We always ought, in the trial of cases, to aim to get a result, whether for our own interests or not is a question, but it is for the interests of our client always to get a result. Of course, people who try cases merely in the hope of securing a disagreement, who do not want a result, are in favor, undoubtedly, of a unanimous verdict of the whole twelve, and requiring the whole twelve to agree, but those who desire the proper and right and just result and to secure a result, and who do not want to try a case over again, which is distasteful to most lawyers, should be in favor of a less number than twelve. We do not require any such unanimous action in any other matter, why then in this? We find, at times, the inattentive, sleepy juror. I was reading, a short time ago, that our esteemed President when trying a case, raised his voice a little, was impolite enough to do it, and woke up a juror who was slumbering before him. And what do you think of a juror who could slumber when addressed by the eloquent President who here so ably presides? (Applause.) It is true he begged his pardon, made what amend he could, but that did not help the matter. That argues that we do have sleepy jurors, inattentive jurors, and we ought to provide as against them. Who wants a sleepy, inattentive juror to decide a case? And, practically, where one may secure a disagreement, that one decides the case, as my friend, Platzek, has well said, rather than the eleven. One, two

or three dissenting jurors, besides, unnecessarily punish the nine who are of a mind, and frequently there is a test of endurance as to who will suffer the hardship the longest. This should not be encouraged. A friend has handed me the suggestion that the decision of a jury as at present constituted is the demonstration of the law of a survival of the fittest, which, as Emerson understands it, means the survival of the toughest. Sometimes the judge, too, gets in the jury-box, and then we have the unlucky number of thirteen jurors. But it has been said here, what is the use of discussing this question? The Convention will not pay any attention to it; they will not reverse the report of the Judiciary Committee. The Judiciary Committee, by a large majority, have reported this amendment adversely and ask you to agree with them. I have the utmost respect, individually and collectively, for the Committee on the Judiciary. They are undoubtedly the brainiest body of men in this Convention, but they are only seventeen out of the 170, and they are not at all infallible. Some people seem to think that the business of this Convention should begin and end in committees. From that position I most strongly dissent. The theory of the membership of this Convention is that our constituents sent us here under the notion that everybody here is as good as everybody else; and, while the opinion of this committee and all other committees will have proper weight and be given respectful consideration when we come to voice our opinion by our votes, it is our privilege and our duty as well, to voice the sentiment of our people, and what we consider the best for the whole people, despite any committee or any leader. Therefore, I take it, that this committee, if we do dissent from them, will not take umbrage or offense, because they have considered it and given us their best judgment. We have had the best judgment of distinguished people, judges of the Court of Appeals, judges of the Supreme Court and county judges in different counties of the State, as quoted by Mr. Platzek. I listened attentively, and I think the large majority of those gentlemen who have dealt directly with the jury system, and know all about it for years, favor this, or some such proposed amendment. Some favor the plan that there should be ten concurring, rather than nine, but that is a matter of detail; the sentiment is common to most all of them. In setting up my views it may be considered somewhat presumptious as against this committee, but I, in doing so, arrogate to myself no superior knowledge, because I have lived long enough to discover how little I know. I would have retired abashed long ago if it had not been that in brushing against other people, many of them of great pretentions, I have discovered how little they know. (Laughter.)

You remember the story of the Senator from the west who went down to Washington, and when he got there was wondering all the while how he came to get there, but after he was there awhile and became acquainted with his fellows his wonder changed, and he wondered then how the other fellows got there. (Laughter.) And I may be pardoned in speaking of this subject, because the matter is something I know something about, one of the few things that I do know something about. In an active practice of twenty-eight years I have tried hundreds of jury cases, and, lest it may be thought that they have too often found against me and I thus have a grievance, I may add I have had a fair majority of successes, as my friend, Hirschberg, who sits here, will bear witness. Not that I have beaten him, because he usually beats me, but I have beaten a good many of the other fellows. And I have, in preparing myself for the duties here, talked with my brethren of the bar on the subject, and they largely favor this amendment. I introduced here a proposition that is under consideration to-night, proposing that there be six jurors instead of twelve. I think there is much to commend it, as it is saving half the expense to the people to reduce the jury by one-half, but it has gone to its graveyard in the Judiciary Committee, and I bow to their superior wisdom. (Laughter.) But I challenge any good reason for rejecting that proposal, except that it is a radical change, and that we must continue to have juries of twelve because they have been that number. But I am told that another proposition of mine, to do away with the justices of sessions, is likely to meet with favor at the hands of this Judiciary Committee, for which I am very grateful. (Laughter.) If the change in Mr. Platzek's bill commends itself to your better judgment, I hope you will vote for it, in spite of the adverse report of this committee. (Applause.)

Mr. Marks — Mr. President, "sink or swim, live or die, survive or perish," I believe, will be the motto which the proposers of the several amendments, embraced in this adverse report, will have to apply to themselves. I believe it will be sink, die and perish together. But, Mr. President, in order to get this Convention to take some interest and possibly favorable action on a proposed amendment which I have before the House, I wish to address the Convention in a very few words. It has occurred to me that this Convention might take some steps towards preventing mistrials in long and protracted cases. I do not propose the amendment because there is what is called in this Convention a crying abuse to remedy. I believe in the system of jury trials as it exists to-day, and am opposed to any change. The amendment which I propose, which is No. 17 of the

proposed constitutional amendments, it seems to me, is at least a suggestion which the members of this Convention might act upon either in this form or some other. The amendment is that, "after the jury, selected to try the issues in a civil or criminal case, has been sworn, and before the trial of such case is commenced, the judge presiding at such trial may order one or more additional jurors to be sworn, who shall attend during the trial. In case of the death, disability or disqualification of any juror or jurors, selected to try said case, at any time during the trial or before a verdict is rendered, one or more of said additional jurors, as the case may be, shall be substituted." That is not compulsory. It simply provides that a judge may do so. After hundreds of talesmen have been examined, weeks have been consumed in getting a jury together, the trial is entered upon and weeks and weeks and weeks consumed before the trial is terminated. During that time, between the speeches of counsel and the expert testimony of physicians, it is not an unlikely case that some of the jurors may become ill. It has happened. The only suggestion that I have heard made against this proposed amendment is that it does not occur frequently enough to demand any change. We cannot tell what the future may bring forth. We cannot tell to what extent jury trials may be extended, and if you think this amendment in the form presented is too lengthy or contains too much detail, put a simple sentence in the Constitution that the Legislature may provide for the drawing of additional jurors. It seems to me that would cover the same ground which this amendment seeks to cover. It is just in one line. There are two cases which I recall. I don't know how many cases have occurred in the practice of the many able lawyers who are delegates to this Convention from the city of New York. There was one case where weeks were consumed in getting a jury. Just as the trial was finished and while the jurors were deliberating upon a verdict, one of the jurors became insane. The question was raised as to whether he was competent to render a verdict. Physicians were called in the jury-room and questions of expert testimony were raised, not alone on the trial, but physicians followed the jury into the jury-room, and while some decided that the juror was competent to render a verdict, others again decided that he was not. The question, as I have been informed, is on its way to the Court of Appeals. In another case in the city of New York, a criminal case, one of the jurors, as the case was being summed up, became ill. What was the result? A mistrial resulted. The city of New York was put to the expense of a second trial, in which thousands and thousands of dollars had to be expended. One thousand jurors

were summoned, nearly 500 jurors responded to their names, and nearly 500 jurors were examined before a jury was obtained. I do not know how many weeks were occupied in getting a jury. Finally the case was commenced; the defendant and his friends who had got together enough money to defend him on the first trial were unable to pay counsel on the second. The result was that the city, in addition to being saddled with the expense of a second trial, was saddled with the expense of paying counsel for the defendant. I know of another case in the city of New York, although this would not happen as frequently as the other cases that I mentioned. One of the jurors died just as the jury was waiting, after recess, to render a verdict. This case also took a number of weeks to get a jury and a number of weeks to try. In a civil case you can very well avoid a mistrial if the counsel are willing to agree to go on with less than twelve jurors or are willing to accept the verdict of less than twelve; but, in a criminal case, where no provision is made in the Constitution that a jury trial may be waived, and where the courts have held that a defendant cannot waive his right to a trial by a jury of twelve, I think some sort of a provision in the Constitution, whether in this form or any other, would certainly not defeat the purposes for which this Convention is called, and certainly would not defeat any Constitution which might be submitted to the people. I claim, Mr. President and gentlemen, that an amendment of this sort would be in the interest of economy and would save expense to litigants, many of them being unable to hire counsel a second time. It would save expense to the public and be in the interest of justice.

Mr. C. H. Truax — Mr. President, I have listened with some attention and a great deal of amusement, to the arguments that have been advanced by the gentleman from the Eleventh (Mr. Platzek) and from the Sixteenth (Mr. Dickey). They dealt in theories and not in facts. They had many letters to read, or one of them did, full of theories, but no letter contained any statement of facts. It seems to me that old-established institutions that have survived the conflict of ages, and what is worse, the discussion of three or four Constitutional Conventions like this, should not be changed unless for the better; and no man here to-night has made a suggestion that seems to me for the better. We are not dealing with trivial things. We are here for the purpose of making substantial changes in the organic law of this State, or no change. We are not called here by the people of this State, at great expense, to deal with trivialities, but we are called here to deal with substantial things, and I say that this question of the jury, as presented by these different amendments, is merely trivial. My friend from the Eleventh (Mr. Platzek)

referred to the term "jury fixing." I have not the Century dictionary with me here, but I do not believe the word is in the dictionary. It may be in his vocabulary, but it is not in the ordinary legal vocabulary. I listened to the gentleman from the Sixteenth (Mr. Dickey) and I was somewhat entertained by the suggestion that sometime he might be able to get into a balloon and go away somewhere. (Laughter.) It seems to me that if he will give himself a little rest after the adjournment of this Convention — but a few days — he may be able to furnish that balloon himself. (Laughter.) Now, what is the question before us? It is: Shall we change the jury law? Yes; if it is necessary; but not a single gentleman, that has addressed this house, has presented any argument showing that such a change is necessary. I have taken the trouble to collate a few facts, and facts are quite strong sometimes. In 1,104 cases tried in the Superior Court of the city of New York, there were but twenty-five disagreements of the jury, and so far as I know those disagreements were right; at any rate, can you say that there would have been but twenty-four if eleven jurors had been allowed to render a verdict? Can you say that there would have been but twenty-three if ten jurors had been allowed to render a verdict? Can you say that there would have been but twenty if ten or nine or eight or any odd number had been allowed to render a verdict? No man can say that. The experience of every gentleman at the bar, who has tried any number of cases, will convince him that jurors usually stand, not eleven to one, but nine to three, eight to four, or seven to five. There is more of a disagreement than eleven to one. I asked the clerk of the Supreme Court in the First Department to give me the number of jury trials in the last five years in that department, and to-day I received a telegram in reply. I think it is wrong. I do not think there can be so great a difference, but I shall read it to you and to the Convention. "From 1889 to 1893, actually tried, 3,460. Disagreements, twenty-two." Now, a man, no matter how good a figurer he is, would need all the rules of algebra and tables of logarithms at his right hand, to figure out that proportion; 3,460 — why, it is about one-half of one per cent, I think; and it is not worth while for this Convention to spend its valuable time, the valuable time of the members of this Convention, in discussing one-half of one per cent? (Applause.)

Mr. E. A. Brown — Mr. President, as to the principle involved in the proposed amendment offered by the gentleman from the Eleventh (Mr. Platzek) I consider it to be sound; but in offering an amendment (introductory No. 184), I desired to do away with the objection that has been raised here, to overcome, if possible,

the objection that might be raised that we must revere and respect old and ancient customs and manners, and the objection that we are bound to by the ancient rule that one man shall dictate to eleven in passing upon the rights of litigants in the courts of this State. The amendment, Mr. President, is as follows: "The Legislature may provide that when a jury cannot agree, the court may direct that a verdict in writing may be signed and returned by two-thirds of the jury." At the suggestion of very many of my brothers in the legal profession, this amendment was prepared, that the Legislature might have the power to give the authority to the judge, upon a jury announcing a disagreement in a civil action, to retire and sign a verdict, and if two-thirds of the jury should sign such a written verdict that it should stand as the verdict in the cause. I do not desire to take the time of this Convention after the able arguments that have been made and the able views that have been presented on this question. I desire to say, in behalf of my proposed amendment, that it gives this power to the Legislature. And if, as is claimed by the friends of this proposed amendment, there should be a verdict of less than twelve men in a court of record and less than six men in a court not of record, the Legislature will have the power to make such a provision. If it proves in actual trial to be unsatisfactory or to work injustice, then the law may be repealed by the Legislature. It certainly is an experiment which I think should be tried, and it can work no injustice if adopted in the form which is submitted by introductory No. 184.

Mr. J. I. Green — Mr. President, it seems to me that the proposers of these different amendments which are under consideration this evening, are placed in the position of being asked, "What have you got to say why the sentence of the Judiciary Committee should not be pronounced upon you according to their report?" I have to say, sir, in behalf of amendment No. 75, introduced by me, that it is a measure a little different from the others proposed. I do not desire to change the system of jury trial in reference to civil cases, but only in case of the death or disability of a juror from any cause in the trial of a criminal case. It must occur to you, sir, as well as to the minds of the other gentlemen in this Convention, that in criminal cases, as it has been held by the Court of Appeals, the strict rule is adhered to that none but a jury of twelve men can sit in judgment upon a person accused of crime. I have attempted to provide here that in the case of the death or disability of one or more jurors from any cause, that the trial shall proceed, provided the defendant and his counsel and the prosecuting attorney shall consent to proceed with the trial. As the law exists to-day, in case of such death or

disability, the trial itself comes to an end. But, sir, if the defendant or his counsel and the prosecuting attorney agree to go on, there surely can be no harm done to the people of the State or to the defendant or the attorney prosecuting the case. It seems to me that for that reason this amendment ought to prevail and that the report of the Committee on the Judiciary should not be agreed to.

Mr. Lincoln — Mr. President, that there are some inequalities and defects in our legal system probably everybody here will admit; but, perhaps, there is not wisdom enough in the Convention, and quite likely we have not time enough, to remedy all the evils or inequalities that might be brought to our attention. This Convention has not been called together for the purpose of creating a millennium, much as some people seem to imagine, and much as such a condition of society might be desired. Yet, I believe there are some things that could be suggested on the line of these amendments that have been presented here, which might be to our advantage. I think a great deal of the jury system and the trial by jury, especially when I get a verdict; sometimes I do not think so much of it. But I am not in favor of any radical change in our jury system, and I am not in favor of putting into our Constitution any provision for a three-fourths verdict or a two-thirds, or any other verdict, except a verdict of a unanimous jury. But before coming to a suggestion which I wish to make, I want to call the attention of the Convention to some things in our judicial system which seem to me inconsistencies — that is in presenting claims to some bodies which have a right to act upon them we do not require unanimity, while if the same matters and the same questions are presented to a jury we require unanimity. Let me illustrate. Suppose you receive an injury, while traveling along a highway, of such character that you would have a claim against a town. Under the law you may present your claim to the town board. That town board may entertain the claim and pass upon it, and adjudicate it, and make an award against the town, but they are not bound to be unanimous. Suppose the town board does not agree upon any award, and you are driven to a lawsuit. You are then compelled to go into court and there you are obliged to get a unanimous verdict of twelve men upon precisely the same claim, and precisely the same state of facts. That seems to me an inconsistency. Again, suppose you have a claim against the board of supervisors of the county. You may present it to the board, the board may obtain jurisdiction to hear it, they may pass upon it, and they have a right to allow it if it is a legal claim; not by a unanimous decision of the entire board of supervisors, but by a majority vote. Suppose the board declines to listen to it at all, and you are driven

to a remedy by a mandamus; suppose you get an alternative writ of mandamus; the issues raised by that are to be tried by a jury of twelve men, and you are there required to get a unanimous verdict. That is another instance where the same claim may be presented to different tribunals, one requiring unanimity and the other not requiring unanimity. Again, under the highway law, prior to the late revision, if a highway was to be laid out and the town wanted some man's land a jury of twelve men was summoned. Nine of those jurors could agree upon a verdict deciding as to the necessity of taking the land for a public highway. Now, if the towns wanted a piece of land it may get it by a verdict of nine jurors. If a private citizen wanted the same land and was driven to an action of ejectment he must get a unanimous verdict of twelve men. There are other similar inconsistencies. Upon an application for the appointment of a committee of a person claimed to be a lunatic, a jury of not less than twelve and not more than twenty-four are summoned. True the statute requires that twelve shall agree, but it does not require that the entire jury shall be unanimous. Yet if the person into whose sanity you are inquiring were charged with a crime it requires a verdict of twelve men to convict him of the offense while his liberty and property may be taken away by reason of his misfortune, without the unanimity of a jury. Again, suppose you get a verdict as a result of a trial before a jury, and the judgment entered upon that verdict is appealed from. In very many cases the court, on appeal, may review the facts and the statute does not require the court to be unanimous in affirming or reversing a judgment upon the facts. Some of these things I merely suggest to show what seem to me to be inequalities, and apparent inconsistencies in our judicial system. Now, what I am willing to see done is, that a proposition should be incorporated in our Constitution, added to section two of article one as it now stands, giving the Legislature power to provide by law that in civil cases and in criminal cases, except where the punishment is death or imprisonment for life, the concurrence of not less than five-sixths of the jury shall be sufficient to warrant the court in receiving the verdict of a jury. I would not have any cast-iron rule put into a statute about that. I would require at least twelve hours deliberation, and then, after that time, if the court becomes satisfied that the jury cannot agree let the court in it discretion receive a verdict of ten if in a court of record, or five in a court not of record. I think it would be entirely safe to put a provision of that sort into our Constitution, leaving this question to the Legislature to be worked out, in the wisdom of the Legislature, so that if the statute was found not to work satisfactorily it could be

repealed. I would rather see a provision of that sort than the one suggested by the gentleman from the Eleventh (Mr. Platzek) making it an inexorable provision of the Constitution. There are so many questions mixed up with this report, in regard to some of which it might be amended so as to lead to their adoption, that it seems to me that the Convention might very well decide to disagree with the Judiciary Committee so that we may agree upon something, and at least get it in shape so that we may suggest an amendment. As it stands now, we are simply to vote on this entire proposition, embracing six amendments as a whole, and either vote for it as it stands or vote against it as it stands. For my part, I am ready to vote against it as it stands, so as to get it in shape where Mr. Goodelle may be heard, and others whom he represents, where suggestions, along the line of these amendments, may be put in a better shape than can be done to-night.

Mr. Goodelle — Mr. President, I did not desire to say anything on this proposition, nor do I design to make any argument now; but I am surprised that a matter of this kind should be brought before this Convention. By what process or for what reason the committee has seen fit to group together six bills, each one involving separate propositions, upon which, as has been suggested, this Convention might want to take some action, I cannot understand. I am in favor of some of the propositions contained in this report, and should agree to the report to a certain extent; but others I cannot agree to, and I shall therefore have to vote against the report as a whole. I would like to have these matters so separated that the parties who have entrusted to me matters, in which I have no personal interest, should feel as if they had been fairly dealt with in the Convention. I do not like this way of reporting, putting six amendments here involving separate propositions and saying that we must vote for them all or vote against them all. We have had some things referred to the Committee on Rules, for them to report as to whether or not adverse reports should be made on proposed amendments. The reports before us were made on Friday morning, and this morning the Committee on the Judiciary report that hereafter we shall have no adverse reports. I think the only fair way in which to reach the different elements in the amendments embodied in this report, is to vote this report down, in order that these propositions, separate in themselves, may be sifted out. If this committee had made a separate report on these different propositions they could have been separately considered, but I do not see how this report

can be intelligently acted upon in its present shape. I, therefore, hope that it may be disagreed to.

Mr. Countryman — Mr. President, as one of the unfortunate members of the Judiciary Committee who was unable to agree with the report which is now the subject of consideration, it may be well, perhaps, that I should explain the reason which prompted me in dissenting from that report. I ought to say, in view of the suggestions that have been made in the progress of the discussion, that there were only eleven members of the committee who voted upon this report, seven in favor and four in opposition; so that no impression should go out that only four out of seventeen dissented. I shall make no remarks, touching any of these proposed amendments, to the Convention, excepting that which relates to the abolition of the rule of unanimity in the jury-box, and provides that three-fourths of the jury may render a verdict in civil actions. I ought to say also, at the outset, or to refer to the reasons which have, as I suppose, prompted the limitation of this proposed amendment to civil actions. In some cases in other countries the rule of unanimity has been abolished in criminal cases and not in civil cases, and in other States and countries the rule has been changed in civil actions and left under the old system in criminal cases. To my mind there is a good reason for a distinction between the two classes of cases, and it is found in the rule of evidence which obtains in the trial of those cases. That I may not overstate that rule, I have transcribed from a standard author what that rule is to which I will call your attention. "A distinction is to be noted between civil and criminal cases in respect to the degree or quantity of evidence necessary to justify the jury in finding their verdict. In civil cases their duty is to weigh the evidence carefully and to find for the party in whose favor the evidence preponderates, although it be not free from reasonable doubt. But in criminal trials the party accused is entitled to the benefit of the legal presumption in favor of innocence, which in doubtful cases is always sufficient to turn the scale in his favor. It is, therefore, the rule of criminal law that the guilt of the accused must be fully proved. Neither a mere preponderance of evidence nor a weight of preponderant evidence is sufficient unless it generates a full belief of the fact to the exclusion of all reasonable doubt." Now, it may very well be urged that doubt, and all reasonable doubt, is not removed in the trial of any given case where any of the members of the jury remain unconvinced from the evidence as to the question of guilt or innocence. Therefore, it may be entirely proper, under our rules at any rate, to insist upon unanimity in criminal cases while we abolish it in civil actions. We are only bound to establish by a

preponderance of evidence the probability in favor of one party or the other to entitle him to a verdict at the hands of the jury; and when we have satisfied the minds of nine or ten or even a less number, that there is a preponderance of evidence for one of the parties, there is no reason, I submit, in ordinary cases at least, why that majority, or plurality of the jury should not be allowed to render a substantial verdict in the action. It must be remembered, sir, that it is our duty to furnish an efficient and an effectual method for the trial and determination of civil causes. Unless we give such a tribunal as that to the people at large we fail in our duty as men who are expected to formulate a fundamental law regulating the rights and interests of parties in the community. We are bound, I submit, to furnish to the people a method of determining questions of fact as well as questions of law, which will be effectual, which will decide the matter one way or the other in every trial, in every court, between parties who are seeking for justice at the hands of the tribunal. Therefore, if experience has shown that the present system of trial by jury does not accomplish that object, it is our duty to look it over and see where the defect lies, and, if possible, remedy that defect as far as may be in our power. It is this view of the case that has suggested itself to my mind, requiring an examination upon original principles of the duty which is incumbent upon us as members of this constituent body. Now, sir, I admit that we should be governed by facts in the decision of this question and not by mere theories. I have practiced at the bar, now, something over forty years, and during all that period of time I have been engaged in the trial of causes before juries, and I think that every man in deciding this question ought to look back over his own history, to recur to his own experience and see, whether or not, in the light of that experience, he can make any suggestions upon this subject which will throw light upon it, and possibly improve this old tribunal of trial by jury. I, sir, am not opposed to this old system. I believe in it; I would preserve it; I would perpetuate it; but, if possible, I would also improve it, and not receive it, and not pass it over if it is defective, in precisely the same shape in which we have received it from our ancestors. This system of trial by jury was not formulated in a day. It was not adopted in any period of time by a statute, but it is the result of a gradual process of evolution, running back over a period of more than a thousand years; and it did not assume its present form until a comparatively modern period of time. It originated in a state of circumstances entirely different and this rule of unanimity originated under circumstances entirely different from those which exist either here or in the mother country. This trial

by jury, as it is called, was originally a mere method of obtaining the opinion of persons living in the vicinage of parties engaged in any controversy, with the view of satisfying the judicial mind whether the parties were entitled to credit. The jurors were mere witnesses from the neighborhood, having no knowledge of the matters in dispute, and listening to no evidence in the trial court, but before the tribunal merely for the purpose of testifying to the character of the parties who had originated the dispute, for the purpose of satisfying the tribunal that the parties were reputable parties, of testifying to their character, and thus enabling the tribunal to say whether or not they were entitled to credit and their claim should be recognized. In the process of ages that was changed somewhat so that these witnesses were called who had knowledge of the facts to testify in reference to those facts, it was supposed to be necessary to have at least twelve persons of the vicinage, acquainted with the parties, who would testify to their character, before they would be recognized as entitled to credit; and that number of twelve was continued through all the ages; and this doctrine of unanimity was continued when these jurors became tryers of fact instead of mere witnesses of the character of the party. This whole rule, this rule of unanimity, I say, originated in that old doctrine of calling persons from the vicinage who were acquainted with the parties to testify to their character; and the fact that twelve were required for that purpose does not throw the slightest light upon the subject, or upon the question in controversy here, when these jurors are judges of the fact, and do not have any knowledge of the parties or the matters in dispute. There is no reason for the rule of unanimity in disposing of questions of fact. We do not require it on questions of law. We are satisfied to have the courts pass upon the most important questions of law, involving public right and private right, by a mere majority; and there are frequent cases going up to the court of last resort, the Supreme Court of the United States, where an equal division of the tribunal decides the case by an affirmance. It was formerly so in this State. Prior to 1870 many of the most important questions which are found in the reports were decided by an equal division of the judges of the court of last resort. Now, is there any reason in the nature of the case why a majority can pass upon most abstruse and important questions of law, but that unanimity must prevail in the jury-box in all questions of fact? So much, sir, for the principles of law. But the question still recurs to us, and it is a matter worthy of consideration, whether this old rule should be changed. Not unless there has been a defect discovered in attempting to administer it. If any defects exist to-day there is no more

reason why we should not keep on in this process of improvement than there has been in the past. Now, sir, every man is to judge for himself. I propose, with your permission, to give you the result of my experience at the bar during the past year. In the fall of 1893 I was called upon to assist in the trial of a cause at the Troy Circuit, known as the Lansingburg election cases. We were engaged in the trial for thirty days, taking evidence, listening to arguments, submitting the case to the jury, before it passed to the final determination of that jury. The result was that the jury divided on party lines, nine for the defendant and three for the relator. Now, upon this rule that we propose to establish I should have been beaten in this case, because I was a counsel for the relator, but it would have been far better for the relator to have been beaten by a verdict of the jury than to have had the miscarriage of justice because of a disagreement. There were legal propositions involved in that case, which in the judgment of counsel for the relator were sufficient to entitle him to a verdict, and if we could have got a verdict from the jury one way or the other, we could have gone up to the appellate courts and had that question decided. But there was an entire miscarriage of justice, after thirty days, after swearing 750 witnesses on the part of the relator, simply because the jury could not be induced to agree. Would it not have been far better for all concerned, and of far greater credit to the administration of the law, if those nine jurymen had rendered a verdict for the defendant, than to have allowed the case to go by default, as it were, to turn those relators out of court, complaining as they did, and insisting upon their legal rights? Let me call your attention to another case. In January, last, at the Albany Circuit, I tried a case for the fourth time before I was able to obtain a verdict for the plaintiff, and that verdict in favor of the plaintiff was only obtained five years after the issues were formed in the case. It so happened that only one judge in this judicial district was competent to try the case, and every time that the jury disagreed the parties had to wait from a year to a year and a half for that judge to turn up again at the circuit before it could be tried. Now, sir, is not that a most preposterous remedy to furnish to a party who appeals to a court of justice in favor of his claim, and asks to have it adjudicated for him or against him, to turn him over to four different juries before he can get a final verdict, and to delay him for five years in getting a decision before the court of original jurisdiction? He is now on his way through the Appellate Courts and, for aught we know, a new trial may be granted, either in the General Term or the Court of Appeals, and he may be sent back again to this tribunal of a jury, to ascertain and determine the dis-

puted facts. Why, sir, in a case tried at the May Circuit, since this Convention has been in session, we were compelled to go through the long and tedious process of a trial of several days, for the second time, before a verdict was rendered in favor of the plaintiff. This is my experience with jury trials within the past year, and in this immediate vicinity; and I have no doubt that every member of the bar can give similar accounts of the practical results of this rule of unanimity in the decision of questions of fact before a jury. Sir, I insist, that the old guarantee contained in Magna Charta prevails, is still the right of every freeman within the State. He is entitled to a prompt and certain determination of his claim before the tribunal provided for him by the State. Let me advert to the language of the Constitution of Massachusetts upon this subject: "Every subject of this commonwealth ought to find a certain remedy by having recourse to the law, for all the injuries or wrongs which he may receive in his person, property or character. He ought to obtain right and justice, freely and without being obliged to purchase it, freely and without any denial, promptly and without any delay, conformable to law." That is the constitutional guarantee of the State of Massachusetts to its citizens. That is the implied guarantee contained in the bill of rights in this State and in the existing Constitution, to all suitors in court. I insist that the present system of trial by jury often results in a total miscarriage of justice. It leads to great expense, both on the part of the public and on the part of the parties, which ought to be prevented; and it can only be done by adopting some such modification as that proposed here, by allowing eight or nine or ten of the jury to render a verdict. It is entirely consistent with our notions of law that such a verdict should be received. Unanimity does not indicate, in a great number of cases tried at the courts, that the jury have all agreed to that verdict, that is, without a compromise of their opinions, without a surrender of their judgment. How often has it occurred in the experience of every lawyer that a jury have been out over night and have reported to the court in the morning that they were unable to agree, that the court then proceeded to take fatherly supervision and care over the jury by admonishing them as to their duties, by lecturing them, as to the course of their proceedings, suggesting to them in various ways what they ought to do in order to reach a verdict, and how often has it occurred that that jury, having been sent out again, has, in less than fifteen minutes or half an hour, returned into court with their verdict. Would it not be far better for all concerned, far more just to those dissenting jurymen, to have rendered the verdcit, and to have recorded the dissent of the remaining members, rather than

to have forced them against their consciences to subscribe to that verdict? There is another reason why this rule ought to be changed. I think, sir, that we ought to repeal all of the exemptions in relation to service on juries. I believe that every citizen, competent to perform the service, should be required to take part in the administration of justice. There is no better field open to the average man, the business man, the plain man, the wayfaring man, than to spend a certain portion of his time in the courts of justice, becoming familiar with the principles of law and with the methods pursued in our tribunals. It is the best part of his education as a citizen of this republic. It is one of the most essential points to preserve this republic, to instill into the minds of all a reverence for the institutions under which they live. Now, the greatest objection to business men serving on juries is this difficulty of agreement, this liability to be tied up for days and nights in the jury-room, held there by some stubborn juror or by some man who is more than stubborn, governed by some other motive than mere stubbornness. It is a great subject of complaint among citizens at large against serving on juries. If we make this amendment, if we afford every reasonable facility to jurymen, if we subject them only to reasonable rules and regulations, if we allow a reasonable number of the jury to render a verdict after a reasonable time in the way of consideration in the jury-room, we enlarge the probabilities of a general interest taken by the community at large in the administration of justice. It is not a new story, sir, this difficulty in procuring agreements in a jury-room. The ancient records disclose that the same trouble arose in the earlier ages of the law. We are all familiar with the records which show that it was the custom to cage jurymen without food, without meat or drink or fire, until they rendered their verdict; and if they failed to render it before the close of the circuit, it was the common custom of the judge to cart them about through the counties which composed his circuit, from county to county, until they finally agreed upon their verdict. These rules of the old law disclose the difficulty which obtained then, and the hardships to which jurymen were subjected; an improper, a totally improper and unjustifiable method of treating juries.

There are many other considerations which might be adverted to, to which I will not refer at this late hour. I only wish to call attention a little more specifically than has been done as yet, to the fact that it is not merely the dream of doctrinaries or of judicial officers like Jeremy Bentham or William Forsyth, or others who have been mentioned here to-night, but that it is the result of the experience of distinguished members of the bar, and of distinguished judges of the

common law courts of England as well as in this country, that this rule of unanimity is an anomaly of the law which ought to be abolished. I call particular attention to the report which has already been reverted to by my friend from New York (Mr. Platzek) of the commission appointed to examine, sixty years ago, into the defects of the practice at common law. My friend had read the substance of that report. I wish merely to call the attention of this Convention to the names of the members of that commission. It was a unanimous report by Mr. Justice Bosanquet, who was a judge of a Court of Common Pleas; by Mr. Justice Alderson, who was also a member of that court and subsequently a baron in the Court of Exchequer, and Mr. Justice Patterson, a judge for long years of the king's bench, and Henry J. Stephen, one of the last of the sergeants of the law in England, and the famous author of the work on pleadings, to which we are all accustomed to refer when we wish to trace back the principle of the rule which still obtains in that branch of the practice. Here, sir, were old counselors at the bar, distinguished practitioners of the common law court, who united their experience on the bench as judges to their experience as pleaders at the bar, and they all concurred in asking for the abolition of this rule. I do not wish to be understood as calling for any revolutionary change in this old system of trial by jury. I would not change it. I would preserve it, by all means. But, sir, there is no reason, if an actual defect is discovered in the administration of the law, in this or any other branch, why we should not, even at this day, avail ourselves of an opportunity like this, to change it and improve it. (Applause.)

Mr. Barhite — Mr. President, at this late hour, I only desire to say a few words to this Convention. I have listened with attention to the arguments which have been made for and against the report of the Judiciary Committee. I have been charmed with their eloquence and almost convinced by their logic. We have heard here that poets, historians, philosophers and balloonists are not in favor of the proposition which requires the concurrence of twelve men to render a verdict in a civil action. Upon that proposition I heartily concur with the report of the Judiciary Committee. I think it is one of those principles of the old Saxon law which should not be lightly disturbed by this Convention, but at the same time, Mr. President, there are other propositions contained in this report which I have not examined, and upon which I do not feel that I can vote intelligently or consistently at this time. It seems to me that these propositions should be separated; and in order to relieve the difficulty, and that we may have an opportunity to vote upon that single question which seems here to be the chief

topic of discussion, and also upon the other propositions, if it is in order I desire to make the following motion: I move you, sir, that this report be recommitted to the Committee on Judiciary, with instructions to report separately from the others those propositions which relate exclusively to the number of jurors which shall be required to render a verdict in a civil action.

The President — Mr. Barhite's motion is in order.

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

The President — The question is, shall the main question now be put on Mr. Barhite's motion to recommit to the Judiciary Committee the report now before the House, with instructions to report separately upon the proposition as to how many of a jury shall be required to concur in a verdict.

Mr. Mulqueen — Mr. President, I rise to a point of order. A motion to recommit cannot be received in Committee of the Whole.

The President — We have not yet got into Committee of the Whole, or I should not be here.

The President put the question, shall the main question now be put on Mr. Barhite's motion, and it was determined in the affirmative.

The President — The question now is on Mr. Barhite's motion to recommit.

Mr. Goodelle — Mr. President, I move to amend by instructing the committee to report separately on each of the six propositions.

The President — It is not open to amendment after the previous question has been ordered.

The President put the question on Mr. Barhite's motion to recommit to the Judiciary Committee with instructions, and it was determined in the negative by a rising vote, 55 ayes, 61 noes.

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

Mr. Cochran — Mr. President, may I ask for information from Judge Countryman through the Chair, if his statement is correct, that but seven members have united in favor of this report? If that is so, it seems to me that this report is not a report of the Judiciary Committee, and that it is not favorably reported by at least a majority of that committee. I think that matter should be called to the attention of the Judiciary Committee for further investigation. I make the point of order that I moved to amend rule 5, when it was originally adopted in this Convention, to the effect that all reports should be signed by a majority of the committee. It was stated at

that time by a gentleman in this Convention — and the debate will be found on page 10 — that no report could be signed or presented by a chairman unless it represented the action of a majority of the committee; not a majority of those who were present, but a majority of the actual number of the committee; and it was with that statement and understanding that rule 5 was adopted in its present shape. And I submit, sir, that a report which is the report of only seven members of the Judiciary Committee is not a report of that committee, and I make that point of order.

Mr. Bowers — Mr. President, if I recall the report of the Judiciary Committee correctly, it says that it is a report of that committee with a certain number of dissenting votes; and I do not accept the statement that has been made upon the floor of this House, that it was only reported by seven of the members. That is entirely contrary to my recollection of what took place. It was the report of a large majority of that committee.

The President — The Chair will hold that it is too late to raise that question now, at any rate.

Mr. Goodelle — Mr. President, if there is no motion before the House, I move that the report be recommitted to the Judiciary Committee, with instructions to report separately upon each of the six propositions included in the present report.

The President — Mr. Goodelle's motion is in order.

Mr. C. H. Truax —Mr. President, I rise to a question of information. Has not that motion already been put and declared lost?

Mr. Crosby — Mr. President, I call for a rising vote upon this motion.

Mr. Alvord — Mr. President, I desire to say that I am with the committee in their general report, but under the rules that obtain, this omnibus way of killing these matters off is, in my opinion, entirely wrong. I, therefore, hope that the motion that the committee make separate reports of each individual case, giving opportunities for each one to stand on its own legs if it can — and I hope none of them can — will obtain in this Convention. I am, therefore, decidedly in favor of the proposition that the report be made singly upon each proposition.

Mr. McClure — Mr. President, I would be in favor of this motion if it were not apparent that the subject has been debated as fully as it is the desire of the Convention to have it debated. It seems to me that the cry, which is being put forth against this Convention of not accomplishing something, will soon be one that is merited if we do not accomplish something. As I look at these amendments there

is only one of them that has been discussed at any length. There is only one of them that has merited any attention, and that is the question of whether less than twelve members of a jury shall be permitted to render a verdict. Now, the fact that every man on the floor has not discussed it is no indication that every man has not a lively interest in the question, and that every man's opinion is not ready to be disclosed by his vote. I do not think, Mr. President, that if the questions were separated there would be any discussion worth mentioning upon any of them, except this one which has been discussed to-night. I think we are ready for a vote upon it. We have had this extraordinary evening session where we have sat here, not very comfortably, except that we have been — or at least I have been — very much entertained by the debate. We have found that there is a division of sentiment among the members of the bench, as there is among the members of the bar. But we have heard about all that is to be said about it, and I think that we are ready for a vote. As I understand the parliamentary practice, we can here and now divide these questions and vote upon them separately. We can take up and vote first upon the one as to whether less than twelve jurymen shall render a verdict, and after we have disposed of that we can vote separately upon the others. That would be about the only effect of referring these matters back to the Judiciary Committee for them to report singly upon the different propositions, which we have the right to ask and which the Chair will accord us, of having them voted upon separately.

I am now ready to vote upon this question and I believe that every delegate is also ready. We have all got our opinions settled and fixed. They have been made by our own individual experience, certainly those of us who have been at the bar. I hope this matter will be disposed of to-night. I want it disposed of so as to be out of the way for the larger questions, the questions on which there will be more actual division of sentiment; that those more important matters can be discussed at length and freely. Therefore, as it would be of no advantage, in my opinion — for it is a mere matter of form to send the report back and have the propositions reported upon separately when we can now vote upon them separately — I hope the motion to recommit will not prevail.

Mr. Root — Mr. President, the report which is now before the Convention was made after a request to the Judiciary Committee by the gentleman from New York (Mr. Platzek) that there should be a report upon what has been regarded here as the main proposition for amendment, and what I may say the committee regarded as the main proposition before them for amendment to the sec-

tion relating to jury trials, and that is providing for a verdict by less than an entire jury. That request having been made, and the committee feeling bound to make the report, giving to the introducer of the resolution, and those who thought with him, the right which was theirs to be heard before this Convention upon this question, we endeavored to make a report in accordance with the provisions of rule 32, which it was hoped by, I think, the entire Convention, would lead to the shortening of discussions, so that we could discuss questions, instead of discussing one by one all the great multitude of proposed amendments which have been cast upon us since we first met. The provisions of that rule are that when a committee has reported that no amendments shall be made to the provisions of the existing Constitution, relating to any specified subject, and such report is agreed to, all propositions for constitutional amendment relating to that subject which have been referred to that committee shall be considered as rejected. We would not have made any report unless we had been requested. The report which was made was twice before the committee. If I remember correctly, upon the original question of the adoption of the amendment proposed by the gentleman from New York (Mr. Platzek), that is to receive less than a unanimous verdict, sixteen out of the seventeen members of the committee were present, and all but four of them voted against the amendment. This report, after it was drafted, was submitted at a subsequent meeting of the committee, and the one member of the committee who was not present at the former meeting was present at the last, and a majority of that meeting ordered the report to be made. I do not see how any other course was open to the chairman of the committee but to comply with the orders of the committee; and, as I have said, it was made in such a way as we believed would shorten the discussion.

Now, sir, I have observed with some regret that the fact that the committee has reported at all seems to have created some little feeling on the part of one of the gentlemen who has spoken, a gentleman for whom I have the highest respect and regard, and I can only say in regard to that manifest feeling that I hope that time and reflection and association with the members of the Judiciary Committee, who have the most pleasant personal relations with him, will entirely do away with that feeling. I regret, also, that the gentleman from Onondaga (Mr. Goodelle) should not have been present when this subject was made the special order for this evening. If there had been any intimation from him at that time that there was any pressure upon him to secure delay, that he wanted further opportunity, no one would have been readier than myself, and I am sure the other

members of the committee, to so arrange matters as to give him full opportunity. The matter has passed out of our hands, and I do not know what we can do about it. Now, as to the recommittal: It seems to me that it would but prolong discussion; that we have gone through the subject, and the Convention is in a position to say what they want to do. But we are entirely at the disposal of the Convention. If the Convention prefer that our report shall be made in detachments so that these measures can be taken up one by one, we will yield cheerfully to that order. That is all I can say upon that subject.

Mr. Hamlin — Mr. President, I move the previous question upon Mr. Goodelle's motion.

Mr. W. H. Steele — Mr. President, before that motion is put I desire to raise a question of order. My question of order is this: That the session of the Convention to-night is upon a special order for determining whether we shall agree or disagree with the report of this committee. I believe that the committee have done simply their duty. They have followed the instructions of the Convention and the rules in reporting as they have, and I have serious doubts whether we should entertain a motion to recommit, with instructions that they shall divide their report and report severally upon each of the propositions. The Convention can divide the report and act on each proposition separately if it so desires.

The President — The Chair holds that it is competent for the Convention to entertain this evening a motion to recommit the present motion.

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

The President put the question upon the motion to recommit the report to the Judiciary Committee, with instructions to report upon each proposition contained in it, and it was determined in the negative.

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

Mr. Dickey — Mr. President, upon that question I call for the ayes and noes.

Mr. Platzek — Mr. President, I move that the various amendments under discussion this evening be taken up separately and voted upon.

The President — The Chair rules that the motion is out of order;

that the only question before the House is upon agreeing to the report of the Judiciary Committee; the single indivisible question.

Mr. Root — Mr. President, I wish to make a very few observations upon the merits of this report.

I apprehend that it is not the function of this Convention to evolve a Constitution out of theory or from first principles, irrespective of the existing condition of things. That is not the American or the Anglo-Saxon method of legislation. It is the French method, which has given to them within the last century many constitutions, none of which has been permanent. Our method is to proceed cautiously, slowly, holding on to that which is good, and changing only when we are certain that a change will be an improvement.

Now, sir, the fundamental idea of this report is that while there were many things which led the people of this State to order the convening of their delegates for the purpose of revising and amending the Constitution, a discontent with the system of trial by jury was not one of those things. We did not believe — I do not now believe, notwithstanding the very able and forceful addresses which have been made to-night — that the people of the State of New York are dissatisfied with their time-honored institution of trial by jury. I am not dissatisfied with it, sir. I believe that it is one of the most important, most vital, most sacred of the institutions which maintain our free and popular government. I believe that it serves to bring the people — not lawyers and judges, the plain people — who vote, and who underlie the whole structure of our government, into immediate participation in the administration of law. I believe that it mitigates the severe logic of the law, and makes its administration tolerable. I believe that it reaches correct results in fact and in reason, though not always by logic; and I believe, sir, that the very essential feature of this system is the requirement of unanimity. I think that the amendment which aims at permitting less than the entire body of the jury to render a verdict is aimed at the very heart of the jury system, and is nothing short of revolution. Now, sir, believing that we could do nothing else than report against this amendment, even though we were in doubt, even though it might seem to you and to me, even to a majority of this Convention, that if we were to frame a Constitution anew upon theoretic principles, nevertheless we would require overwhelming evidence that our new idea was the best before we should venture without any evidence of great popular discontent with what exists, without any evidence of a great popular demand for a radical change in the established institution, to set out upon a new and untried experiment, relating to the most vital matter in the administration of the law. I say most vital,

because this is where the people are concerned in the administration of the law. It is the muniment of their title to control of that administration. It is the means by which they protect themselves against power, against wealth, and against the judge on the bench. I am not surprised that we should have expressions from judges which tend in derogation of the system of trial by jury, for the system of trial by jury was designed and has served always as a protection against judges, and the time comes often and again when the people need that protection, when individual liberty needs that protection; and I will never consent, if I vote alone, against overwhelming majorities, to take away one jot or tittle of the strength, the stability and the perpetuity of that safeguard. (Applause.)

I do not believe, sir, that the people of this State will ever consent to it. I hope they never will. While I have no objection to my learned and distinguished friend from Orange county going to Europe or anywhere else, in a balloon, I object to his taking our proposed Constitution with him. Let us keep that upon solid ground, upon *terra firma*, where the people can be with it, can understand it, and can approve it. Mr. President, I have said all that I have to say, with one exception: We have had read to us to-night a number of expressions of opinion from text-writers, from jurists, from learned judges, in England, in Illinois, in Michigan, in Iowa and in New York; but in England, in Illinois, in Michigan, in Iowa, in New York, there still remains the system of trial by jury, with its essential characteristic of a unanimous verdict. Theory is against it, Mr. President, but the plain practical common sense of the Anglo-Saxon race has wrought out and holds to, and I believe means to hold to this their peculiar method of conciliating disputes and of ending litigation. The plain sense of the people, through hundreds of years in practical experiment, sets itself still against the theories of jurists. The plain sense of the people will have to pass upon this revised and amended Constitution. Not theorists, not jurists, not text-writers. To them we must appeal, and let us apply their good common sense to the work which we do. I hope, Mr. President, that this Convention will not attack the system of trial by jury.

Mr. Griswold — Mr. President, I know I am trespassing upon the patience of this Convention at this time of the evening, and nothing but a clear conviction that we ought not to attempt this experiment without a further understanding of what we are doing, leads me to say what I shall say. Of course there are defects about the jury system, and there may be instances in which the requisition, that we must have a unanimous verdict, is unsatisfactory. In rare

instances it may be defective. But have you tried the system of a majority verdict? Men are ready to go to their meals. They will do anything to relieve themselves from duty without a sufficient regard to what is due to the rights of parties involved in their verdict. Take the case of a jury from whom you are to have a simple majority to render a verdict. That jury goes to their jury-room and there are but a few minutes' consideration and a verdict is hastily rendered. What I claim should be done, and it is found to be perfectly practicable, is what our forefathers have had, that system they have had that before a man shall be deprived wrongfully of his life, liberty or estate you shall have the decision of a verdict of twelve men under oath. We find that it is practical to have that. Now, then, when you come to have a mere majority of a jury — and the gentleman who proposes it does not tell how many there should be — they abandon that part of it; one says eight and another says nine and another says ten. They abandon the principle of a majority vote and render a verdict, and then what are you going to do about it? Now, I say that this is a dangerous matter, and as it seems to me, with all due respect to the gentlemen, a dangerous innovation upon the rule that has prevailed so long. You will find a verdict will be ill-considered a great many times with a majority verdict. The gentlemen who have written about this and discussed it seem to forget and disregard the main reason for which trials are had. It is to ascertain the truth, to ascertain what is the right thing to do, and to render justice to the parties. With a mere majority it will be likely to be disposed of in a hasty and ill-considered manner. And this very thing of requiring a unanimous verdict, in my judgment, when you do that you strike out the most valuable part of the jury system. Now, I do not profess to have had any great experience in trials. I live in a country town, but I have had, for the locality, a reasonable experience, and I know in that time of two juries where the majority of eleven was held up and arrested by one man, and those jurors disagreed. During that trial each had become acquainted and understood what the points of the opposing party were, and, in the case of each of those trials, there was a prompt verdict upon the retrial sustaining the sole juror that stood out. Now, of course, in different cases there might be defects undoubtedly, but we have got along with this majority jury, and it strikes me that when you strike out this minority that virtually is no part of this jury and a verdict can be given without them, you tend a great deal to having ill-considered verdicts that will be rendered with less regard to the justice of the case than to the haste of the juror in getting home and getting discharged from duty.

Mr. Hotchkiss — Mr. President, if it will not infringe upon the privileges of Mr. Dean, I would like to move the previous question.

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

Mr. Dickey's call for the ayes and noes was sustained, and the Secretary called the roll.

Mr. Goodelle — Mr. President, I desire to be excused from voting, and I desire to say that I should be very glad, indeed, to be able to vote for that part of this report which maintains the present unanimity of verdicts, but I disagree myself, as I know many members will do, with the chairman of the committee in his view that there is no important question involved in these proposed amendments except this one under discussion, the unanimity of juries. I cannot consistently, with what seems to be my duty, although I would be glad to vote for that part of this report, I cannot consistently with my duty to myself, or in fairness and justice to parties whom I represent, and I, therefore, withdraw my request to be excused from voting and vote no.

Mr. Lauterbach — Mr. President, I desire to be excused from voting and will state my reasons. I find, among the list of measures adversely reported on, bill No. 36. I do not know of any reason why there should be an adverse report upon that measure this evening except the fact that Lauterbach introduced it. Whenever there is to be an adverse report of any kind his name is connected with the adverse report. This measure has nothing whatever to do with jury trials. It does not affect the question under discussion, it is not in harmony with the question in any respect. It provides in the first section that upon appeal to an Appellate Court a new trial may be granted as justice may require, that is to say the Appellate Court may, instead of ordering a new trial, determine absolutely on the appeal as in its opinion the merits demand. What that has to do with the question of jury trials, or the question whether twelve or nine jurymen shall determine the result of a trial, I do not know. The next sections are even less relevant than the one I have quoted. But the bill was before the Judiciary Committee and was discussed by them with full knowledge on the part of the committee of the character of its proposers. I desire to withdraw my request to be excused from voting and vote no.

Mr. Marks — Mr. President, I desire to be excused from voting, and will briefly state my reasons. I am not in favor of interfering with the jury system as it exists to-day. I am rather in favor of

extending it, but there are some other propositions involved in the adverse report of the committee upon which I should very much like to vote separately. I, therefore, withdraw my request to be excused from voting and vote no.

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

Ayes — Messrs. Abbott, Allaben, Alvord, Banks, Barhite, Barnum, Barrow, Becker, Bigelow, Bowers, Brown, E. R., Bush, Cady, Campbell, Cassidy, Church, Clark, G. W., Clark, H. A., Cochran, Coleman, Danforth, Davenport, Davies, Davis, Deady, Dean, Deyo, Doty, Durnin, Emmet, Faber, Floyd, Frank, Andrew; Frank, Augustus; Fraser, Fuller, C. A., Fuller, O. A., Goeller, Green, A. H., Griswold, Hamlin, Hawley, Hecker, Hill, Hirschberg, Holcomb, Hotchkiss, Hottenroth, Jacobs, Jenks, Johnston, Kellogg, Lester, Lewis, C. H., Lyon, Manley, Marshall, McArthur, McClure, McCurdy, McIntyre, McLaughlin, C. B., McLaughlin, J. W., Mereness, Meyenborg, Moore, Morton, Mullen, Mulqueen, Nichols, Nicoll, O'Brien, Osborn, Parkhurst, Peck, Phipps, Porter, Pratt, Redman, Roderick, Rogers, Root, Spencer, Springweiler, Sullivan, W., Truax, C. H., Vogt, Wellington, Wiggins, Williams, Woodward, President — 91.

Noes — Messrs. Arnold, Baker, Blake, Brown, E. A., Carter, Chipp., Jr., Countryman, Crosby, Curran, Dickey, Durfee, Fields, Forbes, Gibney, Giegerich, Gilbert, Gilleran, Goodelle, Green, J. I., Hedges, Johnson, I. Sam, Kerwin, Lauterbach, Lincoln, Mantanye, Marks, McDonough, McKinstry, Platzek, Powell, Riggs, Sandford, Steele, A. B., Steele, W. H., Sullivan, T. A., Tekulsky, Titus, Turner, Whitmyer — 40.

Mr. Barhite — Mr. President, I move that we now adjourn.

The President put the question and it was determined in the affirmative. Adjourned to July 18th, at 10 A. M.

Wednesday, July 18, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber, in the Capitol, at Albany, N. Y., July 18, 1894, at ten o'clock in the morning.

President Choate called the Convention to order.

The Rev. R. H. Shirley offered prayer.

The Journal of July 17th was read.

Mr. E. R. Brown — Mr. President, I notice that in the report of the proceedings of the Committee of the Whole, a proposed amend-

ment which I made, to wit: To strike out in general order number 6 all after the word "abrogate" in line one ——

The President — Is that a correction of the Journal of Friday?

Mr. Brown — That is a correction of the Journal of yesterday.

The President — I understand that that motion was in Committee of the Whole. It does not appear.

Mr. Brown — But it does appear in the report which is laid upon our desks this morning, and I would like to have that corrected. It may be corrected now as well as any other time.

The President — Do you not find it in the print of the debate?

Mr. Brown — No; it is not printed at all.

The President — What you have in your hand is the debate, is it not? It is not the Journal.

Mr. Brown — I hold in my hand, Mr. President, the report of the proceedings of the Committee of the Whole, and all the proceedings of that committee are there reported except the proposed amendment which I named, and I would like to have that corrected.

The President put the question on making the correction asked for by Mr. Brown, and it was determined in the affirmative.

The Journal as so corrected was approved as read.

Mr. Barhite — Mr. President, Mr. M. E. Lewis, who was with us yesterday, was taken ill yesterday afternoon and is unable to be present to-day. I ask that he be excused from attendance to-day.

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

Mr. Cochran — Mr. President, I desire to ask leave of absence for Mr. Towns during the balance of the week as he will be unavoidably detained from the Convention.

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

Mr. Deyo — Mr. President, I ask to be excused from attendance on Friday of this week.

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

Mr. Roche — Mr. President, I ask to be excused from attendance on Friday.

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

Mr. Herzberg — Mr. President, I ask to be excused from attendance upon the Convention to-morrow and Friday.

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

Mr. McClure — Mr. President, I ask to be excused on Friday from attendance upon the Convention.

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

Mr. Dickey — Mr. President, Mr. Phipps asks to be excused from attendance upon the Convention to-day and to-morrow so that he may be allowed to attend a funeral.

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

Mr. Smith — Mr. President, I would like to be excused from attendance on Friday and on next Tuesday.

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

Mr. Deady — Mr. President, I would ask the Convention to excuse me from attendance for the balance of the week.

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

Mr. Lauterbach — Mr. President, I ask to be excused from attendance on Friday.

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

Mr. Durnin — Mr. President, I ask to be excused from attendance on Friday.

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

Mr. Meyenborg — Mr. President, I ask to be excused from attendance on Friday.

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

Mr. Davis — Mr. President, I would very much like to be excused from attendance on Thursday and Friday of this week.

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

Mr. Cornwell — Mr. President, I ask to be excused on Friday from attendance upon the Convention.

The President put the question on excusing Mr. Cornwell, and he was so excused.

The President announced the order of presentation of memorials, and stated that the Chair had received a petition in favor of equal suffrage for women, which was referred to the Committee on Suffrage; also two petitions from citizens of New York city in favor of the proposed amendment to the Constitution against the appropriation of public funds for sectarian purposes, which was referred to the Committee on Charities; also three communications from citizens of New York State in reference to wages and labor on Sunday, which were referred to the Committee on Industrial Interests; also the petition of the Watertown District Conference of the Methodist Episcopal Church against the appropriation of public funds for sectarian purposes, which was referred to the Committee on Charities.

Mr. Cornwell presented the petition of the Otsego Baptist Association of New York State upon the same subject.

Referred to the Committee on Charities.

Also, the petition of the faculty and board of instruction of the Polytechnic Institute of Brooklyn upon the same subject.

Referred to the Committee on Charities.

Mr. Bigelow presented the petition of Charles Blauvelt in reference to a reform in the mode of selecting jurors.

Referred to the Judiciary Committee.

Mr. Tibbetts presented the petition of citizens of Cayuga county in favor of striking the word "male" from the Constitution.

Referred to the Committee on Suffrage.

Mr. I. Sam Johnson presented the petition of citizens of Wyoming county upon the same subject.

Referred to the Committee on Suffrage.

Mr. Becker presented the petition of citizens of Erie county upon the same subject.

Referred to the Committee on Suffrage.

The President announced the order of notices, motions and resolutions, and the Secretary called the districts:

Mr. J. I. Green offered the following resolution:

Resolved, That all delegates desiring to be excused from attendance hand their names to the Secretary, with the days of attendance which they desire to be excused, and that the same be voted on as a whole immediately before adjournment.

Mr. Green — Mr. President, I desire to say that I offer this resolution simply for the purpose of saving time. It must occur to the members that individuals getting up here and there and asking to be excused causes delay in the business of the Convention, and the adoption of this resolution would save much time.

Mr. Barhite — Mr. President, is not this question debatable?

The President — The question seems to refer to the business of to-day and every day, and is debatable.

Mr. Alvord — Mr. President, I desire to say that this resolution is very objectionable. It is necesary and always has been in the past, when a party desires to be absent from his duties upon the floor of any legislative body that either he in person, or someone for him, should stand up in his place and give a reason why he should be absent. The adoption of this resolution would do away with any such explanation on the part of a member desiring to be absent for any day or on the part of any member speaking for him in his absence. I, therefore, move you, sir, that this resolution do for the present lie on the table.

The President put the question on Mr. Alvord's motion to lay the resolution of Mr. Green on the table, and it was determined in the affirmative.

Mr. Crosby offered the following resolution:

R. 140.— "Resolved, That the Secretary of State be and is hereby requested to promptly furnish to this Convention the following-mentioned information namely:

"First. The aggregate number of acres of land originally conveyed to the State of New York known as the Onondaga salt springs.

"Second. The aggregate number of acres of land since purchased by the State, with moneys arising from the sale of such lands.

"Third. The aggregate number of acres known as salt springs now belonging to the State.

"Fourth. The aggregate number of acres of such lands now leased by the State to different persons or corporations.

"Fifth. The general terms and conditions of the outstanding leases of said lands."

Mr. Crosby — Mr. President, I am informed that the information required by this resolution can be readily obtained. It seems to me necessary that we should have more information upon this subject than is now before us in order to act intelligently upon the question,

and I ask unanimous consent that this resolution be considered at once.

The President — Under the rules, unless such unanimous consent is given, the question goes to the Committee on Salt Springs for a report.

Mr. Alvord — Mr. President, I desire to say, in respect to the request of the gentleman from Delaware, that I am entirely willing and hope that the matter will now be considered. I am, for that purpose, desirous of putting over the further consideration of the amendment offered by me until that evidence can be obtained. It is in the right direction, and I court the investigation. I hope, therefore, that the unanimous consent will be given that the resolution be now considered.

The President — No objection being made, the question will be put on Mr. Crosby's resolution calling upon the Secretary of State for information as to the salt springs.

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

The President — Constitutional amendments are now in order. It seems hardly worth while to call the districts, and unless objection is made, they will not be called. Any gentleman having constitutional amendments to propose will present them, and they will be referred to the select committees.

O. 355.— Mr. A. H. Green offered a proposed amendment to the Constitution, which was referred to the Select Committee on Amendments.

The President announced the order of reports from standing committees including reports upon resolutions which had been referred to them.

Mr. Francis, from the Committee on Preamble and Bill of Rights, to which was referred the overture introduced by Mr. Marks, introductory number 15, entitled, "Proposed constitutional amendment to amend section 7 of article 1," referring to taking private property for public use, introduced by request, reported adversely thereto.

The question will be on agreeing to this report.

Mr. Marks — Mr. President, I move that this report be made a special order for to-morrow morning.

The President — Gentlemen will remember that this requires a two-thirds vote.

The President put the question on Mr. Marks's motion, that the

adverse report be made a special order for to-morrow morning, and it was determined in the negative.

The President — The question is on agreeing to the adverse report of the committee, and the Secretary will read the amendment which is the subject of the report.

The Secretary read the amendment as follows:

"Introductory 15, printed 15, introduced by Mr. Marks, read twice, and referred to the Committee on Judiciary and the Committee on Preamble and Bill of Rights. Proposed constitutional amendment to amend section 7 of article 1, referring to taking private property for public use. The Delegates of the People of the State of New York, in Convention assembled, do propose as follows: Section 2 of article 1 is hereby amended so as to read as follows: When private property shall be taken for any public use by a municipal corporation, 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. When private property shall be taken for any public use by any individual, association or corporation, except a municipal corporation, the compensation to be made therefor, when such compensation is not made by the State, shall be ascertained by a jury. Private roads may be opened in the manner to be prescribed by law, but in every case the necessity of the road and the amount of all damage to be sustained by the opening thereof, shall be first determined by a jury of freeholders, and such amount, together with the expenses of the proceeding shall be paid by the person to be benefited.

Mr. Marks — Mr. President, the subject upon which this Convention can make a needed and acceptable reform, is the present system of taking private property by so-called private corporations for public use. When I use the term private corporations, I mean all corporations, except the State or any civil division of the State which are authorized to take property by the law of eminent domain. The Constitution of the United States provides that no State shall deprive any person of his liberty or his property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law. In depriving a person of his property by the right of eminent domain for so-called public uses, by private corporations, unless it is done by the judgment of his peers, and in the same manner and by the same laws which are prescribed for individuals in cases of damage arising by reason of their taking or damaging another's property, it is not equal justice or by due pro-

cess of law within the strict meaning of that term. No person should be compelled to submit to having his home invaded and his property taken from him without the full protection which the Constitution is supposed to guarantee to him, namely, redress at the hands of his peers, his fellowmen in the jury-box, for the injury thus committed. The Constitution of this State provides in section 7, that "when private property shall be taken for 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."

What is the meaning of this double-barreled provision? What laws does it permit to be made? What laws have been made by the Legislature in conformity therewith on the subject-matter to which it relates? Statutes were enacted in 1850, providing for the incorporation of railroad companies, and providing that when any corporation was unable to agree with the owner of any land for the purchase of such property, or such part thereof as the company needed for the purposes of its incorporation, or to enable it to carry on its business, it should have the right to acquire the same by condemnation proceedings. Railroad after railroad was incorporated, and the same provisions of law as to the manner of exercising eminent domain were applied to them. All acts which I have examined provide for the appointment of commissioners to ascertain, fix and report the amount of compensation to be paid to the owner of the land proposed to be taken. This was allowable under the provisions of this section 7. The Legislature finally consolidated all the laws on the subject of eminent domain and condemnation proceedings into one act known as chapter 23 of the Code of Civil Procedure, which provides that when any corporation which is entitled by law to obtain property by right of eminent domain desires so to do, it shall be taken in the manner prescribed by this chapter. The manner prescribed is substantially the same as all other acts and laws theretofore in force on the subject of eminent domain. The statute provides that the corporation may present a petition to the Supreme Court asking for the appointment of commissioners in the district in which the property proposed to be taken is located. The petition must contain the names of the parties, a description of the property to be taken, and the chapter provides for the notice to the party. On the return of the notice the court hears the parties and if no objection is made it must appoint three commissioners to ascertain and appraise the compensation to be paid to the owner of the property. If objection sufficient to raise a question of fact or of

law is made, a trial is had; not to asess the damages, but to determine the right and necessity of the corporation taking the property. If the result of the trial is favorable to the company, or if no trial is had, then on the return of the notice of motion, the court must appoint three commissioners, a majority of whom must fix the compensation to be paid to the owner or person interested in the land proposed to be taken. On the report of the commissioners, either party may apply to the court to confirm it. The court may confirm the report or set it aside and send it back to the commissioners. If the court confirms the report, an appeal may be taken to the General Term which, if it decides the appeal to be well taken, may appoint new commissioners. But the report of these commissioners is final and conclusive upon all parties interested. This chapter of the Code repealed all other acts and parts of acts except such acts as provided for a method of condemnation for any public use, as a street, highway, avenue or public place in any incorporated city or village, or such acts or parts of acts as provided for a method of condemnation of property for any public use by the city of New York. I refer to these exceptions in the act because they have an important bearing upon the reasons which prompted me to except from the operation of my amendment municipalities to which I will shortly call attention. Every proceeding, brought by a private corporation to take the property of any citizen, can be so regulated in accordance with the privileges granted to these corporations by this section of the Constitution that not a jury trial can be had in any one of them; no matter how much the owner of the property may consider that his interests demand a jury trial. A jury trial in one of these proceedings has never been heard of. The section, though, goes on further and says: "Private roads may be opened in the manner to be prescribed by law." But the line is drawn there. It does not say to the private citizen, you have the right to demand a commission or a jury as you see fit, but it says you must face your fellowmen in the jury-box and satisfy them as to the right and necessity for opening the road; have them fix the compensation which you shall pay to the owner of the property through whose land you may desire to go. The remainder of the section referring to private roads, reads "but in every case the necessity of the road and the amount of all damage to be sustained by the opening thereof, shall be first determined by a jury of freeholders and such amount, together with the expenses of the proceeding, shall be paid by the person to be benefited." The power of eminent domain can be exercised by virtue of legislative enactment, and the time, manner and occasion for exercising it are wholly within the control and

discretion of the Legislature, except as the Legislature may be restrained by the Constitution. What restraint has the Constitution placed upon the Legislature? By providing these two methods, one way or the other, it has practically placed it in the power of the Legislature to dictate the manner, and authorized it alone to fix the manner in which these eminent domain proceedings shall be conducted. Instead of restraining the Legislature, the Constitution opens the door for unrestrained action. Section 2 of the Constitution provides that the right to trial by jury, in all cases in which it has been heretofore used, shall remain inviolate forever. But it also provides that a jury trial may be waived by the parties in any civil case. Section 7 of the Constitution waives that right for the party, and compels him to surrender a valuable right which he otherwise would have had if the entire sentence in section 7, from the first word down to the first period had not existed. Is a proceeding to take private property ever of so little consequence that if taken by a combination of individuals styled a private corporation, no opportunity should be granted to the owner of the land of having any voice in the selection of the tribunal? Is there more or less involved in a proceeding of that character than is involved in ordinary civil actions? In my opinion a great deal more is at stake. Why should it be optional with the Legislature to give to a private corporation which commits the injury, which forcibly ejects the owner from his land, a different tribunal from the ordinary jury allowed to the people, or why should so high and important a privilege be granted to private corporations by our fundamental law, and their rights be declared different from those of any other individual in any other action at law involving the damage by one person to the property of another? No power can take away the valuable right of trial by jury in this State as it now exists. How would we fare, how quietly would the people submit to an amendment to the Constitution which provided that the right of trial by jury shall remain inviolate, but the plaintiff in all cases in which he desires his neighbor's property, or if he has taken it, as private corporations sometimes do, and then comes into court and asks to have the value fixed, he, the plaintiff, shall be the sole judge as to whether the case shall be tried by commissioners or a jury; and the defendant is hereby prohibited and enjoined from saying one world as to the tribunal in which this trifling little difficulty shall be adjusted. If the defendant should believe that his interests demand a jury trial he must request the consent of the plaintiff, as the plaintiff is declared to be the sole judge as to what is best for the defendant, and he, the plaintiff, may select any tribunal which he believes will give to the defendant the

smallest amount of compensation. This is the option given to private corporations by this section 7. Which tribunal can the private corporation control best for its own interests? Which will give the injured party the least? Where will he get the least justice? It practically amounts to a confiscation of one's property to permit two out of three commissioners to fix and appraise its value. The change which I propose in the Constitution is a little different from the proposed amendment as I submitted it at first and as it is before you on your files. The change which I propose, and, Mr. President and gentlemen, I have taken great care to avoid the objection which is made in this Convention that we should not interfere with well-settled principles of law; that we should not bother the courts to construe any new provision; I have followed the present section as closely as I could, and I have prepared this amendment to that section:

"When private property shall be taken for any public use by a municipal corporation the compensation to be made therefor 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. When private property shall be taken for any public use by any individual, association or corporation, except a municipal corporation, the compensation to be made therefor, when such compensation is not made by the State, shall be ascertained by a jury, unless a jury trial is waived as in civil cases; and if so waived, such compensation shall be ascertained by not less than three commissioners appointed by a court of record as shall be prescribed by law,—leaving the remainder of the section (as to the opening of private roads) as it is in the present Constitution."

I am a firm believer, Mr. President, in the right to trial by a jury of twelve. In the language of the Constitution of North Carolina, "in all controversies at law respecting property the ancient mode of trial by jury is one of the best securities of the rights of the people, and ought to remain sacred and inviolable." Our Constitution intends to guarantee to the people of this State a jury trial in all proceedings. I claim that the spirit and intent of our Constitution is not sustained when it permits a different course of procedure, when property taken by private corporations, is not sustained, when it prescribes a different course to be followed where private corporations are interested. Trial by jury has been found to be the defender and protector of our liberties, and the safeguard of the rights of all the people. The high estimation in which it is held shows the confidence of the people in it. In all other actions at law juries are considered the proper tribunals to assess damages. No

matter what injury one person may sustain at the hands of another, no matter what contract is broken, for which compensation is asked in money, no matter what the amount of damage may be which one person seeks to recover from another for injury to his person or his property; in all actions in which questions of fact are to be decided and in which a money judgment is asked, juries are considered the proper tribunal to pass upon the plaintiff's as well as upon the defendant's interests. But in these condemnation proceedings the corporation has the right to select its own tribunal, it has the right to select its own judges to assess the value of the property which it desires to take. The Legislature may accommodate private corporations and give them a trial before two commissioners. If they desire a jury trial to condemn property, which I have never heard of, they may have it. If they want commissioners, they must get them. The Constitution prescribes and gives the Legislature the right to elect, and they elect for corporations. Ought not a defendant in such a proceeding to have some voice as to the tribunal in which his interests are to be determined? When a jury trial is held, both parties have an opportunity of examining the jurors, to ascertain their qualifications, their disinterestedness and their fitness to serve. Both parties have the right to challenge or excuse such jurors as for any cause may be found incompetent to act. But as the practice exists in these condemnation proceedings, no opportunity is given a man of finding out who his judges are to be. No opportunity is given him to ascertain their disinterestedness, their qualifications, whether they have the interest of the private corporation more at heart than that of the individual, or whether or not they are stockholders or bondholders in the very corporation whose case they are to decide. I have heard that the practice exists in the city of New York, and I believe it exists in other parts of the State, of each party to the proceeding, submitting the name of one commissioner to the judge. The judge appoints the third. Of course the commissioners submitted by the parties, it is supposed, must have the approval of the judge. But this is not as it should be. The law says that the judge shall appoint them, and nobody should have the right of suggesting who shall be appointed upon such a commission. In cases where the parties do not submit the names of any of the commissioners, the necessity for a jury trial, with all its freedom for ascertaining who one's judges are to be, is greater than where the parties do submit the names of two of the three commissioners. What corporate influences cannot be brought to bear upon a commission of three thus constituted? Who wields the greater influence upon a commission of three, two of whom have a right to decide the

case, the corporation or the private individual? In what direction, if the commissioners are not disinterested, if they are open to temptation, if they are open to corruption, does their pecuniary interest lie in the direction of the private corporation or in the direction of the private citizen? The question is not a difficult one to answer. Who is better able, who is more apt to secure the appointment of desired and favorable commissioners, the great and powerful corporation, or the individual? The question is not a difficult one to solve. No suggestions are permitted as to who should constitute a jury. The inquiry as to the jury is open, and no one, unless his qualifications are shown, unless he is examined and his disinterestedness appears, can serve as a juror in civil cases. Why should it be different when a private corporation is interested on one side? The opportunity exists for corruptly influencing commissioners which does not exist in jury trials. Judges themselves have not always been found to be upright and honest, and while human nature remains, instances of corruption and partiality among judges will appear. Jury trials are a protection against the corruption of judges and should be of commissioners. They are a check upon the bench and any one or two referees or commissioners, and the people should not be deprived of this valuable right. If they wish to proceed without a jury, give them the opportunity to waive a jury trial, as I propose in my amendment. Give them the right to it and let them waive it as in all civil cases, if they desire. A jury removes the fear and the distrust with which people may regard commissioners or a judge, and places a man in touch with his fellowmen, and they proceed to decide the facts in the case as the people believe that only a jury can. The people have the benefit of twelve minds engaged in meting out justice, and need not fear the hidden power and partiality of one or two. Whenever great rights and personal privileges are at stake they are cared for by juries. They are the only weapons that can be found, the only defenses at hand against the corruption of judges and commissioners. The practice of having jury trials to redress wrongs to persons and property secures to us that freedom which we enjoy, and secures to us the privileges of American citizenship which have won for us as a nation the admiration of the civilized world. To abolish or curtail the system of jury trials strikes at the very foundation of our institutions. It is one of the principles upon which our government is founded and by which it is administered. No matter what opinion we, as lawyers, may have as to jury trials, no matter what opinion we may have as to the ability of juries to ably and successfully try cases submitted to them, we must lay aside all questions of personal preferment, and remem-

ber that it is the people's wishes which must prevail. Their rights are our rights, their wishes are our wishes. We must remember that the privilege of a jury trial is consecrated by a long and continuous practice; that it is an institution so ancient that its origin cannot be traced, one of which the people are proud and watchful, the strengthening and extension of which will meet with approval, and the curtailing or abolishment of which would meet with condemnation.

To act as a juror is certainly a high privilege, greater than the right to vote, greater than the freedom of religious liberty, greater than the freedom of speech, for thereon depends the very liberty of the person, the opportunity for exercising these privileges as well as the protection of the property of the citizen. Is not the fact that the people are deprived of a substantial right sufficient to justify this Convention in making a change, as I suggest in my amendment? Must I go about the State and call your attention to cases where the practice has been abused before you will give the people that which rightfully belongs to them? The reports of these commissioners have been set aside for inadequacy, but that does not remedy the evil. They go back before new commissioners, where the same objection can be raised. The same evil exists. If a jury passed upon the question, the necessity for setting aside the report of the commissioners would not exist.

The judges would hold that as juries are the best judges of the facts that can be obtained, their verdict must stand. In the cities of New York and Brooklyn the abuse has shown itself, and charges of partiality and unfairness have frequently been made against these commissioners. Case after case of condemnation proceedings was begun by corporations and sent to commissioners; report after report was handed in by these commissioners awarding six cents damages to the owners. If a train runs close to a man's property and interferes with his light; if smoke and cinders enter his apartments rendering his premises untenantable, is not the damage done to that man's property greater than the sum of six cents, over and above any benefit which may be derived from the operation of the road in front of his premises? Let a private citizen attempt to obstruct his neighbor's property, as private corporations do, and then attempt to escape the payment of damages, except at the hands of a jury and see how long the practice would be permitted.

Who are these commissioners? The people do not elect them to try their cases. If they have faith in the judges whom they have elected, and whose decisions are open to criticism, they cannot be expected to have any confidence in commissioners whom they do

not select, who are forced on them, whom denunciation cannot affect, who are not answerable to anyone and whose decisions may be reviewed and sustained by the very judge who appointed them in the first instance. In the city of New York the awards of these commissioners have also occasionally been set aside, but, as I said, if a jury trial was had the objection would be removed on questions of fact.

The question of less expense and speedy determination of these proceedings also enters into the amendment which I propose. Usually proceedings of this character are dragged along, as we know references usually are, and the commissioners receive ten dollars for an hour's session or less. The commissioners, if the claim of a distinguished member of the New York Bar, a member of this Convention, is sustained, are entitled to ten dollars for idle moments spent in thinking what they should give for damages, whether in the wilds of Africa or at the north pole, if they stop for a moment from the business which brings them there, and give a few moments thought to the consideration of a proceeding in which they are commissioners, they are entitled to ten dollars compensation for those few moments of thought devoted to that question. If a jury was empanelled the trial could be commenced and concluded, and an opportunity given the jurors to view the premises at the close of the trial, and then return and render their verdict, or they could view the premises before the trial commenced.

This section goes on further, not alone as to the manner of fixing the compensation, but it gives a private corporation the right to take property before the compensation is fixed. This is not as it should be in cases of private corporations. It may very well be in cases of public corporations, but it should not exist in the case of private ones. In New York and Brooklyn, the corporations did not wait to have the damages assessed by a jury or by commissioners, before they took the property, but they went right ahead, erected their posts and foundations in the very cellars of the premises along the line of the road, and then came into court and asked for what? Not three ordinary jurors, plain householders, which is the proper qualification of jurors in civil cases, and who are considered of sufficient intelligence and integrity to decide questions of fact in ordinary cases, but they asked for three freeholders, men who by reason of their ownership of real estate might be able, from the higher moral standard which they possess as owners of property, to decide questions of fact in these condemnation proceedings, which vary as much as questions of fact in other ordinary civil actions. The Constitution, as it was adopted in 1846, when railroad companies were

few, and when proceedings to take private property were few as compared to the present time, when private property was not as valuable as it is to-day, might very well have been adapted to the then existing condition of things. But in the progress which the State has made in wealth and prosperity, to an extent not even dreamed of by the framers of that Constitution, the very many private corporations that have sprung up since then, their tendency to combine, their disregard of public interests and welfare, the formation of trusts and monopolies, the concentration of power and capital to prevent and crush out competition in all branches of trade; all these facts with which we are familiar and which you cannot escape, certainly demand that in one instance, where a wrong is perpetrated by private corporations upon the individuals of this State, and that wrong is perpetrated by reason of a privilege granted to private corporations by our fundamental law, we should take advantage of the opportunity and decide here and now that we do not discriminate between private corporations on the one hand, and individuals on the other, in favor of corporations, and that a private citizen is entitled to a jury trial at the hands of a private corporation which that private corporation must respect. Make them answerable before the same tribunal that an ordinary citizen must face in every litigation. The law now is that the Legislature, at the instance of a private corporation, may deny to the citizen a jury trial. Private corporations are necessary evils, and should be protected against as much as possible; with the power that they have, with the method that they practice, they should not be given such high and important privileges as our Constitution grants to them. Why in reason, why in justice, should a private corporation receive at the hands of the Legislature of the State under our fundamental law, a privilege which no other citizen can enjoy or obtain? Why should their rights be declared different from those of any citizen, and why should a right be given them of which a private citizen is robbed and denied; denied to him to prevent a jury where he is plaintiff, and robbed of the right to demand a jury right where he is defendant? Where a private corporation is plaintiff in these proceedings it prevents a jury trial and robs the defendant of the right to demand one. Private rights should be protected against, rather than surrendered to, private corporations. The security of our homes, the necessity of parting with our land, is left entirely at the mercy of the private corporations who may desire them. If they can select their tribunal, if they can select their judges, how far short is that of making us surrender to them entirely and allowing

them to take our property at what time and in what manner they choose and paying us what and when they choose? How far short is that of confiscation of one's property? This is not the manner in which eminent domain should be exercised. The right to take property by eminent domain applies strictly and entirely to purposes of public use, and may very well be left, in the case of public corporations, the State or any municipality, as I propose to leave it by my amendment, to commissioners or a jury, as the State or municipality may prefer.

The taking of property by the State or any branch of the State, or the power of eminent domain exercised by the State, which is only another means of taxation — this eminent domain by the State may be called a system of taxation with which the people are satisfied, and as I propose, by my amendment, to leave, at the option of the State or municipality, to a jury or commissioners. There is a difference between the taking of property for public use by the State, or the power of eminent domain exercised by the State, and the taking of private property by private corporations. The taking by the State or a city of property, or the taxation by the State or a city, takes property from the individuals as their respective shares or contributions to a public purpose or for the purpose of defraying public expenses. The people have the right to see that the property so taken is correctly applied and to see that the taxes they pay are properly used. But private property taken by private corporations is not the contribution of the citizens of the State to any public burden or for the purpose of paying any public expense, but it is just so much property taken from the citizens beyond their taxes, and for which the citizens receive no benefit. Taxation, whether in money, or by the taking of property by eminent domain, operates on all by equal apportionment; upon persons according to number, and upon property according to its value or the benefits to be derived therefrom, and the necessity for subjecting the State to a jury trial, unless it desires it, does not exist. Eminent domain, exercised by private corporations, operates on a few, without regard to the many, and the manner of assessment of damages to private property taken by private corporations for public use does not apply to the assessment of public taxes or eminent domain exercised by the State. The power given to a State to take property is a proper and unavoidable power surrendered by every citizen for the benefit of the whole community, as well as for his own protection. The people recognize this, as they do the fact that exigencies and necessities may arise for the State taking property summarily. Floods, fire, contagion or war, various exigencies, may demand that the State or a

city should take property in a summary manner without, if you please, making any compensation therefor, or in advance of payment. At other times, if the property is taken by the State, the people know that the property so taken is under the control and supervision of officers elected by the people, and they have the right to see that those officers discharge their duties properly.

In addition, the State will pay, and does pay, just and full compensation for property taken. It is presumed to be honest, and this presumption has been considered sufficient to justify a different course of procedure on behalf of the State. It need not have recourse to methods practiced by private corporations to obtain favorable decisions. The taking of the property by the State or any municipality is dedicated and remains open to public use. If taken for a highway, the people have the free use and enjoyment of the street. If taken for a public building, it goes for the benefit of the people. It operates on all and all enjoy the benefit. If taken for a school-house, the children of the State have a right to use it. If taken for a hospital or poor-house, the sick and poor of the State are provided for. If taken for an armory, for an engine-house, or any other public purpose than can be imagined, by the State or any municipality, or any branch of the State government, the people bow and submit to the right of the State to take their property by eminent domain. But the taking of property by private corporations is not for any public use; it is for private gain. The public is not entitled to the use and enjoyment of the property so taken, but must pay for that use; they have no direct or unqualified use of the property so taken, and sometimes no use at all. I desire to call the attention of this Convention, particularly, to the facts which I will now place before you. Mr. President and gentlemen, no other section of our Constitution contains any provision as to the manner of fixing the compensation for private property, taken for so-called public use by railroads or any other private corporations. The manner is all contained in section 7, which provides for commissioners or juries. I ask the gentlemen of the Convention to pay particular attention to the facts which I will now state. I believe they ought to be carefully considered. There are only two States in the Union, Missouri and Michigan, whose Constitutions contain any law similar to this section 7 of our Constitution, but those two States, however, one by its Constitution and the other by statute, expressly provide for a trial by jury to ascertain the compensation to be paid for property taken by railroads. Missouri follows the language of our section 7, but, by section 4 of article 12 of their Constitution, it provides that the right of trial

by jury shall be held inviolable in all trials of claims for compensation, when, in the exercise of the right of eminent domain, any incorporated company shall be interested, either for or against the exercise of said right. Michigan provides that the compensation shall be ascertained by a jury of twelve residing in the vicinity of the property proposed to be taken, or by not less than three commissioners appointed by a court of record, as shall be prescribed by law. But by statute Michigan has provided that the party whose interest is affected by the proceedings to take property, may demand a jury trial. So that New York stands boldly out, favoring corporations by its Constitution, and by its fundamental law in this particular. The Constitutions of other States of the Union contain the following provisions for ascertaining and fixing the compensation to be paid for private property taken by private corporations for public use: The Constitutions of Alabama, Kentucky, Pennsylvania and South Dakota provide that private property shall not be so taken, unless compensation has been made, and prohibit their Assemblies from passing any law preventing the right of appeal to a jury from an assessment of damages made by commissioners against any corporation. The Constitutions of Arkansas, California and Florida provide that it shall not be taken until assessed by a jury. West Virginia, by a jury, if either party desires; Colorado, Illinois, Iowa, Maryland, Ohio, North Dakota, South Carolina and Washington provide for a jury, either absolutely, as matter of right, or at the option of one of the parties. This makes seventeen States, Mr. President and gentlemen, whose Constitutions guarantee a jury trial in proceedings by railroad corporations to take property. Now, as to the States whose Constitutions are silent on this subject. The statutes of Louisiana, Mississippi, Oregon and Tennessee provide for a jury to assess the damages. Georgia, Indiana, Idaho, Kansas, Maine, Massachusetts, Minnesota, Montana, Nebraska, New Hampshire, New Jersey, North Carolina, Texas, Wisconsin, Wyoming and Rhode Island, all provide, in substance, that if any railroad corporation requires property for its use, that commissioners shall be appointed first, and then, if either party is aggrieved at the award of the commissioners, they may appeal to a jury. In Delaware, I have not been able to find any statute; but in the charters of railroad corporations I find that commissioners are first appointed, and from their award an appeal is allowed to a jury. So that seventeen States provide in their Constitutions and twenty-two States provide by statutes, a total of thirty-nine States out of forty-four, for jury trials in proceedings where railroad corporations take land, and some of them make that provision apply to all cor-

porations in proceedings commenced for the purpose of taking private property for public use. What a record! Shall the great State of New York, because it is greater than any of these other States of the Union, deny this right to its people? The greater the interests involved, the greater the necessity for jury trials. Is the wisdom of the Constitution-makers of the State of New York greater than the combined wisdom of the Constitution-makers and the legislators of thirty-nine other States of the Union?

The plan which I propose, Mr. Chairman and gentlemen, is simpler than the plan which a great many of these States have. A great many of these States, as you will have observed, provide for the appointment of commissioners, but they hold a check over the commissioners by deciding that their award must be reviewed by a jury. The proposition which I offer is simple. No injustice can be done to anyone. It simply says in a very few words, it shall be ascertained by a jury, unless a jury trial is waived, as in any other civil case.

Mr. President and gentlemen, I do not come fortified by petitions and memorials, asking that the word "or" be stricken from this section of the Constitution, or changed to "and," but I come fortified by the knowledge that it is equality for all before the law which I ask, equality for every citizen of the State, and not a discrimination in behalf of private corporations. I come fortified by the wisdom, the judgment, the deliberation, the fiat of between forty and fifty millions of people of thirty-nine other States of the Union allowing and guaranteeing a jury trial in these proceedings. It is not a question, Mr. President and gentlemen, of personal pride with me, whether this amendment goes through in the form which I have suggested. I have no axe to grind; but I appeal to the representatives of the people in this Convention assembled. If you went among your people, if you asked your people who sent you to this Convention: "What shall we do with this question where the private corporation is on one side and the people on the other? Shall we give you the right of jury trial?" What would be the answer of your constituents? Have any of you any doubt on the subject of what the answer would be? It will be a measure, if adopted, that will be universally commended. We are not here, as a body of lawyers, to amend the Constitution simply according to our own views. We represent the people, the masses; and their rights are our rights. The system that they consider best for their own interests we should give them. We are making a Constitution for the masses. Why should you be afraid to tamper with the Constitution in this regard? Are we to come here, with over a quarter of a

million dollars to spend, to read over the Constitution and go back to the people and say: "We have read our Constitution; it has cost you two hundred and fifty or three hundred and fifty thousand dollars to give us an opportunity to read the Constitution. We send it back to you just as it is. It was pointed out to us that we could improve the system of fixing the compensation for taking property, by letting a jury pass upon the value, but we think the present system, with its abuses, is good enough, and your call for a Convention to revise and amend the Constitution was entirely unnecessary. Why not change this system of compelling the people to submit to a trial by two out of the three commissioners? Put it where it belongs. Let the people see we are the champions of their rights. With this matter called to our attention should we, ought we to neglect the opportunity, ought we to allow the opportunity to pass of remedying an evil, remedying a practice which is opposed to all principles of equity and justice? The very object of our gathering here is to secure for all the people of the State the utmost limit of protection, the utmost equality for all by fundamental law. An eminent member of the New York bar, in stating that the jury trials and the jury system should be upheld — and I have not the means at hand for stating his exact language — said that the jury system is where the people are concerned in the administration of the law. That is the muniment of their title for control of the administration of the law; is the means by which they protect themselves against power, against wealth and against the judges on the bench. That is the language, in substance, Mr. President and gentleman, which the chairman of the Judiciary Committee made use of last night, when he spoke in favor of sustaining the jury system, and, gentlemen, I want no better argument to sustain the proposition that I have brought before the Convention than the overwhelming vote by which any proposed interference with the jury system was rejected last evening. Apply the same argument, the same reasons which you used last evening, in sustaining the jury system, and you must extend that system to these condemnation proceedings. Let the people see we are interested in their welfare, and not the welfare of private corporations alone. I am not at liberty, Mr. President and gentlemen, to state to you by what vote an amendment to this section was lost in the Committee on Preamble. This report was made at my request in order to bring the question before the Convention. The amendment on which the Judiciary Committee has reported adversely, and which is the same amendment which is the subject of the report of the Committee on Preamble now under discussion by me, was brought up in that

Committee on Preamble, and, I hope I am not guilty of any breach of etiquette or any breach of parliamentary law or manners in making this statement, this proposed amendment was before the Committee on Preamble, and a proposition was made to give the right to trial by jury in these proceedings at the option of property owners. I leave it to any gentleman on the Committee on Preamble to state to the Convention by what vote that amendment was lost in the committee. My proposition is a fairer one. I place them on an equal footing and give them the same chance as individuals, but do not rob individuals of a substantial right. Justice is not meted out to the people of this State in equal proportions, unless private corporations are placed on the same footing and made subject to the same laws, so far as property rights are concerned, as the private individual. Deny to private corporations what is denied to others, the right of preventing jury trials. Deny to them the right of depriving a citizen of the State of a substantial right. Make for private corporations no special laws. Do not legislate specially for private corporations, but give to the people the same ancient, sacred, incalculable, inestimable right of a jury trial in cases where a private corporation is on one side and an individual on the other, as exists in cases between private individuals. Do not place it or leave it in the power of any Legislature to take away that right. I hope, Mr. President and gentlemen, you will consider this question carefully, slowly, deliberately. It is a measure which the people will commend. Do not go over it hastily, because you have the adverse report of two committees here, but bear in mind, rather, the suggestion of the chairman of the Committee on Judiciary, who, while the committee, of which he is chairman, reports adversely on this proposition to give to the people a jury trial, he, the chairman, in open Convention, gets up and lauds and applauds the jury system and declares it to be the only protector and safeguard of the rights of all. Give the question that consideration and attention which it deserves.

I, therefore, Mr. President, disagree with the report of this committee, and hope the question will receive discussion. Do with it what you will, but send it to the Committee of the Whole and let us discuss it there. Change the amendment, if you not like the wording of it; send the adverse report back and provide in your Constitution that a jury trial is a matter of substantial right to the citizens of the State, unless the parties waive it, as in civil cases. (Applause.)

Mr. Alvord — Mr. President, I am not aware whether this applause is for me or the gentleman who has just spoken.

(Applause.) I desire to make a somewhat lengthy speech on this occasion, and to say to this Convention that under an unfortunate rule which obtained the approval of the Convention yesterday, we of the Committee on the Bill of Rights were compelled to make this report this morning at the request of the gentleman who has just sat down. We were in that report, sir, practically unanimous. We believed that the House had heard all of the eloquence that by any possibility can be expended on a matter of this kind, and, therefore, sir, I ask leave that now the previous question be ordered.

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

Mr. Marks called for the ayes and noes, which were ordered.

The Secretary proceeded to call the roll.

Mr. Becker — Mr. President, I ask to be excused from voting, and will briefly state my reasons. I believe, to a considerable extent, in the principle which underlies the amendment. At the same time I feel that in matters of appropriation of land, in the exercise of the power of eminent domain, it will be exceedingly difficult to discriminate between land taken for public uses and land taken for those which are essentially private uses. I also find difficulty in the practical working of any such scheme, because it seems to me that expert commissioners who can view the property, and largely make up their judgment of the value of the property from their previous experience and their opportunity for examination, present a better method and safer to all classes of society than the submission of questions of this character indiscriminately to juries. For that reason, I cannot approve of this measure. I, therefore, withdraw my request to be excused, and vote aye.

Mr. A. H. Green — Mr. President, I ask to be excused from voting, and will give my reasons. I am decidedly in favor of granting to the owner of property to be taken for public use by forcible proceedings, the option of saying whether he will elect a jury or commissioners. I am on this committee, and would go much farther than the gentleman who has taken so much pains to prepare this amendment. I believe in the principle of giving the option to the owners of the property to be taken whether they will elect a jury or commissioner. The Constitution says that it may be by a jury or by commissioners, as provided by law. The law has provided that it shall be commissioners. I wish to retain the option to have it go to a jury, if the property owners prefer to do so. I withdraw my request to be excused from voting, and vote aye.

Mr. I. Sam Johnson — Mr. President, I ask to be excused from voting, and briefly state my reasons. It is an old, old saying that in the affairs of men it makes a great deal of difference whose ox is gored. I listened with much pleasure last evening to the eloquent speeches by the gentlemen upon this floor in favor of trial by jury. I felt something of a pride in the leader of this body when he stated that he never would consent to give up the rights, not a single jot or tittle of the right of the people, to have that sacred right preserved; and I was somewhat astonished when I found that a report of this kind had been made by which the right of trial by jury, in an important particular, was taken away. I believe that the same rule should apply to the good people and to the corporations. I believe that wherever a large interest is to be taken away from any one of the citizens of this State that he should have the right to appeal to the trial by jury to have that matter determined. Mr. President, I withdraw my request to be excused from voting, and vote no.

Mr. Marks — Mr. President, I desire to be excused from voting, and will briefly state my reasons. I do not think that this question has received the consideration which it deserves, or that its importance has been duly weighed by the delegates to this Convention. I hope that the matter may come up in another form when the delegates have had an opportunity of thinking it over, of weighing the reasons for making the change, of considering the fact that there are thirty-nine States in the Union that are opposed to our present system. I trust when the question comes up again on adopting that section, and you have another opportunity of voting upon the question, you will give due consideration as to whether you will side with private corporations, as against individuals, and deprive individuals of the right to trial by jury where these corporations are interested. For these reasons, Mr. President, I withdraw my request to be excused from voting, and vote no.

Mr. Maybee — Mr. President, I ask to be excused from voting, and will state my reasons. I do not believe in infringing upon the right of trial by jury, and I have never been accused of any partiality to corporations, but it seems to me that the provision proposed by the mover of this amendment will be a cumbrous and impracticable provision of the Constitution. It is almost always the rule in condemnation proceedings that the proceeding is somewhat protracted, spread over a considerable period of time, and it is also nearly always the rule that a personal inspection of the premises sought to be condemned is thought to be necessary. Now, if

the jury system were to be adopted, it would be very cumbersome, very impracticable, very inconvenient, to keep a jury, in the discharge of its functions, for a period of days, and, perhaps, weeks, until the condemnation proceeding had been terminated, and to take twelve men to the premises, the *locus in quo*, to make a personal inspection of the property sought to be condemned. It seems to me that while the principle of trial by jury ought to be preserved to every extent compatible with the convenience of litigants and the orderly discharge of the duties of courts, that it would be cumbersome and impracticable to adopt any such provision as that proposed. I withdraw my request to be excused from voting, and vote aye.

Mr. Mullen — Mr. President, I ask to be excused from voting on this question, and will state my reasons. I observe by section 7 of article 1 of the Constitution that it provides in the following language: "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." If this section of the Constitution means anything, it means that the owner of this property has some rights in the possession of his property and in the dispostion which shall be made of it. He has rights under the Constitution which the judges administering the law are bound to respect, but which, from my personal experience, I regret to say, they observe very seldom in the interest of the land owner. Experience is a hard task master. Facts are stubborn and hard to overcome. I have in mind a series of cases where I appeared for the land owner and endeavored to protect his rights in the possession of his property, but in every instance those rights were disregarded. Where he had the temerity to decline to accept the offer made by the railroad company, the court in every instance, although an application was made for a trial by jury, refused to accord to the land owner a jury trial, and appointed commissioners who were, undoubtedly, in the pay of the railroad corporation. The punishment which the land owner received when he declined to accept the offer made by the corporation of the sum which was offered him was that all the expenses of the commission were deducted from that sum. He was compelled to take the sum originally offered him, less the whole expense of the proceeding. I consider that this is one of the most crying outrages that exists in this State; that the owner of property is at the mercy of the corporation. I will give one case in illustration.

The President — Mr. Mullen has used up the time allowed by the rule.

Mr. Mullen — Will you pardon me for one minute more?

The President — Unless objection is made.

Mr. Mullen — There was one case where the counsel for the corporation, instead of making application for commissioners in Richmond county, where the matter arose, or in the adjoining county of Kings, made his application at Poughkeepsie. When we appeared at Poughkeepsie, objection was raised that the application should have been made in the county, or in an adjoining county, so that the land owner might have an opportunity to produce his witnesses. The judge then presiding at that proceeding gave his assurance to me that if I would agree to proceed and take the testimony of the railroad company's witnesses at Poughkeepsie, that they would come down to Richmond county on the following Tuesday and take the testimony of the land owners. The railroad company proceeded and gave their testimony, and when they closed the judge turned to me and said: "Now, proceed with your case. Call your witnesses." I claimed that by false pretenses, by misrepresentations made by a judge of the Supreme Court on that occasion, that we were induced to submit to his jurisdiction; and, when the railroad company had given its proof, he shut us off, and we were deprived of our right to be heard as to whether these commissioners were to be appointed or not. An appeal was taken to the General Term, the matter fully argued and exposed at General Term, and the General Term affirmed the conduct of that judge, who, thank God, no longer is a judge. And when we come to the Court of Appeals —

The President — The Chair must insist upon the observance of the rule. Three minutes is all the time that is allowed for a statement on a request to be excused from voting.

Mr. Mullen — That was a case where we did not have an opportunity to be heard. I withdraw my request to be excused from voting, and vote no.

Mr. Powell — Mr. President, I ask to be excused from voting, and will very briefly state my reasons. It occurs to me that the question which is put before this Convention by the proposed amendment is exceedingly clear cut. It is a question of whether or not privileges shall be accorded to corporations in excess of those which are accorded to private individuals, when the interests of the two are brought into open conflict. It seems that this Convention

is about to commit itself to the doctrine that it is right and proper for the people of the State of New York to give corporations special privileges which are denied to the private citizen. If this doctrine is to be adopted by this Convention, and, if the Convention is to go before the people of the State of New York upon any such platform as that, I believe that the answer of the people to the projects of this Convention will be such that the work of this Convention will result in absolute and total failure. Last night, sir, this Convention affixed the seal of its approval to an institution, which Hallam, the great English historian, in his "Middle Ages," denominates a preposterous relic of barbarism. It may be fitting and it may be proper that, after having taken that step in our deliberation, we should to-day go a step further and declare to the people of the State of New York that when the private individual and the great moneyed corporations come into open conflict, as to the value of the property which the corporation is taking from the private individual, that we will give to the large moneyed corporation its choice of the tribunal before which the matter at issue shall be tried. If this Convention believes it to be wise to do this, then let it pursue that course, and it will receive the rebuke from the people of the State of New York which it justly deserves.

The President — Mr. Powell, your time is exhausted under the rule.

Mr. Powell — I shall refuse to walk in the footsteps of this Convention, if it pursues such a course, and, therefore, I withdraw my request to be excused from voting, and vote no.

Mr. Van Denbergh — I ask to be excused from voting, and will briefly state my reason. I read from the Manual "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." Now, further, the proposition is, "when private property shall be taken for any public use, by a municipal corporation, 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. When private property shall be taken for any public use by any individual association or corporation, except a municipal corporation, the compensation to be made therefor, when such compensation is not made by the State, shall be ascertained by a jury." A jury trial may be had as it now stands,

but it is said that the Legislature has interfered and prevented. The point was made in the Committee on Preamble that there should be no difference between the corporation and the individual; that the corporation stands before the people as an individual does. It has its rights, and there can be no good reason why one rule should apply to our corporations, and another rule to individuals. That would appear to be reason enough for voting the proposition down. I withdraw my request to be excused from voting, and vote aye.

Mr. Marks called for the absentees, and the Secretary proceeded to call.

Mr. Griswold — Mr. President, I believe that my name is not recorded as having voted, and, in the form adopted, I ask to be excused from voting, and will state my reasons. I have had some experience in these claims for damages against railroad companies and in the proceedings to acquire property. The simple question here is, which of these two tribunals shall assess the damages to the owner? One of those tribunals is by commissioners and the other by a jury. In the case of commissioners, the first proceeding by a railroad company is to go to a favorable or kindly judge to present the petition, which they have the right to do. The next thing in order is for that same judge to name the commissioners. I say, I have had some experience in regard to that, and I have had commissioners named under protest, the same ones from time to time, to assess damages when it has been protested against aand still continued until threats of impeachment of the judge were made. That is not the usual case, I admit, but, on the other hand, if the owner has the opportunity of choosing a jury, he is not subject to any partial judge or any commission. There is another thing. This State is almost dominated by a powerful, overwhelming railroad company, with two lines upon it. It dominates the Legislature, as it is generally understood, and it is charged with having great influence in this Convention, with its donations, where it will do the most good. I ask the delegates to stand up against this powerful corporation that is about dominating this State. I withdraw my request to be excused from voting, and vote no.

Mr. Lauterbach — Mr. President, I ask to be excused from voting. I refrained from voting on the first call, because I am professionally engaged in condemning some miles of abutting owners' damages along the line of a railway or a system of railways in the city of Brooklyn; and think it would be better taste for me to refrain from voting.

The President put the question on excusing Mr. Lauterbach from voting, and it was determined in the affirmative.

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

Ayes — Messrs. Abbott, Acker, Ackerly, Allaben, Alvord, Arnold, Baker, Banks, Barhite, Barnum, Becker, Bigelow, Bowers, Brown, E. R., Bush, Cady, Cassidy, Chipp, Jr., Church, Clark, G. W., Clark, H. A., Crosby, Danforth, Davenport, Davies, Deady, Dickey, Doty, Durfee, Fields, Floyd, Foote, Francis, Frank, Andrew; Frank, Augustus; Fraser, Fuller, C. A., Fuller, O. A., Gallinger, Gibney, Gilbert, Goodelle, Green, A. H., Hamlin, Hawley, Hecker, Hedges, Hirschberg, Holcomb, Holls, Johnson, J., Kellogg, Kimmey, Lester, Lewis, C. H., Lincoln, Lyon, Manley, Marshall, Maybee, McClure, McIntyre, McKinstry, McMillan, Mereness, Nichols, Osborn, Parker, Parkhurst, Parmenter, Peck, Pratt, Putnam, Redman, Roche, Root, Rowley, Sandford, Schumaker, Spencer, Steele, A. B., Steele, W. H., Tekulsky, Tibbetts, Truax, C. H., Truax, C. S., Van Denbergh, Vogt, Wellington, President — 93.

Noes — Messrs. Barrow, Burr, Campbell, Carter, Cochran, Coleman, Cornwell, Curran, Davis, Durnin, Emmet, Faber, Fitzgerald, T. W., Forbes, Giegerich, Gilleran, Goeller, Green, J. I., Griswold, Herzberg, Hill, Hottenroth, Jacobs, Jenks, Johnson, I. Sam, Johnston, Kerwin, Mantanye, Marks, McArthur, McLaughlin, C. B., Meyenborg, Moore, Morton, Mullen, Mulqueen, Nicoll, O'Brien, Ohmeis, Platzek, Porter, Powell, Roderick, Smith, Springweiler, Storm, Sullivan, T. A., Sullivan, W., Titus, Tucker, Turner, Veeder, Whitmyer, Wiggins, Williams, Woodward — 58.

Mr. Vedder, from the Committee on the Powers and Duties of the Legislature, to which was recommitted the proposed amendment introduced by Mr. Vedder, introductory No. 73, entitled, "Proposed constitutional amendment to amend section 15 of article 3 so as to secure greater publicity and deliberation in the passage of all bills," reports in favor of the pasasage of the same, with some amendments.

The President — This will retain its place on general orders.

Mr. Vedder, from the Committee on the Powers and Duties of the Legislature, to which was referred the proposed amendment introduced by Mr. Mereness (introductory No. 49), entitled "Proposed constitutional amendment to amend article 3 of the Constitution, relating to public officers," reports the same to the Convention, with some amendments for the purpose of printing, and when

printed, to be recommitted to the Committee on the Powers and Duties of the Legislature.

The President put the question on the motion to print and recommit, and it was determined in the affirmative.

Mr. Cady, from the Committee on Canals, to which was referred the resolution (No. 135) introduced by Mr. Hottenroth, asking for information of the State Engineer and Superintendent of Public Works, reports in favor of the passage of the same, with some amendments, and recommends its adoption.

The Secretary read the resolution as amended as follows:

Resolved, That the Secretary request the State Engineer and the Superintendent of Public Works to obtain aand report to the Convention as soon as possible, and not later than August first, approximate detailed estimate of the cost of improving the various canals of this State, specifying each separately.

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 reservoirs or conduits thereof, and also the probable extent of the land damages that may result therefrom.

Second. Of the probable cost of cleaning the canals so as to give full use for navigation, to the depth of seven feet.

Third. Of the probable cost of lengthening all locks not already lengthened to a uniform length.

Fourth. Of the probable cost of building retaining walls wherever necessary for the most effective service; and, be it further

Resolved, That the said officers ascertain and report as soon as practicable the probable cost of constructing a suitable ship canal in the place of and along the route of the present Erie canal, together with an estimate of the probable expense of land or other damages that would result from such construction.

The President put the question on the adoption of the resolution, and it was determined in the affirmative.

Mr. Root, from the Committee on Rules, to which was referred the resolution introduced by Mr. Moore (No. 137), " Resolved, That on the coming in of a final report of any committee, if such report be not unanimous, a minority report shall be always in order at any time before the final disposition of such report by the Convention, or at such other time as the Convention may decide," reported in favor of the adoption of the same, amended as follows: That a minority report may be made at any time before the subject on

which report has been made by a standing or select committee, has been finally disposed of by the Convention.

The President put the question on the adoption of the resolution as amended, and it was determined in the affirmative.

Mr. Root, from the Committee on Rules, reported favorably the following resolution introduced by Mr. I. S. Johnson (No. 119):

Resolved, That hereafter the Convention may dispense with the reading of the Journal and that amendments thereto may be made on the legislative day following that on which the printed Journal is placed on the desks of the members.

The President put the question on the adoption of the resolution, and it was determined in the affirmative.

Mr. Root, from the Committee on Rules, to which was referred the resolution introduced by Mr. Moore: Resolved, That the final report of all staanding or special committees shall embody in them the respective amendments by number only, considered by them in arriving at the conclusions mentioned in such report, and in substance such report shall always state that such committee had under consideration amendments Nos. ——, and report on them as follows, report adversely thereto.

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

The Committee on Rules, in obedience to a resolution passed on July 10, 1894, requiring it to report a rule providing for the printing of certain substitutes to proposed amendments, or amendments to proposed amendments, do hereby report the following rule as calculated to effect that purpose, but the committee are unanimously of the opinion that it is not expedient to adopt the same.

Rule: Substitutes to proposed amendments to the Constitution, or amendments to proposed amendments exceeding twenty-five words in length, which may be offered in Committee of the Whole, or in the Convention, shall be printed and placed on the files of the members.

Mr. Root — Mr. President, there were two objections, we thought, to the rule, one is that it is not necessary, because it is entirely within the power of the Convention to print, as they have done on both occasions, when extended amendments have been offered. It requires but a moment to introduce and pass a resolution to print, whenever anything comes up proper for printing, and we have found no difficulty with it hitherto. The other objection is that if we tie

ourselves up by a rule which requires everything over twenty-five words to be printed, whether the Convention wishes to print or not, then we would never get through, for the offering of an amendment exceeding twenty-five words, would be equivalent to postponing consideration until after that amendment had been printed. It seemed to us that the Convention ought to keep the matter in its own hands, and that it can readily dispose of the matter as the occasions arise; and that the Convention should not prevent itself from taking such action as it sees fit from time to time.

Mr. Barhite — Mr. President, my object in offering the resolution upon which the Committee on Rules has made a report, was to provide some means by which every member of this Convention could be thoroughly informed of amendments or substitutes which might be offered in Committee of the Whole. I recognize the difficulty which has been stated by the acting chairman of the Committee on Rules, and that in some cases it may delay action in the Committee of the Whole upon proposed amendments, but we had an example the other day when a substitute was offered by the gentleman himself, and while action that day was delayed and it was referred back to another committee, yet if the Committee of the Whole had proceeded then and discussed that proposed substitute and passed it, or refused to pass it, there were not more than one or two delegates in this Convention who would have had any opportunity to know what the substitute contained except as they might gather and retain in their minds from one or two readings from the desk. I did not mean to insist upon an amendment of not more than twenty-five words, but my object was to bring before the Convention some rule, or have some provision adopted, by which any lengthy matter which was offered for consideration could be brought to the personal notice of every delegate.

Mr. Alvord — Mr. President, I desire to say that the rule that has obtained, in legislative bodies before this, has been that upon the incoming of a substitute or an amendment of any importance, there has been a distinct motion to print it. It seems to me that that is all that is necessary. We can gather from the reading from the desk, if we pay the attention we ought to the proceedings of the Convention, the necessity or propriety of thus printing the proposed amendment or substitute, and if it can be seen that it is entirely frivolous or entirely unnecessary, we can thus avoid that expense. I am decidedly in favor of the proposition of the gentleman from New York (Mr. Root), the acting chairman of this committee, in

what he has said, that it is entirely unnecessary to go through with a mass of printing which will drop upon the floor and never be seen again, and that we should confine ourselves to that which is of importance enough in the opinion of the Convention to be placed upon the desks of the members.

Mr. Cochran — Do I understand the question is on adopting the rule? As I understand it the committee have reported the rule.

The President — They have reported the rule and have reported that in their judgment it is not expedient to adopt it.

Mr. Cochran — Then is not the question on the adoption of the rule itself?

The President — That is the effect of it. The question is on agreeing with the report of the committee that it is inexpedient to adopt the rule.

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

Mr. Bowers — While in the order of business of reports of committees, I desire to offer a motion to reconsider the vote which was taken sustaining the report of the committee on preamble and adverse to the proposed constitutional amendment (No. 15) introduced by the gentleman from New York (Mr. Marks). My reason for making this motion is as follows: A similar constitutional amendment, if not this same amendment, was before the Judiciary Committee, and it was very carefully considered, and the conclusion was reached in that committee in which conclusion I joined, that the bill, as drawn, would tend to the interest of corporations and not to the interests of individuals whose property was to be taken, because the bill provided that a jury trial should be a matter of right unless waived, and that meant waived by both parties. Every man, at all familiar with the history of elevated railroad litigations in the city of New York, knows that the corporations invariably seek for a jury trial, and that the property owner invariably seeks for commissioners because he gets better protection from them. For these reasons, I voted in favor of sustaining the report; but it touches a subject which ought to be dealt with more thoroughly by this Convention. There will be, to-morrow morning, an amendment introduced which will provide that it shall be at the option of the man whose property is condemned, whether he will have a jury trial or no. In that form I believe that the amendment will commend itself to this body. Having thus briefly stated the reason which actuated me to make this motion to reconsider, I ask that the Convention will permit that motion to lie upon the table until a new

resolution in the form proposed be introduced, when we will probably send it back to the Committee on Preamble to determine whether or not it should be finally adopted. Therefore, my motion is to reconsider, and let it lie on the table.

The President put the question to lay the motion upon the table, and it was determined in the affirmative.

Mr. Davis — Mr. President, I desire to call the attention of the Convention, as well as that of the gentleman last upon the floor, to the fact that the proposed amendment, No. 230 (introductory No. 228), provides for the very amendment which he suggests or states that he will offer to-morrow. I rather think the Committee on Preamble and bill of rights have considered that proposition and made a report upon it. That proposition reads: "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."

Mr. Alvord — I rise to a point of order. I should like to know what is before the Convention. We have just passed upon a proposition which the gentleman is now discussing. I think he is entirely out of order.

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

The Secretary read a communication from the Secretary of State, as follows (communication No. 14, in response to resolution No. 56):

"ALBANY, *July* 17, 1894.

"*Hon. Chas. E. Fitch, Secretary Constitutional Convention, Albany, New York:*

"DEAR SIR.— Your communication of the thirteenth inst., is received, in which is embodied a resolution of the Convention requesting certain information in relation to railroads incorporated in this State, but which have not been constructed; and also relative to railroads constructed, but which are not operated.

"In reply we beg leave to state that this office is not in possession of the desired information.

"Yours very respectfully,
"ANDREW DAVIDSON,
"*Deputy Secretary of State.*"

The President presented a communication (No. 15) from the Board of Railroad Commissioners, in response to resolution No. 56, which was read by the Secretary.

The President announced the general order, the amendment offered by Mr. Alvord relative to salt springs.

Mr. Alvord — Mr. President, there having been offered by the gentleman from Delaware (Mr. Crosby) a resolution of inquiry in regard to details connected with salt springs, with his permission, and, with the approbation of the Convention, I desire not to move that until the report can come in.

General order No. 4 was called by the Secretary.

Mr. Goodelle — I desire to say, in regard to No. 4, that I announced yesterday that I should move that matter to-day. Very urgent requests have been made by persons who are largely interested, that the matter should stand over. We have consented that it should take that course, and I, therefore, shall not move the matter until morning.

The Secretary announced general order No. 7.

Mr. Holls — Mr. President, it was my intention to move that amendment to-day, and I was prepared to submit to the Convention an argument in its favor, but the distinguished gentleman from New York (Mr. Smith) is very anxious to be heard in opposition. As it is impossible for him to be here to-day, and he has leave of absence for the rest of the week, I am obliged, under the circumstances, to pass it. I shall ask the Convention to take it up, however, on the earliest day next week possible.

The Secretary announced general order No. 8.

Mr. Lauterbach — Mr. President, I have been requested to permit that matter to stand over until a day next week, if there is no objection.

The President — If you simply do not move it, that will answer.

Mr. Lauterbach — I do not move it.

The Secretary announced general order No. 9.

Mr. Dickey — I move that the Convention go into Committee of the Whole upon that amendment.

The President put the question on going into the Committee of the Whole, and it was determined in the affirmative.

The Convention resolved itself into Committee of the Whole.

Mr. Bush, chairman, announced that the Convention was in Committee of the Whole on proposed amendment No. 6, 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 Secretary read the first section of the amendment.

Mr. Alvord — The latter part of this is no part of the amendment, and should not have been read by the Secretary. It is simply explanatory of what the gentleman desires. It seems unnecessary to me to read that portion of it.

Mr. Dickey — Mr. Chairman, I was satisfied with the public demand for such a measure as this amendment, when I introduced it, but when the Committee on Towns, Villages and Counties, with but one dissenting voice, voted to report it favorably, I was confirmed in my belief. It has received the indorsement of many papers, both city and country, among others the leading and influential New York Herald. It has been indorsed by the medico-legal societies of New York and Buffalo. I might make a long speech in its favor, as long as Brother Marks did in support of his amendment, but I think too well of the Convention to inflict any such punishment upon them. But I desire to commend this measure to your consideration. I am opposed to the office of coroner, notwithstanding it is moss-grown and venerable. Our Committee on Bill of Rights may remember a time when a "Crowner's Quest" had the respect of the community. He lags superfluous and answers no useful purpose. His work can better be done by other officials, and thus avoid going over the same ground twice. In practice the coroner and his jury accomplish nothing, because the same work has to be done a second time, where there is any criminality attached to the matter under investigation, by the police magistrate, and the self-same witnesses are sworn twice over. The medical examiner, who is employed by the coroner to make the investigation and give the testimony at the coroner's inquest, is called a second time before the committing magistrate in the country and the police justice in the city. In most of the counties of the State the fee system prevails. Inquests are held, and many times unnecessarily, in cases of accidental drowning, sudden death by heart disease, and other causes where it is very evident there is no criminality whatever. The coroner is spurred by the fee, and he makes about thirty dollars in each case and jurors a dollar a day apiece, twelve of them, extending over days at a time, and the expense has got to be a grievous burden upon the taxpayers; and we desire to do away with it, and that is the purpose of this amendment. Besides, the coroner and his jury of twelve invade the sanctity of the house of mourning and put the bereaved members on the witness stand; and that I desire to avoid as unnecessary, in the class of cases that I have indicated, where the cause of death is evident and there is no

occasion for criminal investigation. The district attorney and the magistrates can very well attend to the criminal part without the aid, assistance or preliminary work of a coroner. The coroner's verdict amounts to nothing, because it is not binding upon anybody; it does not free anybody. The accused does not have any fair standing before the coroner's jury. He is not even entitled to be represented by counsel. He cannot ask a single question through counsel, and in that respect it is a farce and should be done away with as a relic of past ages. If the coroner is wiped out entirely as a constitutional officer, which is the purpose of this amendment, then it clears the way for the Legislature, in its wisdom, to provide a substitute of some kind. I am not so particular as to what that substitute shall be. In the State of Massachusetts they have a very good system of a medical examiner, who does all the preliminary work. In the case of death, sudden or suspicious, he goes to the place where the corpse is, investigates, makes a post-mortem examination, if necessary, and, if there seems to be any criminality attached to the death, he reports to the criminal officers, who at once take charge and proceed to investigate, and take the necessary steps to bring the suspected person to examination and justice. I hope this will meet the favorable report of this committee, and nearly unanimously so, if it may be, as there was but one dissenting voice in the committee, and I hope that the sense of this committee will be practically the same, and that this amendment will prevail. Having made this brief speech, and favored you to that extent, not having punished you any more than I have at this time, I submit the matter to your consideration.

Mr. Alvord — Mr. Chairman, I am decidedly and heartily in favor of the proposed amendment to the Constitution; but, if not already done by the Secretary by the order of the Chairman, I desire to strike out the stump speech in this matter: "The purpose of the amendment being to do away with the office of coroner as a constitutional officer." It is wholly unnecessary, inappropriately placed there, and is merely a stump speech, giving the reason the amendment is offered. I, therefore, move to strike out that portion of what has been read by the Secretary.

The Chairman put the question on the motion to strike out the words referred to, and it was determined in the affirmative.

Mr. A. H. Green — I move that the committee now rise, report this amendment to the Convention and recommend its passage.

The Chairman — The Secretary will first read the title.

Mr. Hottenroth — I desire to ask the mover of the amendment

a question, as to in whom he believes the duties will vest, which are now vested in the coroner, until provision is made by the Legislature.

Mr. Dickey — The Legislature may very well, Mr. Chairman, provide to assign this to the county treasurer or some other existing officer. It is a very easy matter, merely a matter of legislation.

Mr. Hottenroth — I think some provision ought to be inserted requiring the Legislature to provide, immediately upon the adoption of this amendment, for some officer to exercise these functions

Mr. Lester — Mr. Chairman, I understand that there is no necessity for anything further than the amendment which has been proposed, for the reason that the passage of this amendment will not do away with the office of coroner, as it exists under the statute of the State. The coroner stands upon a double footing. He is not only a constitutional officer, but he is also an officer recognized and having the basis for his existence in the statute law of the State. So that until the Legislature goes a step further, and repeals the laws now existing, providing for the office of coroner, he will still exist as a public officer, and be competent to perform all the functions which he now performs. It will be necessary only to substitute some other officer, or find some other means for the performance of his duties when the present statutes regulating his duties are repealed by the Legislature.

Mr. Alvord — Mr. Chairman, I desire to call the attention of the Chair to the fact that there is no title, except simply for the accommodation of the members of the Convention, to any article which we propose. No title follows the article into the Constitution, providing the people accept it. It is only necessary in a legislative body to read the title, because it is an absolute component part of the legislation required by the statute as an explanation of the law. I, therefore, suggest to the chairman that there is no question, except the question which I shall now make, with the approbation of the Chair and the committee, that the committee do now rise, report this limited portion of the Constitution to the Convention, and recommend its passage.

Mr. Kerwin — I ask Mr. Alvord to withdraw that motion for a moment.

Mr. Alvord — I will, if the gentleman will not take up too much time.

Mr. A. H. Green — I have already made the motion.

Mr. Kerwin — I will not take up much time.

Mr. A. H. Green — Before the gentleman from Saratoga spoke, I made the motion that the committee rise.

Mr. Alvord — Certainly; that is all right. I will not take away the honor from the gentleman from New York.

Mr. Kerwin — I ask the gentleman from New York to withdraw his motion.

Mr. A. H. Green — I withdraw the motion.

Mr. Kerwin — It has been said here that there was only one dissenting voice in that committee in relation to this amendment. The fact is that there ought to have been two there. The other dissenting vote would have been my own. The Committee on the Powers and Duties of the Legislature had a measure pending before them in which I was greatly interested. The meetings of the two committees clashed so that I could not be present at the meeting of the Committee on County, Town and Village Officers, and could not sign my name with the minority of the committee. Mr. Chairman, this amendment looks to me to be in aid of the medico-legal society, which is seeking to do away with the constitutional office of coroner and make it a legislative office for the practice of doctors in this State. Under those circumstances, I wish to go on record as being opposed to it.

Mr. Becker — Mr. Chairman, I desire to offer the following resolution:

The resolution was read by the Secretary as follows:

Resolved, That it is the sense of this committee that the office of coroner be abolished, and that the proposed amendment (introductory No. 6) be referred to the Judiciary Committee, with directions to report whether any legal difficulties concerning the abolition of the office exist, which should be avoided in the proposed amendment, and, if so, that said committee draft a proper amendment for that purpose.

Mr. Alvord — Mr. Chairman, I rise to a point of order. The only way in which the gentleman can accomplish this is to move to rise, report progress and ask leave to sit again, and on the incoming of the report of the Chairman, then he can make his motion to the Convention. It cannot be entertained in Committee of the Whole.

The Chairman — The point of order is well taken.

Mr. Becker — I am not at all particular how the matter is brought up; not being so familiar with parliamentary practice as the learned and distinguished gentleman from Onondaga (Mr. Alvord), I was,

perhaps, too quick in offering this resolution. I desire, however, to express my hearty concurrence in the purpose of the amendment. I believe that the office of coroner should be abolished; and I do not believe that the abolition of it, in any way, so far as relates to its constitutional position, will necessarily bring about the result which is feared by the gentleman from Albany (Mr. Kerwin). It is true that the medico-legal societies of this State, and some medical associations, have passed resolutions in favor of abolishing this office, but I do not think their motives are unworthy or of the character imputed to them. The fact is that nearly all the coroners of the State now have medical examiners attached to them in some way, and we have the anomaly, really of two officers performing the functions of one. Worse than that is the fact stated in the suggestion made by Mr. Dickey, which is that a large portion of the duties which have from time immemorial fallen upon this officer, under our present system of magistracies throughout the State, police magistrates and the like, can just as well, and, even better, be performed by that class of officers. The time has come, it seems to me, when the cumbersome method of procedure, which has come down to us from King Alfred's time, when there were no railroads, no telegraphs, no speedy methods of transportation, when conditions of life were so vastly different from what they are now, should be abandoned.

Mr. C. H. Truax — I rise to a point of order. I would like to be informed what question there is before the committee.

The Chairman — The matter is open for general debate. The whole question is before the committee.

Mr. Becker — The time has come when such superfluities should be cut off from the body politic. I will follow Mr. Dickey's example in not making a long speech, although I have some data.

Mr. Alvord — I rise to a point of order. I do not wish to interfere at all with gentlemen who are speaking, but I do desire that the rule shall be observed, if possible. I, therefore, ask my friend from Erie (Mr. Becker) to move to strike out a section, and then he has a legitimate right to proceed. But, unless he has made that motion, there is no question upon which he can speak. There can be no other motion, except to rise and report progress, or the motion that has been made by the gentleman from New York to rise and report the matter to the Convention. If the gentleman makes a motion to strike out the section, then he can proceed in order.

The Chairman — The Chair assumed that the gentleman would move to strike out, at the end of his speech. The assumption was

that he opposed it and would make that motion at the close of his speech, if he did not do so in the beginning.

Mr. Becker — I understood the gentleman from New York to withdraw his motion. I may be in error, but, as I have finished my speech, the objection of the gentleman from Onondaga (Mr. Alvord) does not obtain.

Mr. A. H. Green — I withdrew my motion, but I desire to renew it.

Mr. Holcomb — I believe it is in order to move as an amendment that the committee rise and report progress. I am in accord with what the gentleman from Buffalo (Mr. Becker) has said about the necessity of inquiring a little, through the Judiciary Committee, as to the effect of this amendment. If I may be allowed to say that as in the city of New York we elected coroners last fall, I do not think those gentlemen should be deprived of their offices immediately. I move that the committee rise, report progress and ask leave to sit again.

The Chairman — Mr. Holcomb moves to amend the motion of the gentleman from New York (Mr. A. H. Green) to the effect that the committee now rise, report progress and ask leave to sit again.

The Chairman put the question, and it was determined in the negative.

The Chairman — The question is now on the motion to rise and report the amendment.

Mr. Crosby — Mr. Chairman, I desire to say —

Mr. Alvord — I rise to a point of order. It is not debatable.

The Chairman — The point of order is well taken.

Mr. Crosby — I ask unanimous consent to make a statement.

Mr. Kerwin — I would like to have the rule stated. It states that a motion to rise and report progress is not debatable.

The Chairman — That is not the motion. Does the Committee of the Whole give unanimous consent for the gentleman from Delaware (Mr. Crosby) to make a statement?

Mr. Veeder — Is not the motion one that the committee do now rise, report this proposition to the Convention and recommend its adoption?

The Chairman — That is the motion.

Mr. Veeder — Does the Chair decide that we are not to debate that question? Is not that what we are here for?

The Chairman — That motion is similar to a motion for the previous question in the Convention, and is not debatable.

Mr. Veeder — We are not in the Convention; we are in Committee of the Whole.

The Chairman — We are in Committee of the Whole, and the motion to rise and report is not debatable.

Mr. Veeder — I beg your pardon; it is the proposition that we recommend this to the Convention.

The Chairman — The motion, as I now understand it, is that the committee do now rise.

Mr. Veeder — And report this proposition; that is the very thing we are here to discuss.

The Chairman — The question is not debatable, and the gentleman from Delaware has the floor and asks unanimous consent to make a brief statement. Will unanimous consent be granted? Is there objection? There being none, the gentleman may make a statement.

Mr. Crosby — I do not desire to discuss the merits of the amendment, but simply to make this suggestion. In the language in which this amendment is drawn, it seems to me to be in rather a crude state for us to adopt. My suggestion is that article 10, section 1 of the present Constitution be amended by striking out the word "coroner," and that the section, when so amended, be substituted in the place of the proposed amendment. I do not wish to take the credit from the gentleman from Orange, if he desires so to amend his proposition.

Mr. Maybee — I rise to a point of order. My point of order is that the question before the House is not a debatable one.

The Chairman — The committee gave the gentleman from Delaware (Mr. Crosby) unanimous consent, as the Chair understands it. This statement is made by unanimous consent.

Mr. Bowers — I ask unanimous consent to be allowed to address a question to the Chair. I understand that under the suggestion of the gentleman from Onondaga (Mr. Alvord) it has been ruled by the Chair that this matter now before the Committee of the Whole is not debatable until a motion has been made of some character. I understand the Chair has also ruled that when a motion is made to rise and report progress, or rather to rise and report, with the approval of the Committee of the Whole, a recommendation that it be passed that that is not debatable. I understand, Mr. Chairman, that the motion to rise and recommend passage is not

debatable, and is the method of closing the debate. I had not supposed, however, that that would ever be taken advantage of in the Committee of the Whole until it was felt that reasonable time to debate had been allowed. I certainly supposed that, when we were in Committee of the Whole, the whole matter was up for debate in the same manner as if we were in some special committee, and that it was not necessary, at the outset, to make a motion, either that we rise and report progress, or rise and recommend; and it seems to me that we have fallen into error under the management of the gentleman from Onondaga (Mr. Alvord), this morning, until we do not know where we stand or how we can be heard. That is just where he tells us that he wants to place us, and he has done it with marvelous success. I take the liberty of suggesting to the Chair that when we are in Committee of the Whole we should have an opportunity for discussion and the subject should be open for debate.

The Chairman — The Chair has not ruled that the subject was not open for debate. The proceeding in the Committee of the Whole is that a section shall first be read, and any amendments that there may be are then proposed. If no amendments are then proposed, then the recommendation that the committee rise and report is in order, and that will shut off debate. There is no debate, if no amendments are proposed, and the question before the committee is the section as it exists.

Mr. Bowers — There is no debate, if no amendments are proposed? Can we not debate the original proposition?

The Chairman — You can always debate the original proposition. That is what the gentleman from Orange (Mr. Dickey) did on the start. Debate was not shut off until a motion was made to that effect. What motion does the gentleman from New York (Mr. Bowers) make?

Mr. Bowers — I ask that we be permitted to debate the main question.

The Chairman — The committee may do that by voting down the motion of the gentleman from New York (Mr. A. H. Green).

Mr. Kerwin — I move to amend by striking out "article 10, section 1."

The Chairman — The gentleman is not in order.

Mr. Crosby — I rise to a point of order. Rule 26 provides that a motion to rise and report is not in order until each section, and the title, has been considered, unless the time has expired. My

point is that the title has not been considered, and, there being no limitation of time fixed by this Convention by any rule, that the motion is premature.

The Chairman — The Secretary read the title and no motion was made in reference thereto. Therefore, it has been considered and the question is on the motion of the gentleman from New York (Mr. A. H. Green).

The Chairman put the question, and it was determined in the affirmative.

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

Mr. Bush — Mr. President, the Committee of the Whole, to which was referred the proposed constitutional amendment, No. 6, entitled proposed constitutional amendment to amend article 10 of the Constitution to do away with the office of coroner, as a constitutional office, have gone through with the same and made some amendments thereto, and have instructed me, their Chairman, to report the same to the Convention and recommend its passage.

The President — The question is on agreeing with this report, which, under rule 33, is now open for debate.

Mr. Becker — Mr. President, I desire to offer the resolution which I offered in Committee of the Whole, and I would like to have the Secretary read it, substituting the word "Convention" for "committee."

Mr. Maybee — I move that the Convention do now adjourn.

Mr. Davies — Before that motion is put, I have received a telegram which seems to necessitate my absence from the Convention for the remainder of this week.

The President — Mr. Davies and Mr. Roderick desire to be excused Thursday and Friday of this week.

The President put the question, and Mr. Davies and Mr. Roderick were excused.

The President — Mr. Becker's motion will go over.

The President put the question on the motion to adjourn, and it was determined in the affirmative.

Whereupon the Convention adjourned.

Thursday, July 19, 1894.

The Constitutional Convention of the State of New York, met in the Assembly Chamber, in the Capitol, at Albany, July 19, 1894, at ten o'clock in the morning.

President Choate called the Convention to order.

The Rev. Charles W. Hardendorf offered prayer.

The President — Under the rule adopted yesterday, the reading of the Journal will be dispensed with. Any delegate having any amendment to propose to the Journal, will propose it to the printed Journal, when he finds it upon his desk.

A communication from Mr. Putnam and Mr. T. A. Sullivan, asking for the action of the Convention in respect to their expenses in obtaining rightful possession of their seats, has been received by the Chair, and is subject to the action of the Convention. The Chair does not feel authorized to refer it to any particular committee, but is of opinion that it should be referred, upon motion and vote of the Convention, to some committee, perhaps the Committee on Privileges and Elections. What action will the Convention take in regard to it?

Mr. Holls — Mr. President, I make that motion, that the matter be referred to the Committee on Privileges and Elections.

Mr. Hirschberg — Mr. President, I move to amend the resolution by adding the Committee on Contingent Expenses.

The President — Jointly?

Mr. Hirschberg — Jointly, Mr. President.

Mr. Holls — I accept the amendment, Mr. President.

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

Mr. Wiggins — Mr. President, I ask to be excused from the sessions of to-morrow and next Tuesday.

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

Mr. Jenks — Mr. President, I ask to be excused from attendance upon the session of to-morrow.

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

Mr. Alvord — Mr. President, I would suggest that every gentle-

man who asks to be excused from attendance upon the sessions of this Convention be required to give some reason for such request.

The President — The Convention is certainly entitled, when a delegate asks to be excused, to a statement of his reasons therefor.

Mr. Jenks — Mr. President, I have a very important matter of business, which I cannot avoid, and I ask to be excused from attendance to-morrow for that reason.

Mr. Kellogg — Mr. President, I have not been absent a single day from the duties of this Convention, and I would not now ask to be excused for to-morrow and Tuesday next, unless it were an absolute necessity.

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

Mr. Hotchkiss — Mr. President, I move that the privileges of the floor be extended to the Hon. Andrew S. Draper, formerly Superintendent of Public Instruction in this State.

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

Mr. Chipp — Mr. President, I would like to be excused from attendance from the Convention to-morrow, on the ground that I have business which requires my attention elsewhere.

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

Mr. Peabody — Mr. President, I ask to be excused from attendance to-morrow. I have been sick for several days, and I telegraphed the Chair to that effect.

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

Mr. Parmenter — Mr. President, I ask to be excused from attendance to-morrow on account of important business.

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

Mr. McMillan — Mr. President, I desire to be excused from attendance on the Convention to-morrow, Friday.

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

Mr. Hill — Mr. President, I move you, sir, that the privileges of the floor be extended to Mr. Emory P. Close, of Buffalo, who is present.

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Mr. Hirschberg — Mr. President, I move to amend the resolution by adding the Committee on Contingent Expenses.

The President — Jointly?

Mr. Hirschberg — Jointly, Mr. President.

Mr. Holls — I accept the amendment, Mr. President.

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

Mr. Wiggins — Mr. President, I ask to be excused from the sessions of to-morrow and next Tuesday.

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

Mr. Jenks — Mr. President, I ask to be excused from attendance upon the session of to-morrow.

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

Mr. Alvord — Mr. President, I would suggest that every gentle-

man who asks to be excused from attendance upon the sessions of this Convention be required to give some reason for such request.

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Mr. Kellogg — Mr. President, I have not been absent a single day from the duties of this Convention, and I would not now ask to be excused for to-morrow and Tuesday next, unless it were an absolute necessity.

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

Mr. Hotchkiss — Mr. President, I move that the privileges of the floor be extended to the Hon. Andrew S. Draper, formerly Superintendent of Public Instruction in this State.

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

Mr. Chipp — Mr. President, I would like to be excused from attendance from the Convention to-morrow, on the ground that I have business which requires my attention elsewhere.

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

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

Mr. Parmenter — Mr. President, I ask to be excused from attendance to-morrow on account of important business.

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

Mr. McMillan — Mr. President, I desire to be excused from attendance on the Convention to-morrow, Friday.

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

Mr. Hill — Mr. President, I move you, sir, that the privileges of the floor be extended to Mr. Emory P. Close, of Buffalo, who is present.

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

Mr. E. R. Brown — Mr. President, I desire to be excused from attendance upon the Convention next week, on account of business which calls for my immediate attention.

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

The President — The attention of the Chair is called to the new rule in respect to the reading of the minutes, which is not that hereafter the Convention dispense with the reading of the Journal, but that it may dispense with the reading of the Journal. It requires a vote.

Mr. I. Sam Johnson — Mr. President, I move that the reading of the Journal be dispensed with.

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

Mr. Cochran — Mr. President, I desire to ask for information, whether corrections to the Journal must be made on the day that the Journal is printed and placed on the files, or the day after? As I recollect it, it is the day after.

The President — The Secretary will read the rule upon the subject for the information of the members.

The Secretary read the rule as follows:

"Resolved, That hereafter the Convention may dispense with the reading of the Journal, and that amendments thereto may be made on the legislative day following that on which the printed Journal is placed on the desks of the members."

Mr. Cornwell — Mr. President, I move that the privileges of the floor be extended to the Hon. Charles T. Saxton, who is present.

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

The President — It seems now that so many general orders have accumulated, rule 22, which has not been heretofore applied, should be put in operation, that Tuesday and Thursday of each week shall be set apart specially for the consideration of general orders. The first business in order under general orders is the amendment, the passage of which was recommended yesterday in Committee of the Whole, to proposed constitutional amendment to amend article 10 of the Constitution, so as to do away with the office of coroner as a constitutional office, and the question is whether the Convention

will agree to the report of the Committee of the Whole. That is now open for debate.

Mr. Moore — Mr. President, do I understand that that amendment is now put upon its third reading, or is the question simply on agreeing to the report of the Committee of the Whole?

The President — The Chair is of opinion that under rule 33 the question is upon the Convention agreeing with the committee in its report; after which, if the House votes to agree to the report of the committee, under the rules that follow, the amendment has to be printed and goes to the Committee on Revision and cannot pass to a third reading until they report it.

Mr. Vedder — Mr. President, I would suggest to Mr. Dickey that his propostion ought to go back to the standing committee, retaining its place on third reading, and should read, section 10 hereby amended shall read as follows: So that the people when they come to vote upon it may know just how the section will read. If you strike out the word "coroner" and go before the people, they may not understand, without looking it up, how the article will read. The proposition that we submit to the people ought to be in shape so that they will know just what the section is, if they should ratify it.

The President — The Chair had supposed that that was the business of the Committee on Revision, and that that was the object of sending it to that committee, under the rule, and that the proper question now is whether the Convention will agree to the report of the Committee of the Whole.

Mr. Vedder — Do I understand, Mr. President, that the Committee on Revision will put it into the proper shape?

The President — That is the object of that committee.

Mr. Dickey — Mr. President, I move that the Convention agree with the report of the Committee of the Whole.

The President — Did Mr. Vedder withdraw his motion?

Mr. Vedder — I desire to withdraw it now, Mr. President.

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

Mr. Bowers — Mr. President, do I understand that Mr. Vedder's motion is withdrawn, that this amendment be referred back to the committee in order to be put in the shape in which it shall be submitted to the people?

The President — I understood Mr. Vedder to make no motion.

Mr. Bowers — Then, Mr. President, I make such a motion, that it be referred back to the Committee of the Whole for the purpose of being put into the form suggested by Mr. Vedder, and I do it for the reason that while there is a Committee on Revision, it seems to me we ought not to compel them to perform unnecessary labor. So far as we can, we ought to shape the proposed amendment here. As it now stands, the amendment will simply express the view of the Convention, which is probably unanimous, and it, undoubtedly, should be submitted in a totally different form. It would be but a moment's work, and I think it should be done. Otherwise, at some future time, an enormous amount of material will come in here which cannot be attended to so late in the session. The duty of the Committee on Revision is to correct errors, to ascertain where errors occur in the language and to correct them. I, therefore, take my suggestion from Mr. Vedder, and move that this matter be recommitted to the Committee of the Whole for the purpose of putting it in proper phraseology.

The President — Is Mr. Bowers's motion to refer the matter back to the Committee of the Whole, or to the committee from which it originated?

Mr. Bowers — To the Committee of the Whole, Mr. President.

Mr. McMillan — Mr. President, the Committee of the Whole has discharged all its duties in reference to this argument. They have approved of the principle of striking the word "coroner" from the Constitution where we find it. It is the duty of the Committee on Revision simply to revise that portion of the Constitution and present it to the Convention to pass upon the order of third reading. That is the province of that committee. They cannot make any mistake. Their duty is purely clerical. I think this motion ought not to obtain.

Mr. Alvord — Mr. President, I am decidedly with the gentleman from Erie. The duty of the Committee on Revision is plain and apparent, from the past, as well as by our rules of the present. It is a great deal better that mere clerical work in putting in shape an amendment of this kind should be performed by the few, subject, of course, to the approval of the many. I trust that the motion on the part of the gentleman from New York (Mr. Bowers) will not prevail.

The President — The Chair is of the opinion that Mr. Bowers's motion is not in order until the Convention has passed upon the question whether they will or will not agree to the report. If it

agrees to the report, then Mr. Bowers's motion will be in order, whether advisable or not. The question is on agreeing to the report of the Committee of the Whole upon this amendment.

Mr. Mantanye — Mr. President, as a member of the Committee on County, Town and Village Officers, which reported this proposed amendment to the Convention, I desire to make a statement, which, perhaps, may give some light to the members of the Convention. In reference to this section, which is proposed to be amended by dropping from it the coroner as a constitutional office, there are before this same committee other propositions for amendment, one of which is to make the county treasurer a constitutional office, it not being one now; and, also, in regard to the sheriff and various other officers. If we formulated this whole section and sent it to the Convention, those who may differ upon the various officers and the provisions in regard to them in the section would feel constrained to combine, and the proposed section, perhaps, would go down. So, having agreed upon this proposition, standing by itself, as a principle merely, that we would drop from it the section in reference to coroner, as a constitutional office, we have reported it to this Convention to ask for its approval or disapproval, as it may see fit to act. If the Convention approves of the action of the Committee of the Whole, and the action of our committee upon this matter, then we propose to ask to have it referred back to the Committee on County Officers, that we may use the voice of the Convention upon that matter in our action in further formulating this section. Therefore, I hope that the motion now before the House to approve of the action of the Committee of the Whole may prevail, and there will be no misunderstanding as to what will become of the matter afterwards, that it is to be followed by a motion to refer it back to the Committee on County Officers.

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

The President — Mr. Bowers's motion would now be in order, if he wishes to renew it.

Mr. Bowers — I think it will become a matter of serious moment before we finish, Mr. President, and I, therefore, renew my motion that it be referred to the Committee of the Whole.

Mr. Cochran — Mr. President, I take the liberty of calling the attention of the Convention to rule 67, which, undoubtedly, is intended to cover such a situation as this, and provides, in effect, that after all the amendments have been adopted, and at least five days before adjournment, the Committee on Revision shall attend to the

proper engrossment and revision of the Constitution and submit it, in its entirety, to this body for approval, and then they would, undoubtedly, strike out the word coroner and submit to the Convention the article, as amended by that amendment, striking it out. I think the motion of Mr. Bowers should not prevail for that reason.

Mr. Alvord — Mr. President, I rise to a point of order. My point of order is that the gentleman from New York cannot make his motion without a reconsideration of the vote just had, by means of which we have adopted the report of the committee.

The President — The Chair understood Mr. Bowers's motion to be a motion to refer this to the Committee of the Whole for the purpose of adopting its phraseology to the purpose intended by the amendment.

Mr. Bowers — The motion I made, Mr. President, was to recommit the proposed amendment to the Committee of the Whole for the purpose of enabling that committee to put it into proper phraseology. I understood the Chair to rule that it was out of order, and, as usual, I accepted the ruling of the Chair. That ruling was that it could not be made until the Convention had decided whether it would agree to the report or not. It seems to me now, that the point of order made is directly antagonistic to the ruling of the Chair.

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

Mr. Mantanye — Mr. President, I would now make the motion that this matter be referred back to the Committee on County, Town and Village Officers, for the purpose of being incorporated by that committee in the section in question.

Mr. Cochran — Mr. President, I renew my point of order, that under rule 67 it must go to the Committee on Revision and Engrossment. That is what that committee is for. After all the amendments upon this proposed article are adopted, then the Committee on Revision and Engrossment shall revise the article. I think that is the proper committee to which to refer it.

The President — The Chair holds that the point of order made by Mr. Cochran is not well taken; the ordinary disposition of the matter would be that it would now go to the Committee on Revision, as matter of course, unless the House orders otherwise.

Mr. Bowers — Mr. President, do I understand correctly that the Chair ruled, first, that my motion was out of order until the House had passed upon the question of whether it would agree or disagree

with the report of the Committee of the Whole, and now rules that when I make it later, in obedience to the Chair, that I am out of order?

The President — Mr. Bowers correctly understands the ruling. Mr. Mantanye's motion is in order. If the House sees fit to order this amendment to be referred back to the Committee on County, Town and Village Officers, it has the power to do so.

Mr. Kerwin — Mr. President, yesterday when this Convention went into Committee of the Whole we were choked off in debate by parliamentary tactics; tactics similar to what have been adopted to-day. Yesterday there was a motion made, and I asked Mr. Alvord to withdraw his motion for the purpose of debate and he did so. Again the motion was renewed, and another gentleman on the floor asked to have it withdrawn, and he was told that he must have a motion pending first. The final decision of the Chairman of the Committee of the Whole was to shut off all debate. To-day the same question comes up, in reference to agreeing to the report of the Committee of the Whole, and we are told that we must debate the resolution to agree to the report of the Committee of the Whole.

The President — Mr. Kerwin is clearly out of order in respect to that. The Convention was told no such thing. It was told that the question was whether the Convention would agree to the report of the Committee of the Whole, and that the question was open for debate.

Mr. Kerwin — Then Mr. Bowers's resolution should have been in order, if I understand it correctly?

The President — When Mr. Kerwin is in the chair, he can make the rulings.

Mr. Dickey — Mr. President, I make the point of order that it is not in order for any member to discuss the ruling of the Chair, except by appeal from it.

The President — The Chair is of the opinion that Mr. Dickey's point is well taken.

Mr. Kerwin — Then I move to recommit this to the Committee on County, Town and Village Officers.

The President — That is not in order, because Mr. Mantanye has already made that motion, which is now before the House.

Mr. Dickey — Mr. President, it seems to me that there is no necessity for it to go back to that committee at all. We should

keep the progress we have already made instead of going backwards, and I hope that motion will be voted down.

The President — The Convention will excuse the Chair for calling attention to rule 25, which was intended to regulate proceedings in this stage of a bill: "No proposed constitutional amendment shall be put upon its third reading until it shall have been reported by the Committee on 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 once printed." The Chair is of opinion that the regular course of this bill now should be to go to the Committee on Revision, but, nevertheless, that it is in the power of the House to order otherwise, if it shall see fit. The question is on Mr. Mantanye's motion.

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

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

The President put the question on Mr. Mantanye's motion to send the amendment to the Committee on County, Town and Village Officers, and it was determined in the negative.

The President — The bill goes to the Committee on Revision, under the rules.

Unfinished business of general orders is in order.

The Secretary will read No. 6 first.

The Secretary read as follows:

"Introduced by Mr. Alvord. Proposed constitutional amendment to amend section 7 of article 7 of the Constitution, entitled 'Salt Springs.'"

Mr. Alvord — Mr. President, in consequence of the fact that the information called for by the gentleman from Delaware has not yet been put upon the table, I decline to move this number at the present time.

The Secretary read as follows:

"Introduced by Mr. Vedder. Proposed constitutional amendment, to amend section 15, article 3, so as to secure greater publicity and deliberation in the passage of all bills."

Mr. Vedder — Mr. President, I do not know of a better opportunity for making a motion than now. Before the Committee on Legislative Powers was proposition No. 11, introduced by Mr. McMillan, which the committee reported unanimously in favor

of. It has been on general orders for some time, as general order No. 3. After such report there were two other bills or propositions amending the same section and same article, one introduced by Mr. C. A. Fuller, No. 201, and the other introduced by Mr. Jesse Johnson, No. 214; without anticipating the action of the committee I may say that the committee were favorably inclined to some of the propositions in these two different new propositions amending the same section that we have already reported favorably upon. All the matters ought to be embraced in the same section, and, I believe, that the standing committee which reported upon these propositions, after thorough discussion and after a number of hearings, is more competent to put it in proper shape than the Revision Committee, which has not had those hearings; and, therefore, with the consent of Mr. McMillan, I ask that proposition No. 11, general order No. 3, be referred back to the Standing Committee on Legislative Powers, retaining its place on general orders, so that we may incorporate these propositions in one.

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

The President — No. 2 is next in order.

The Secretary read No. 2 as follows:

"Introduced by Mr. Roche. Proposed constitutional amendment to amend article 3 by the addition of a new section, prohibiting the Legislature or any division of the State from granting pensions to any civil officers or employes, not, however, including existing police and fire department pension fund."

The President — Is No. 2 moved by any delegate?

Mr. Roche — Mr. President, I move that the Convention go into Committee of the Whole upon this amendment, No. 99, which is general order No. 2.

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

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

Mr. Dickey — Mr. President, I am very much obliged for the compliment paid me, but I intend to offer an amendment and would like to be excused at this time.

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

The House resolved itself into Committee of the Whole.

Mr. Vedder, Chairman, announced that the order of business was

on general order No. 2, and 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:

"Article 3 of the Constitution is hereby amended by the addition of the following:

"Section —. Neither the State nor any division thereof shall impose or collect any tax for the purpose of creating any pension fund or paying any pension to any civil officer or employe, or to any class of such officers or employes; nor shall any public moneys be voted or paid by way of pension, bounty, retired pay, or gift to any civil officer or employe, or to the family of any such deceased officer or employe; but this provision shall not prohibit the Legislature from authorizing the proper authorities of any municipality to create a police pension fund for the benefit of the members of the police force of such municipality and maintaining the same from sources other than the levying of a tax upon property for that purpose; nor prohibit the Legislature from imposing a tax upon insurance companies or insurance agents and their business for the purpose of creating and maintaining a pension fund for the benefit of the members of the fire department in any municipality; nor shall this provision be held to repeal or modify any existing laws relative to any police or fire department pension funds which are now established in any municipality."

Mr. Doty — Mr. President, I desire to offer the following amendment:

To amend Mr. Roche's proposed amendment by striking out all after the word "fund" in line 3 of page 2, to and including the word "purpose" in line 5, and insert in lieu thereof the following: "And a health department pension fund for the benefit of the members of the police force, and of the officers, physicians and employes of the health department, respectively, of such municipality, and of the families of such persons, to maintain the same from sources other than the taxation of property for that purpose."

Also add after the word "police" in line 10 of page 2, the word "health."

Mr. Doty — Mr. Chairman, the general object of this bill is to prohibit the creation of a pension fund for any civil officer or employe by means of the appropriations of moneys raised by taxation. The bill excepts from the provisions of the section those cases where pension funds have been created for the benefit of the members of the police department, and also the members of the fire depart-

ment of the municipalities where the fund is created, otherwise than by taxation. It is very plain that these exceptions can be made, but the committee has not gone far enough. By chapter 535 of the Laws of 1894, an act was passed for faithful and efficient service in the prevention of contagious and infectious diseases, and to provide for a health department pension fund in the city of New York. Whatever may be said in behalf of the propriety of making an exception in favor of the police and fire department funds, can be applied with much stronger effect to the health department. The extraordinary perils to which they are constantly subjected entitle them to the consideration furnished by this chapter 535. I may say, in justice to the committee which have this bill under consideration, that the fact of the existence of the fire department fund was not before the committee, and I was led to believe by the chairman of the committee that upon reconsideration of this bill by the committee that matter would not have been overlooked. The fund is created, Mr. Chairman, not from taxation, but from the moneys which are raised, in great measure, by the vigilance of the members of the health department, from penalties imposed for violations of ordinances of the health department, and in no wise is it a tax upon the people. The provisions of the act are designed to furnish to the members of the department and the employes, who, in the course of their duties, are disabled by sickness, as the natural consequence of the discharge of such duties; or after a term of service of twenty years, they are entitled to receive a proportionate part of the salary which they have been accustomed to receive. I do not think it necessary, Mr. Chairman, for me to argue for the proposition to amend this proposed amendment by the addition of the members of the health department fund. It must be quite obvious that it is only consistent and just that this should be added. I, therefore, submit the amendment, with full confidence that it will be promptly adopted.

Mr. Roche — Mr. President, I believe that the creation of a class of civil pensioners is contrary to our form of government and our ideas of democracy. The pension practice, as well as exorbitant official salaries, has obtained in old-world countries; not by the consent of the common people, for the common people did not enjoy the right of suffrage, but through the influence and votes of the aristocracy, who were always industrious in building up their class and supporting it at public expense. They have in those countries the class distinction of the nobility, and they have also a class of former civil servants who are retired and are supported from the public treasury. The result is that the masses of the people

are compelled to bear the burdens of taxation for the benefit of idlers or of men who have already been well paid for service rendered. When the fathers of our country came to frame a Constitution for these United States they wisely inserted in it two provisions, one prohibiting the United States from granting any title of nobility, and the other prohibiting any State from granting any such title. With the exception of the very odious distinction which was made in regard to the colored race, and which has since been done away with, it was intended when we started on our national career that every man should be the equal, before the law, of every other man; that every man should have the same opportunities of gaining his livelihood as every other man, and no greater; that when men ceased to perform public service their compensation should also cease, and that no class distinction of any kind should exist in the new democracy. These ideas have prevailed throughout our country from its foundation, until the principle was departed from some years ago in the Constitution of this State, when a provision was adopted for pensioning judges whose term of office might be abridged by reason of age. A search through the Manual which has been placed before us fails to disclose a single State in this Union whose Constitution authorizes the pensioning of retiring judges. The people of this State made no demand for the change. Such of them as voted upon the subject evidently did not understand that it was as comprehensive as it has since been judicially declared to be. It was acted upon in the excitement of a presidential election when upwards of 1,100,000 votes were cast for electors, and less than one-third of the number was cast upon the other question. Already more than a quarter of a million dollars has been withdrawn from the treasury under the operation of this amendment. I think there is a very decided feeling now that it is a mistake, that it is a wrong, that it is a bad precedent, that it should be abolished, and that we should prevent the possibility of its repetition, either for the benefit of judges or any other class of civil officers or servants by constitutional prohibition. There was no occasion for it in the case of the judges, for the salaries, as you will see, have been steadily increased. In 1846 the salary was $2,500 per annum, and the bench was certainly filled by men of high character and learning. In 1857 it was raised to $3,500. In 1870, when, as a result of the war, the prices of living were high, much higher than they are to-day, the salary of the Chief Judge of the Court of Appeals was made $7,500, and that of his associates $7,000. They were granted, in addition, $2,000 as an allowance for expenses. In 1887 these salaries were increased to $10,500 for the chief judge, and

$10,000 for the associate judges, in addition to the $2,000 allowance, thus making the compensation larger than that which is paid to the judges of the Supreme Court of the United States.

Now, since 1846, the age limit has been increased from sixty years to seventy years. The term of office has been raised from eight years to fourteen years. This was followed by the pension system for the judges. The wearing of gowns began to come in with these increased pecuniary allowance, and I only hope it will not be followed up by the wearing of wigs. The salary of the justices of the Supreme Court was made $6,000, in addition to a $1,200 allowance for expenses. But much larger sums than these are paid to the judges in the First and Second Judicial Departments.

Now, this salary and allowance is a pretty good remuneration, for in the outlying districts some of the judges, at least, did not receive more than one-half this sum when practitioners at the bar. The pension system was likewise made to cover the justices of the Supreme Court, who might be retired because of age.

I said that those who voted upon the subject evidently did not understand its full significance. Indeed, the clause in the Constitution has been the subject of litigation, and the courts have been called upon to say how extensive it was, not only as to the amount that should be paid, but also as to the length of time that the pension should run. The Court of Appeals decided in favor of the ex-judges upon both points.

Some years ago a very worthy judicial officer was a candidate for re-election. He had attained the age of sixty-five or sixty-six years, and there was great danger of his being defeated, because of the cry which was raised that he could serve only four or five years, and that he would become a pensioner for the balance of the long term. A number of very eminent lawyers wrote a circular-letter to the electors of that department, in which they said:

"An effort has been made to create a prejudice against his candidacy by alleging that under the new constitutional provision he would become a pensioner, as he will have reached the constitutional limit of age before the expiration of his new term. This assertion is not well founded. The Attorney-General, on the application of the Comptroller, has just delivered an opinion which is exactly applicable to the judge's case."

Now, this circular was accompanied by a strong opinion from the Attorney-General, who combatted the contention that the officer referred to would become a pensioner, as he would have served less than ten years of the term, which would be abridged. The Attorney-General, in his opinion, referred to the provision of the

Constitution, which is in these words: "The compensation of every judge of the Court of Appeals and of every justice of the Supreme Court, whose term of office shall be abridged pursuant to this provision, and who shall have served as such judge or justice ten years or more, shall be continued during the remainder of the term for which he was elected." And the Attorney-General said it should be construed as if it read: "The compensation of every judge," etc., "whose term of office shall be abridged," etc., "and who shall have served as such judge or justice ten years or more of such term, shall be continued," etc. He said that any other construction would lead to results clearly not contemplated by the people when they adopted this provision. After referring to the rules of construction which were applicable to constitutional questions, he continued: "An interpretation yielding such unreasonable and illogical results ought not to be adopted, unless imperatively required by the plainest language in the constitutional enactment. Grants of money from the public treasury, especially when they are in the nature of gratuities, should be strictly construed. Civil pension lists are not favored, and when the language employed in creating them is fairly susceptible of different constructions, that view should be adopted which restricts, rather than enlarges, their application. I am, therefore, of the opinion that four years is the longest period of time that a judge, under any circumstances, can be entitled to receive compensation after his retirement under this section of the Constitution; and that in no case can he claim such compensation, unless he has actually served ten years or more of the term which is abridged by such retirement."

Now, Mr. President, this opinion did not receive the sanction of the Court of Appeals later on, and is not the law to-day. I believe that this system is not only an injustice to the taxpayers, that not only it violates our ideas of republican government, of the equality of men, of equality of opportunity, but that it may also prove a bar to the renomination of worthy judges. I understand that a few years ago a most able judge was refused a renomination, for no other reason than that he would have reached the age limit before his term would expire, and there was such popular objection to the pension system that it was feared he would be defeated if he were renominated. Judges are human, like the rest of men, but it hardly comports with our ideas of propriety that when they are upwards of sixty years of age they should be suppliants of political bosses, political conventions, or influential and sympathetic lawyers to secure them a renomination and be thereby enabled to live on the public moneys after they have ceased to perform public service.

Let the judges be fairly treated. Indeed, in a body composed, as this is, they will receive the consideration and respect which their position and character justly demand. They should be given salaries which are somewhat commensurate with the importance and dignity of their position, and such as will enable them, with ordinary thrift and care, to lay by something for the days of retirement. Having provided for this, let them take their chances of life with the rest of their fellow-citizens.

But, if we are to continue this system, let us be fair and impartial about it, and extend it to the judges of the Superior Courts and the Court of Common Pleas, who certainly perform as great and as important work as that of many of the judges of the Supreme Court.

Now, Mr. Chairman, what I have said about the judges is meant to apply to all other officers. There is no good reason why we should have a class of State-supported citizens, whether they be policemen, firemen, health officers, school teachers, department clerks or any other. As a rule, public employes are very well paid. They have much more leisure at their disposal than is available to the average mechanic or workingman. Policemen and firemen take no more risks than do the men who work around the blast furnaces or down in the mines. In many cases their wages are much higher, and they are much steadier than those that are paid to the mechanic. The man who tills the soil, the professional man who labors with brain day and night, the man who wheels around pig iron at the foundry and earns but a dollar and a half a day, neither of these, nor all of them, should be taxed in order that some man or woman in public place, may, after a certain number of years, retire and be supported for the rest of his or her life at public expense. One enters the public service as a matter of choice. He discharges his duties there as he would discharge them, if he had entered the counting-house instead. No obligation, therefore, rests upon the people that because he has performed his duty acceptably, or because he has had the good fortune of being allowed to perform it for a long period of time, that he should be taken out from among his fellows and be supported for the rest of his life upon the fruits of the labor and taxation of the rest of the community. Once we permit this pension system to be engrafted upon our Constitution and laws, and you cannot tell where it will stop, how far it will extend, or draw the line of demarkation at any point which will be generally considered as fair or just. We now have pension laws upon our statute books, and others are frequently proposed to the Legislature. Other classes of officers and employes will feel that

they are entitled to the same consideration as the long-term and well-paid judges. A pension act was passed by the last Legislature, and, although it takes no money from the public treasury, yet, as it was introduced, I understand it was intended to do so, and it is only a question of time when a demand will be made for such moneys. If we are to pension school teachers who have served thirty years, the Legislature will be besieged bye and bye to reduce the term to twenty-five years, and later on to bring it down to the term of office of the judges, fourteen years. If the sources of existing pension funds should fail or become inadequate, as they inevitably will, for the system is bound to be overloaded, it will be represented that equity demands that they should be replenished from taxes or revenues, such as excise moneys or some other moneys, to be set aside for them in order that those who have come within the prescribed requirements, or are about to come within them, should be treated as fairly as those who went before them, and who have had the advantages of such funds. If we are to pension health officers, who have subjected themselves to offensive smells and contagious diseases in the discharge of their duties, we must pension the grey-headed clerk, as they do abroad, who has become worn out in footing up columns of figures in some department. All kinds of claims, all kinds of excuses, will be made and will be invented for the extension of the pension system and the securing of pension funds by means of taxes. I confess my fears as to the outcome at the hands of good-natured legislators, with willingness and opportunity to vote away other people's money. It is, at best, a system of favoritism and injustice. It is offensive to the people at large, and it should never have obtained a foothold in the State of New York. If there are classes of public employes who desire to help each other or to be mutually beneficial, let them form mutual benefit societies. The idea is a commendable one, but let them carry it out at the expense of their own pockets. I am not satisfied myself with the proposition as it stands before the committee, but it is presented in this form in order that it may come up for consideration in all possible phases. I would not disturb the pensions which are paid to the retired judges, because I believe that the good faith of the State of New York is pledged to their payment, and was pledged to their payment when the people elected them to the offices from which they have retired. I doubt the propriety of disturbing existing pension laws which have been passed for certain cities, which have been in force a great many years and under the operation of which considerable sums of money have been contributed by the beneficiaries themselves, such as

police and firemen. But I believe that the passage of like laws should be prohibited. I believe that we should incorporate in this Constitution which we are making a provision prohibiting pensions for civil service and thereby declare it to be, for a long time to come, a part of the public policy of this State. I believe, Mr. Chairman, that it will be most acceptable to the people, that they will regard it as a wise and sensible proposition and that it will strengthen this instrument when it comes up to be voted upon by them. I am in favor, Mr. Chairman, of striking out all in this amendment beginning with the word "but" in line 9, down to and including the word "shall" in line 8 of page 2, because I think it is unnecessary to put it in the Constitution. Substitute after the word "shall" in line 8, page 2, the word "but." And I believe in adding a provision to the amendment which would secure to the judges who are now receiving their pensions under the present Constitution, the right to have those pensions continued until the term has run out.

The Chairman — Will the gentleman please send up his proposed amendment to the desk in writing?

Mr. Lester — Mr. Chairman, I was about to propose an amendment which would meet the views expressed by the gentleman from Rensselaer, and, as I have prepared an amendment for the purpose of excepting from the operation of this proposed amendment judges who would be entitled to receive, under existing laws, pensions prior to the time when the amendments adopted by this Constitution, if they are ratified by the people, will go into effect, I will offer this amendment to the section under consideration.

I move you, sir, that the section be amended by adding at the end thereof the following words: "But this section shall not apply to nor affect the compensation of any judge of the Court of Appeals or justice of the Supreme Court, whose term of office has been or shall have been abridged by reason of his having attained the age of seventy years, prior to the 31st day of December, 1894."

I was prepared, sir, to make some remarks in support of this amendment, but the reasons of it have been so well stated by the gentleman from Rensselaer, that it seems unnecessary to say anything further upon the subject.

Mr. Foote — Mr. President, I propose the following substitute —

The Chairman — There are two amendments pending now.

Mr. Foote — Mr. Chairman, I offer this as a substitute for the whole section.

The Chairman — The gentleman from Monroe offers this as a substitute for the whole section?

Mr. Foote — As a substitute.

Mr. Mullen — Mr. Chairman, may I call Mr. Lester's attention to the fact that they designate a judge of the Court of Appeals as a justice. If it is going to be amended in the Constitution, it ought to be "judge."

Mr. Lester — That is the word I intended to use.

The Secretary — It is "judge" in the amendment.

Mr. Dickey — Mr. Chairman, having prepared an amendment similar to that offered by the gentleman from Saratoga (Mr. Lester), if in order, I would like to say a few words in support of his amendment. In the judicial district which I, in part, represent in this Convention, there retired on the first day of January last, in the full maturity of his powers, anxious to continue, if he had been allowed, to work as he had been working, early and late, from Monday morning to Saturday night, and, I fear, trenching sometimes on Sunday, that grand old man, the people's judge, who used to cut across lots to do substantial justice, Judge Barnard, of Poughkeepsie. The existing Constitution provided that when he was retired, after thirty years of faithful service, having earned all that the people paid him and much more besides, and much less than he would have earned in private practice, that the salary after he became of the age of seventy years, for the end of the time for which he had been elected, should be paid to him. He quit work, not because he wanted to, but because he arrived at the age of seventy years. This amendment, in terms, as proposed by the gentleman from Rensselaer (Mr. Roche), though I am glad to say that he disavows any such intention and is willing that it should be corrected in that particular, but by its terms, by using the words "retired pay," seems to intend, so far as it can be done, to take away from Judge Barnard that balance of his pay to which he is justly entitled. A similar provision would apply to two other judges in our district, who are soon to retire, because of reaching the age of seventy years. One of them is that gallant, genial, gentlemanly, affable Judge Pratt, who for thirty years has carried in his face the bullet he received in the first battle of Bull Run. The other is Judge Dykman, of White Plains. This amendment, as proposed by the gentleman from Saratoga (Mr. Lester), as I understand it, would retain to these gentlemen, judges of the Court of Appeals similarly situated, and judges in other districts who have been forced to retire by reaching the age limit, the pay for the balance of the term for which they had been elected, and in that way keep good faith with them when we shorten their terms by constitutional amendment.

Therefore, I am heartily in favor of this amendment and hope it will be adopted. The people of the State do not want us to make warfare, to save them a few dollars, on people who have got to be of the age of seventy years. They cannot remain long with us in the ordinary course of nature, anyway, and I plead for justice and right, that whatever becomes of this general amendment, that it will be amended in this particular, in the interest of right and justice.

Mr. Van Denbergh — I had the pleasure and satisfaction of introducing into this Convention a proposed constitutional amendment, which is now before the Judiciary Committee, and before which committee I have agreed to appear. I read the proposed amendment. I have the pleasure of agreeing with the gentleman from Troy (Mr. Roche) in the main on his argument in disposing of or doing away with pensions, but I am opposed distinctly and decidedly to having pensions paid to any judge after this Constitution may be adopted. I say that the argument made by Mr. Roche is abundant and good on the question, and that it is as good in regard to any judge now sitting or who has ceased to sit and is reaping an annual stipend, not for any service he proposes to render now, but for service he does not expect to render, upon the theory that in an evil hour the question of pension comes up. My friend, Mr. Dickey, talks about Judge Dykman and Judge Barnard. If Mr. Dickey will read the report of the Comptroller, he will see that Mr. Barnard will have $43,200, which must be paid to him for the time unexpired after he shall have reached the age of seventy years. Now, what may come to a man after he reaches the age of seventy years we do not know. I remember one judge in the district where I resided who claimed, after he reached the age of seventy years, that he was still competent to do the work to the end of his term, but before that time expired, he said to me: "I felt myself competent to do the work, and that I was as good in legal practice as I ever was, but I find that I was not good for five years, and I find now that I was not able to do the work, and I think no judge should go beyond the term of seventy years." I do not say that to argue for a long term, but I say that as an answer to those men who have worked out the proposition on the theory that men may be good for one-quarter of the time for which they would draw pay. I hold in my hand a list coming from the Comptroller's office, in which it appears that there has been paid to the judges for time after they became seventy years, $198,978. We have two

judges of the Court of Appeals, one of them entitled to $120,000 after he has ceased work, the other entitled to $125,500, and judges of the Supreme Court, $391,900. There are to be paid in all something over $600,000. I ask any man in this Convention whether any reason can be given why the judges should be paid after they cease to work. It is perfectly plain as a matter of law, it has been decided over and over again, that the people standing in their majesty here, through their representatives, and making the organic law, have a right to do just as they choose to; that there is no breach or violation of a contract. That has been decided over and over again in regard to judges, settled by the highest court of the United States. I feel prepared to satisfy the committee that as a matter of law they have no claim or right. I say again, if you can give me any reason why Justice Barnard or any of the other judges of the Supreme Court or of the Court of Appeals should have such a sum of money paid to them after they have ceased to labor, and probably after they have ceased to be fit for it, I shall be glad to hear it. I claim that the judges have been paid abundantly for what they have done, as a rule. They sought the place with the compensation attached. They knew that such a provision was in violation of the rights of the people. They knew there was no justice in it. They, many of them, knew that they received more than they would have received if they had continued their practice at the bar. After being taken from the ranks where they might have received $3,000 per annum as the sole result of their labors in the country districts, many of them, they march to receive the sum of $6,000 and $1,200 in addition. When they get through their service, having been bettered in their condition, having belonged to a class, having been gratified with all that human ambition might ask in such cases as that, they ask that, when they have ceased to work, their pay shall be continued. And talk about their poverty, talk about their inability to live — must they have a stud of horses; must they have a yacht apiece; must they go abroad and visit foreign lands; must they live extravagantly, and then go to the people and ask the men who have got farms worth $5,000, with a $2,500 mortgage on them, to contribute toward the paying of these pensions?

Taxation is oppressive and grinding. These men have already been paid all that their services have been worth, as a rule. I am opposed, decidedly, to a resolution which excepts from the operation of that proposed amendment the judges of the Supreme Court and the judges of the Court of Appeals.

Mr. C. B. McLaughlin — I wish to say but a word on this subject. This amendment ought to prevail, and the amendment, as proposed

by the gentleman from Saratoga (Mr. Lester), ought to be defeated. The proposed constitutional amendment is in the right direction. The system of pensions is contrary to the whole spirit of our institutions. There is no reason why a justice of the Supreme Court or a judge of the Court of Appeals should be granted a pension more than any other person in the public service. The abuse of that system can readily be appreciated when we consider the fact that the highest court in this State has construed the law so that the $1,200 allowed to a justice of the Supreme Court for traveling expenses is also put in as part of his salary, and now as a pension. That was granted to a justice of the Supreme Court to pay for his traveling expenses, and the sum allowed to the judges of the Court of Appeals, $2,000, if I recall the amount correctly, was granted to them to pay for their traveling expenses; and yet when that matter comes before the highest tribunal in this State, a divided court, if you please, they have decided that that is a part of the money which they are entitled to receive. Now, because there is a justice of the Supreme Court, located in the city of Troy, who is drawing a pension; because there is a justice of the Supreme Court, located at Saratoga, drawing a pension, is no reason why this amendment exempting justices who are now drawing a pension, should prevail. If that is true, then it should apply to the justices of the Supreme Court now in office and to the judges of the Court of Appeals now in office, and I say that it should be all stopped here and now. The good faith of the people of this State is not upon trial. It is the experience of every lawyer sitting in this body, if they have witnessed the struggles in the judicial conventions in this State for the past ten or fifteen years, that the salary of this office reaches out and grasps the best legal talent of the district. Now, I say to this Convention, that it is the right thing that this should be stopped, that this provision should be made to apply to those in office and those out of office.

Mr. Mereness — Mr. Chairman, while it is not my intention to contribute very much to the volume of printing that this Convention will involve, I have very decided views upon the proposition before the House and would like to briefly state them. I agree to what has been said that the system of pensioning civil officers is vicious. There seems to be no dispute about that, and I think there is a second reason why the general purpose sought to be attained by the amendment now before the committee should be incorporated into the organic law of the State. I think, in the first place, that it deprives the State and the judicial districts of

the services of a great many able men, because, I think it is generally known, that since the courts have construed the provision of the existing constitution in the manner in which they have construed it, the people, when this question has been presented, have refused to nominate some of the best judges of the State, as they would be obliged to pay them for a great many years that they could not render service, notably, in the cases of Justice Daniels and Justice Tappan. There is another reason why this system should be stopped. There is no way, I think, that can be devised, whereby the hand is put into the public treasury and money taken out and given away that will be equal. For instance, in the Fifth Judicial District, a portion of which I have the honor to represent in this Convention, we have two very able jurists, Justice Hardin and Justice Merwin, who will be compelled to retire within a few years because of the expiration of their terms. Each one of those eminent justices will have served, if God spares his life, for the full period of twenty-eight years, but because neither of them will have attained the age of seventy years at that time, neither of them can receive any gratuity from the State. We have another very eminent gentleman in that district, ex-Justice Churchill, of Oswego, in the full vigor of his powers, anxious and willing to perform service as an advocate at the bar, and I suppose earning a princely income, but in addition to that, and on the strength of only a ten years' service, he will take from the public treasury of this State $28,800.

Therefore, I say that there is no system that can be devised to make this thing equal. Upon the proposition as to the justices now in office and entitled to draw these pensions under the existing provisions, I think perhaps it would be well that the proposed amendment should say nothing about it, because if there is a vested right in that pension I think that those judges, in view of the decisions which have already been rendered, can safely leave to the courts the question as to whether they shall be protected. Because if I remember correctly, every time that this question has been presented, every court has decided in favor of granting the largest amount and for the longest time. Mr. Chairman, there is another reason which has been stated here, to which I would like to refer. I will use no names, but I have been credibly informed, that the highest court in this State, upon this proposition as to whether the provisions extended to ten years' service, and within the term abridged; or whether it applies to ten years under any term; I have been credibly informed, I repeat, that the Court of Appeals stood three to three upon that question, and that a judge was put

in the uncomfortable position of casting the deciding vote on a question that would put a princely fortune into his pocket, if he is spared long enough to sign the vouchers necessary to be sent to the Comptroller's office. I, for one, am not in favor of subjecting human nature to such excruciating conditions. (Applause.)

Mr. Hawley — Mr. Chairman, I desire not to say anything further in the advocacy of the principle which underlies the proposed amendment than to say that I am in favor, myself, of its most strenuous application to the fullest extent that is consistent with our powers, and with the exercise of good faith towards those who are now in office. But I desire to call the attention of the committee and of my friend who has proposed this amendment to a question of phraseology and to a question as to whether, acting upon the proposed amendment and upon that alone, the result which is desired can be accomplished. The proposed amendment deals with phrases like pensions, bounties, retired pay and gifts. That phraseology nowhere appears in the Constitution of the State under which this system has grown up and which is here designed to be reformed. The provision of the Constitution which has given rise, I take it, to the present proposition is that "The compensation of every judge of the Court of Appeals and of every justice of the Supreme Court whose term of office shall be abridged pursuant to this provision, and who shall have served as such judge or justice, ten years or more, shall be continued during the remainder of the term for which he was elected." It is not proposed by the present amendment to remove that provision from the Constitution at all. The proposed amendment affects another section or another article, or adds a new article or section to the Constitution, leaving that provision as to compensation to the judges, standing intact in the Constitution, and making an additional provision under different names, of pension, retired pay, gift and bounty. Now, I submit, Mr. Chairman, with some hesitation, and I hope with becoming modesty, that if we should pass this proposed amendment in this phraseology, and leave that provision of the Constitution as it is now enacted, and under which we have been living, that the judges of the Court of Appeals and the justices of the Supreme Court, as to their right of compensation under the conditions mentioned in the present Constitution would remain unimpaired. It is for the purpose of relieving my own mind, and the mind of any other delegate who may be similarly embarrassed, of this difficulty, that I make these suggestions. I believe that the proposed amendment ought to be carefully reconstructed, as

to its phraseology, and to be so broadened as to include the striking out of the present existing provision of article 6, section 13.

Mr. A. H. Green — Mr. Chairman, it seems very evident that the interests of the judges from the rural portions of the State are to be carefully protected and looked after. I have no doubt about that from what I have heard. I rise to say one word in favor of the excellent, distinguished, able, illustrious — I do not know of anything else I can add to it — judges of the Supreme Court of the State of New York who are related to the unfortunate condition of a fourteen years' term, with a salary of $17,500 per annum. I should be very sorry to see those judges, or any judges or any policeman or fireman, deprived of one dollar of what are their vested rights. That I would never consent to. Now, one more word and I shall have done. In the amendment proposed, the provision is specifically made forbidding the payment of any pensions from taxation, leaving pensions to come from any other moneys that comes justly in the treasury from other sources. I know of no reason for this exception. If they come from penalties they come from the disobedience of the laws that require the expenditure of money from the treasury to repair the damages done by those offenses. I propose to bring in an amendment at some time, if I can get it in proper shape, that every fee, commission, percentage, allowance, shall first go into the treasury, and until that is done we shall never know the exactions and the burdens that this State and the cities of this State are subjected to. Now, in addition to the classes which have pensions already, it is proposed to include the health department. I had already heard the mutterings of such propositions in the city of New York. Why, sir, the health department, the police department or the fire department run no more risks than the mason or the carpenter or the stonecutter, who gets upon the staging to build a structure, and neither of them renders to the public any service more important. I have had some little opportunity, though not perhaps sufficient, to make a presentation of the subject here, to look into the German system of pensions. It provides that a man reaching a certain age, say twenty years of age, if he begins to deposit in the public treasury a dollar a year, any sum that he can gain, that, when he attains the age of sixty years, the government should duplicate that amount and see to it that he should have it for life. That is an equitable system of taking care of men after they have got to be unable to take care of themselves. But this whole system of pensioning classes and imposing upon taxpayers the necessity of supporting classes

exempted from all the chances of life, men in these classes who not only urge their appointment to get these salaries, but browbeat and bribe to get them, salaries which are extravagant, exorbitant; that these classes should be extended is monstrous. Let any man go down to the city of New York and stand in the tax receiver's office there and see a poor woman come in with a little money tied up in a handkerchief to pay her taxes. The tax receiver says to her, your money is not quite enough; your taxes are three dollars more this year than last, and see her fold up her money and go away crying because she cannot pay them. In this Republican country, in this Democratic country, there is but one class which should be pensioned, and that is the soldiers who were wounded in the defense of their country. (Applause.)

Mr. Osborn — Mr. Chairman, I seem to be solitary in my opinions of this measure, and I desire to state briefly the reasons which I find for disapproving what I consider its narrow, illiberal and restrictive policy. It is in effect, Mr. Chairman, a constitutional announcement that hereafter the gratitude of this republic shall be expressed only by votes of thanks. The arguments which have been urged in favor of it have consisted in part of a reference to the pension system of Europe. The gentleman has referred to the abuses of pensions by bankrupt dukes and spendthrift marquises, but he has forgotten to state the fact that the pensions of England have produced judges whose decisions are the admiration of the civilized world. The remainder of the argument of the gentleman from Rensselaer (Mr. Roche) was devoted to a statement of individual abuses, but, Mr. Chairman, those abuses are not sufficient to prove that there is no instance in which this State might find itself desirous of drawing from its overflowing coffers a sum sufficient to reward some worn-out servant in his destitution. Mr Chairman, I oppose the policy which to my mind underlies it, that this State shall say to its servants: We will not reward you sufficiently. It is notorious that the judicial positions in this State are not now attractive to the most powerful and able legal minds of the State. I was told last fall by a gentleman, that he had refused high judicial nomination because with his duties to his family he could not afford it. Mr. Chairman, while I am opposed to the payment of high salaries to judges, while they are in office, and am opposed to enlarging the amounts that this State shall pay out to individuals while they are performing their service to the State, I still think that we should make such provision as will attract to the service of the State men of the

first ability and of the first capacity. There is no provision which better tends to allow men to set aside the sordid cares of life, and enter calmly into the dignified and reasonable pursuits of a judicial career, than the feeling that their declining years will be cared for by the treasury of a grateful State. For these reasons, Mr. Chairman, I am opposed *in toto*, to the provisions proposed by the gentleman from Troy (Mr. Roche) and the amendments thereto. (Applause.)

Mr. Cassidy — Mr. Chairman, the Committee on Charities has an engagement to visit the charitable institutions of the city of Albany, at twelve o'clock. I, therefore, move that the committee now rise, report progress and ask leave to sit again on this question.

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

The committee thereupon rose, and the President resumed the chair.

Mr. Vedder — Mr. President, the Committee of the Whole have had under consideration proposition No. 202, have made some progress therein, but not having gone through therewith, have directed me, their chairman, to report that fact to the Convention and ask leave to sit again.

The President put the question on granting leave to sit again, and it was determined in the affirmative.

Mr. Roche — Mr. President, would it be in order now to move that the amendments which have been proposed to this overture be printed, and that the proposition be recommitted to the Committee on Powers and Duties of the Legislature, retaining its place on general orders?

The President — That motion is in order.

Mr. Roche — I make that motion.

Mr. Spencer — Will that include the proposed amendment by Mr. Foote? It was proposed as a substitute.

The President — That was really not in order.

Mr. Spencer — I understood the chairman of the Committee of the Whole to rule that it was not in order but, being a substitute, I would like to have the motion amended so that that substitute can be included.

Mr. Roche — I desire all the amendments which have been prepared, and which any gentleman desires to offer, to be printed. I would like to have the motion amended in that respect.

The President put the question on the motion as amended, and it was determined in the affirmative.

Mr. A. H. Green, by unanimous consent, introduced the following resolution, which was read by the Secretary:

R. 85.— Resolved, That the State Railroad Commission be requested to furnish this Convention with the following information, respecting each street and elevated railroad in the cities of New York and Brooklyn, namely: Name of road, capital stock outstanding, actual cash received for capital stock, bonds outstanding, actual cash received for bonds, cost of road and equipment, taxes paid during the last fiscal year, amount paid on account of change of motive power and route of road.

The President put the question on the adoption of the resolution, and it was determined in the affirmative.

Mr. McMillan, by unanimous consent, moved that the Committee on Governor and State Officers be discharged from the further consideration of proposed amendment No. 305, and that it be sent to the standing Committee on County, Town and Village Officers.

The President put the question on the adoption of the resolution, and it was determined in the affirmative.

Mr. C. B. McLaughlin, by unanimous consent, moved that the Committee on County, Town and Village Government be discharged from the further consideration of proposition No. 168, introduced by Mr. Doty, to amend section 11 of article 8 of the Constitution, relating to the giving or loaning of money or credit by counties, cities or villages, and that it be referred to the Committee on Charities.

Mr. C. B. McLaughlin — On examination of this proposition, and upon discussion before the committee, it was found that this amendment related simply to sectarian appropriations, and, inasmuch as there are several propositions before the Committee on Charities, it was deemed wise by that committee that it take that course and be sent to that committee.

The President put the question on the adoption of the resolution, and it was determined in the affirmative.

Mr. Becker — On behalf of the Committee on Legislative Organization, I ask unanimous consent to introduce a brief resolution.

The resolution was then read by the Secretary, as follows:

R. 141.— Resolved, That the State Engineer and Surveyor be requested to provide, for the use of the Committee on Legislative Organization and of the Convention, a sufficient number of photo-

graphic or process copies of the maps already supplied to the said committee, and that the expense of said maps and copies be paid as a contingent expense of the Convention.

Mr. Becker — There have been two large maps furnished in pursuance of the resolution adopted the other day, sufficient to hang on the wall, showing the Senate districts and the Assembly districts, separately, and the population.

The President put the question on the adoption of the resolution, and it was determined in the affirmative.

The President — The next business on general orders appears to be general order No. 4, introduced by Mr. Hill.

Mr. Hill — Mr. President, we have been requested by gentlemen interested in this measure, to defer action upon it until the first of the week, and the committee have considered it advisable to do so. I will, therefore, not move that amendment at this time.

Mr. Cassidy — I move that the Convention adjourn.

Mr. Cookinham — I ask to present a privileged resolution.

The President — Does Mr. Cassidy withdraw his motion?

Mr. Cassidy — I withdraw it.

The Secretary read Mr. Cookinham's resolution as follows:

Whereas, It was resolved by the Convention on July eleventh, that so much of the testimony in the contested election case in the Sixth Senatorial District should be printed as was designated by the Committee on Privileges and Election, and that such printing should be done within five days from the delivery of the testimony to the printer, and,

Whereas, Said testimony is not upon the files of the members, now, therefore,

R. 129.— Resolved, That the Committee on Printing be directed to investigate and report forthwith, why the said testimony has not been printed and placed on the files of the members.

The President put the question on the adoption of the resolution, and it was determined in the affirmative.

Mr. Mullen presented a petition relative to female suffrage.

Referred to the Committee on Suffrage.

Mr. McKinstry presented a petition relative to female suffrage.

Referred to the Committee on Suffrage.

Mr. Cornwell offered a memorial and petition relative to sectarian appropriations.

Referred to the Committee on Charities.

O. 356.— Mr. Marks introduced a proposed amendment to section 7, article 1 of the Constitution, relative to taking private property for public use.

Referred to the Select Committee.

Mr. Titus offered a memorial relative to female suffrage.

Referred to the Committee on Suffrage.

Also, on behalf of Mr. Countryman, a memorial relative to female suffrage.

Referred to the Committee on Suffrage.

Mr. Bigelow offered a memorial relative to female suffrage.

Referred to the Committee on Suffrage.

Mr. Parkhurst offered a petition relative to female suffrage.

Referred to the Committee on Suffrage.

Mr. McIntyre offered a memorial relative to female suffrage.

Referred to the Committee on Suffrage.

Mr. Fields offered a memorial relative to female suffrage.

Referred to the Committee on Suffrage.

Mr. Cassidy — I renew the motion that the Convention adjourn.

Mr. Dickey — Mr. President, on the question of adjournment, I ask for a rising vote.

The Secretary proceeded to take the rising vote.

Mr. Maybee — I ask for the ayes and noes.

The President — It is too late after a rising vote has been called.

The motion was determined in the affirmative.

Whereupon the Convention adjourned.

Friday, July 20, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber, at the Capitol, in Albany, on the 20th of July, 1894, at ten o'clock in the morning.

President Choate called the Convention to order.

The Rev. A. Kennedy Duff offered prayer.

On motion, the reading of the minutes was dispensed with.

Mr. Vedder — Mr. President, we have with us this morning a distinguished citizen from western New York, one of the oldest, if not the oldest, editor in the State, Mr. William McKinstry, of Fredonia, N. Y. Mr. President, I move that the privileges of the floor be extended to Mr. McKinstry.

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

The President — The Chair must call attention to an erroneous ruling made yesterday, lest members may be misled by it. When the vote to adjourn was being taken by a rising vote, Mr. Maybee called for the ayes and noes, and it was held to be too late. It seems to be well settled that it is never too late to call for the ayes and noes until the vote has been actually announced.

Mr. Goodelle has asked to be excused from attendance on Tuesday and Wednesday of next week.

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

Mr. Campbell — Mr. President, I desire to be excused from attendance upon the Convention during the coming week.

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

Mr. Mullen — Mr. President, I have an engagement at court in Monticello for Monday and I may not be able to reach here Tuesday and would ask to be excused for that day.

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

Mr. Andrew Frank — Mr. President, I would like to be excused from attendance on Tuesday, as I have some pressing business for that time.

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

Mr. Gilleran — Mr. President, I would ask to be excused from attendance next Tuesday.

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

Mr. Blake — Mr. President, I would like to be excused from attendance on Tuesday next, as it will be impossible for me to attend at that time.

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

Mr. Gibney — Mr. President, I should like to be excused from attendance on Tuesday next.

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

Mr. H. A. Clark — Mr. President, I would like to be excused from attendance next Tuesday, as I am required as a witness in a court of record upon that day.

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

The President announced the order of presentation of memorials.

Mr. Wellington presented the petition of citizens of Madison county in favor of striking the word "male" from the Constitution.

Referred to the Committee on Suffrage.

Mr. Tucker presented the petition of the New York State Grange upon the same subject.

Referred to the Committee on Suffrage.

Mr. Tucker also presented the petition of the Socialist Labor party, of New York city, in favor of two constitutional amendments, one to provide for the gratuitous and non-sectarian instruction of every child of school age, and the furnishing of free meals to the children of destitute persons attending school. And second, to provide for the construction, operation and perpetual ownership by the State, or, where local, by the civil divisions of the State, of all public works, and for the purchase of such as may be held by private ownership.

Referred to the Committee on Education, and also to the Committee on Legislative Powers and Duties.

Mr. Campbell presented the petition of citizens of New York in favor of women's suffrage.

Referred to the Committee on Suffrage.

Mr. McArthur presented the petition of S. T. Birdsall and other citizens of Glens Falls, asking for an amendment to the Constitution, making the owner of property upon which liquor is sold, liable for damages for injury caused by the sale of liquor upon their property.

Referred to the Committee on Legislative Powers and Duties.

Mr. Durfee presented the petition of the New York State Grange in favor of women's suffrage.

Referred to the Committee on Suffrage.

A communication (No. 16) was received from the Board of Railroad Commissioners, in response to resolution No. 85, which was read and referred to the Committee on Railroads.

The President announced the order of notices, motions and resolutions and the Secretary called the districts.

Mr. Bowers offered the following resolution:

R. 142.—"Resolved, That the previous question, motion to rise and report, or other motion to close debate on the report of a standing or select committee, shall not be made until the Committee on Rules, in pursuance of rule 56, shall have fixed a time for debate on each report."

Referred to the Committee on Rules.

Mr. J. I. Green — Mr. President, I desire to call up the resolution which I offered the day before yesterday.

The Secretary read the resolution as follows (No. 139):

"Resolved, That all delegates desiring to be excused from attendance hand their names to the Secretary with the days of attendance for which they desire to be excused, and that the same be voted on as a whole immediately before adjournment."

Mr. Alvord — Mr. President, I trust that this resolution will not be adopted. It is absolutely necessary, in my opinion, when we consent to an absence on the part of any delegate from his duties in this Convention, that we know the reasons therefor specifically in each individual case. The gentleman who moved this matter, on consultation with me a few moments ago, suggested that he would amend it by having attached to the excuse the reason for the excuse. Still he has not changed the nature of his resolution, which bunches these things all together, and he asks us to vote upon them in that condition. I trust that any action of this kind, departing in all its particulars from anything that has obtained in the past in my legislative experience, will not obtain a recognition here.

Mr. J. I. Green — Mr. President, my object in offering the resolution is simply to save the time of the Convention, as I did not think it was expedient for the different delegates to this Convention to rise at different times in the Convention and present their requests to be excused. I have no personal interest in this matter whatsoever, and I have no objection to amending the resolution in so far as to state that gentlemen, at the time of sending in their names to the Secretary, shall also state why they desire to be excused. With the permission of the house, I will so amend my resolution.

Mr. Moore — Mr. President, I am opposed to the passage of this resolution, or anything which looks like it. I do not believe in tying up this Convention, a body of respectable men, like a lot of school boys. I think that the statement of any delegate here upon this floor in open Convention as to the fact that he wishes to be excused and that he may state his reasons therefor should be suffi-

cient. This method of tying up the delegates to certain iron-clad movements looks as if some people were afraid to trust the word and honor of their colleagues. I hope the resolution as it stands, or however it may be amended, will be voted down by this Convention. I believe that there are men of honor in this Convention yet, and there are men who do not come from New York city whose word is good for something, and, therefore, I consider that a resolution to tie us up in this way as if we were a lot of school boys who did not know anything, did not know our own minds, is almost a gratuitous insult to us, and, therefore, I certainly shall oppose it by both my voice and my vote.

Mr. J. I. Green — Mr. President, it is rather warm weather to get excited, but it seems to me, with all due respect to the gentleman who preceded me on the floor, that he does not understand the purpose of the resolution. The resolution simply is, that instead of delegates rising upon the floor of the Convention at different times during the sitting of the Convention, and requesting to be excused from attendance, they should send their names to the Secretary, and, immediately before the motion to adjourn is put, that the Secretary read the list of names of the gentlemen desiring to be excused, and that this Convention at that time vote upon whether they shall be excused or not. That is the whole substance of the resolution.

Mr. Blake — Mr. President, I have no doubt that the gentleman from New York intends to expedite matters by the offering of his resolution, but in my judgment it will involve much difficulty and confusion. One gentleman will want to be excused for one day and another for a whole week. One may have good reasons and another may not, and how could we discriminate between them? We should be in the same position as we were the other evening when we were compelled to vote on half a dozen amendments, some of which we approved of and some we did not. I think it would delay matters and I am not in favor of it.

Mr. Mulqueen — Mr. President, I move to lay the resolution upon the table.

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

Mr. Blake offered the following resolution:

R. 143.— "Resolved, That whenever any standing or select committee shall report to the Convention adversely or otherwise upon two or more proposed amendments or subjects, and after debate upon such report, the Convention shall have the right upon the

request of twenty members, to take a separate vote upon each amendment or subject so reported."

Mr. Blake — Mr. President, I rise to a word of explanation of my resolution. At the evening session of last Tuesday the Convention found itself suddenly in a position from which it appeared powerless to extricate itself. It was a situation that, it seems to me, should not be found in any deliberative body. It was one that compelled many delegates, by disagreeing with the report of the committee, to appear to vote for propositions of amendment of which they disapproved and to reject propositions of which they were in favor.

Therefore, I think that the Journal is a libel upon these gentlemen, because it does not correctly state their views and wishes. This resolution, which is supposed to be an amendment to the rules, would obviate that difficulty. I suppose the object of the rule to which this is an amendment was to limit debate and to economize time. This resolution will not interfere with that, it will not enlarge the debate by so much as a single word; but if the Convention desires, upon the request of twenty members, to single out one proposition of amendment it has the right so to do. I think, therefore, sir, that the rule is a good one and ought to be adopted. We never ought to be again in the position in which we found ourselves last Tuesday evening. I myself, for instance, was compelled to disagree with the report when I approved it as to five or six of the propositions reported. It seems to me an outrage upon parliamentary usage and ought to be corrected as speedily as possible. I have no objection to the resolution going to the Committee on Rules. I have no doubt the committee will be good enough to make a report upon it by next Wednesday, but it seems to me there ought not to be a gentleman in this Convention who is opposed to this amendment to the rules. I will not ask that it be passed upon to-day, and I consent that it be referred to the Committee on Rules.

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

Mr. Maybee offered the following resolution:

R. 144.— "Resolved, That the Committee on Printing be instructed to ascertain why the printed debates are again in arrears for the entire week, and if any method can be devised to obtain the printing of said debates in time to be of some practical benefit to this Convention."

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

Mr. E. R. Brown offered the following resolution:

R. 145.— "Resolved, That the subject of congressional apportionment in the State be referred to the Committee on Legislative Organization with directions to report what, if any, constitutional provisions in relation thereto, should be proposed by that committee."

The President — The resolution is open for consideration. The Chair had supposed that that subject was necessarily in charge of the Committee on Legislative Organization already.

Mr. Brown — Mr. President, this touches the congressional apportionment.

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

The President announced the order of presentation of proposed constitutional amendments.

O. 357.— Mr. Tucker, by request, presented a proposed amendment to the Constitution to provide for the gratuitous and non-sectarian instruction of every child of school age, and the furnishing of free meals to the children of destitute persons attending school.

Referred to the Select Committee.

O. 358.— Mr. H. A. Clark presented a proposed amendment to section 7 of article 1 of the Constitution, relative to taking private property for public use.

Referred to the Select Committee.

O. 359.— Mr. C. H. Truax presented a proposed amendment to section 6, article 1 of the Constitution, relative to taking private property for public use.

Referred to the Select Committee.

O. 360.— Mr. Tucker (by request) offered a proposed amendment to article 8 of the Constitution, to provide for the construction, operation and perpetual ownership by the State, or, where local, by the civil divisions of the State, of all public works, and for the purchase of such as may be held by private ownership.

Referred to the Select Committee.

O. 361.— Mr. T. A. Sullivan offered a proposed amendment to article 5 of the Constitution, in relation to State officers, by creating the office of Superintendent of Corporations.

Referred to the Select Committee.

The President announced the order of reports of standing committees, including reports upon resolutions referred to them, and the Secretary called the list of committees.

Mr. Vedder, from the Committee on Powers and Duties of the Legislature, to which was referred the proposed constitutional amendment introduced by Mr. Vedder (introductory No. 269), entitled "Proposed constitutional amendment to amend section 7 of article 4 of the Constitution," reported in favor of the passage of the same.

Referred to the Committee of the Whole.

Mr. Vedder, from the Committee on Powers and Duties of the Legislature, to which was referred the proposed constitutional amendment introduced by Mr. Johnston (introductory No. 27), entitled "Proposed constitutional amendment regulating the salaries of members of the Legislature," reports the same with recommendation that it be referred to the Committee on Legislative Organization.

The President put the question on discharging the Committee on Powers and Duties of the Legislature from the further consideration of the amendment and referring it to the Committee on Legislative Organization, and it was determined in the affirmative.

Mr. Vedder, from the Committee on Powers and Duties of the Legislature, to which was referred the proposed constitutional amendment, introduced by Mr. Marks (introductory No. 16), entitled "Proposed constitutional amendment to amend section 6 of article 3 as to the pay of the members of the Legislature," reported the same with recommendation that it be referred to the Committee on Legislative Organization.

The President put the question on discharging the Committee on Powers and Duties of the Legislature from consideration of the amendment and referring it to the Committee on Legislative Organization, and it was determined in the affirmative.

Mr. Root, from the Judiciary Committee, to which was referred the proposed constitutional amendment of Mr. Becker (O. 87), to amend section 18, article 3, so as to permit the appointment of commissioners of jurors in the counties of the State, reported overture No. 362 as a substitute therefor.

Referred to the Committee of the Whole.

Mr. Acker, from the Committee on State Finance and Taxation, to which was referred the resolution No. 115, introduced by Mr. Roche, asking for information from the Comptroller relating to public lands, reported in favor of the passage of the same.

The President put the question on the adoption of the resolution recommended by the Committee on State Finance and Taxation, and it was determined in the affirmative.

Mr. Acker, from the Committee on State Finance and Taxation, to which was referred the resolution (No. 105), introduced by Mr. Pratt, entitled a resolution relating to persons and property exempted from taxation, reported in favor of the passage of the same, the report being concurred in by the Committee on Charities, to which the resolution was also referred.

The President put the question on the adoption of the resolution, and it was determined in the affirmative.

Mr. Hawley, from the Committee on Corporations, to which was referred proposed amendment No. 298, printed No. 302, introduced by Mr. O. A. Fuller, reported the same for consideration, and asked that the committee be discharged from further consideration of said amendment, and that the same be referred to the Committee on Railroads.

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

Mr. Hamlin — In response to the resolution (No. 129) of Mr. Cookinham, in reference to the printing what is known as the evidence in the Gravesend cases, in respect to which information was asked of the Printing Committee, I desire to say, informally, by way of report of the committee, that the printing was put in the hands of The Argus Company on the morning of the 12th, that on investigation yesterday, I was informed by the superintendent of the company, the gentleman who has charge of this Convention printing, that the printing would be on the files of the Convention this forenoon. Later I was informed that he would have it ready before the adjournment of the Convention this morning. I am now informed by telephone that he will not be able to do so, and that it will not be placed upon the desks of the delegates until Tuesday morning. I have endeavored to obtain for the members of the Committee on Privileges and Elections a copy of the testimony printed, but while I have the promise that it shall be delivered to them before they leave their seats this morning, I have grave doubts about its being performed. So that, under the information which the committee now have, the evidence will not be printed until Tuesday morning.

Mr. E. R. Brown, from the Committee on Constitutional Amendments, to which was referred the amendment introduced by Mr. A. H. Green (introductory No. 355), proposed constitutional amendment to amend the Constitution, relative to the election and term of

office of corporation counsel, reports in accordance with rule 73, that, in the opinion of the committee, the same should be printed and referred under rule 32.

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

The President — Unfinished business and general orders. The first business under that order is Mr. Alvord's amendment in reference to salt springs, which, as I understand it, he does not move until the information called for comes in.

Mr. Alvord — I do not move it.

The President — The next is general order No. 1, Mr. Vedder's amendment; to secure greater publicity and deliberation in the passage of bills.

No. 1 was not moved.

The President — The next is Mr. Roche's proposed constitutional amendment in reference to pensions that was under consideration yesterday. That was ordered to be printed with all its amendments, and that printing has not yet been completed.

No. 4. Proposed constitutional amendment on general orders to amend section 5 of article 2, relative to the manner of election, introduced by Mr. Hill.

No. 4 was not moved.

Mr. Moore — I desire to call attention to the fact that Mr. Roche's amendments are printed and are in the back of the calendar. Mr. Roche is not here to-day, therefore, I do not care to call it up.

The President — That was recommitted and has not yet come in from the standing committee to which it was referred. No. 5, report of Mr. Green's special committee in relation to the transfer of land titles.

No. 5 was not moved.

The President — Mr. Hawley's to amend section 41, article 2, relating to enforcing the duty of voting.

Mr. Hawley's amendment was not moved.

The President — No. 8, Mr. Lauterbach's amendment to amend article 2, relative to suffrage. Does any gentleman move that? Mr. Lauterbach is not here to-day.

No. 8 was not moved.

Mr. Holcomb — Mr. President, my colleague, Mr. Williams, has been called to New York upon important business, which was

peremptory, and he desires that the Convention excuse him from attendance until Tuesday morning.

The President put the question on excusing Mr. Williams, and it was determined in the affirmative.

Mr. Johnston — I ask to be excused on Tuesday and Wednesday of next week.

The President put the question on excusing Mr. Johnston, and it was determined in the affirmative.

Mr. Church — Mr. President, I desire to ask for an excuse for Mr. O. A. Fuller for to-day. He is in the city, but is not well, and I ask that he may be excused.

The President put the question on excusing Mr. O. A. Fuller, and it was determined in the affirmative.

On motion of Mr. Dean, the Convention adjourned until Tuesday morning, July 24, at ten o'clock.

Tuesday, July 24, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber, in the Capitol, at Albany, N. Y., on the 24th day of July, 1894, at ten o'clock in the morning.

President Choate called the Convention to order.

The Rev. A. Kennedy Duff offered prayer.

The President — A telegram from the physician, as I take it to be, of Mr. Jacobs, states that that gentleman is sick and desires to be excused for a few days until his recovery.

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

Mr. Curran — Mr. President, I desire to state that Mr. Riggs is called away on urgent business and desires to be excused to-day and to-morrow.

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

Mr. Cochran — Mr. President, may I ask leave of absence for Mr. Towns until Thursday, owing to illness.

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

Mr. Cochran — Mr. President, I have also received a telegram from Mr. Griswold, asking to be excused for to-day on account of illness.

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

Mr. Church — Mr. President, I desire to ask leave of absence on behalf of Mr. O. A. Fuller, who is detained at home by illness, and I am unable to state when he will be able to be present.

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

Mr. Redmond — Mr. President, Mr. George W. Clark desires to be excused from attendance on account of illness.

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

The President stated that a request had been received on behalf of Mr. Phipps, asking that he be excused to-day and to-morrow, on account of matters of pressing necessity requiring his presence in New York.

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

Mr. Maybee moved that the privileges of the floor be extended to the Hon. George M. Beebe.

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

Mr. Holls moved that the reading of the Journal of July 20th be dispensed with.

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

The President — General orders are in order. The Secretary will call the numbers of the general orders and the names of the delegates introducing them.

Mr. Lincoln — Mr. President, is there any opportunity to present petitions or memorials?

The President — After general orders, which are made special for to-day.

The Secretary read general order No. 6, introduced by Mr. Alvord, proposed constitutional amendment to amend section 7 of article 7 of the Constitution, entitled salt springs.

Mr. Alvord — Mr. President, for the reason stated before by me, I ask that that be passed.

The Secretary read general order No. 1.

Mr. Vedder — I move that, Mr. President.

The President put the question on the motion of Mr. Vedder that the Convention now go into Committee of the Whole on general order No. 1, and it was determined in the affirmative.

The House resolved itself into Committee of the Whole.

Mr. Alvord, chairman, announced that the order of business was on general order No. 1, and the Secretary read the proposed amendment as follows:

"Proposed constitutional amendment to amend section 15 of article 3, so as to secure greater publicity and deliberation in the passage of all bills.

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

"Section 15 of article 3 is hereby amended so as to read as follows:

"No bill shall be passed or become a law unless it shall have been printed and upon the desks of the members at least one calendar legislative day 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 shall be allowed, and the question upon its final passage shall be taken immediately thereafter and without debate, and the yeas and nays entered on the Journal."

The Chairman — This being an amended report of the committee, under instructions of the Convention, are there any amendments to be offered to this proposed amendment?

Mr. Maybee offered an amendment which was read by the Secretary as follows:

"By striking out in lines 3 and 8 the words 'or become a law,' and to add after the word 'Legislature' in line 9, 'any bill passed otherwise than as above provided shall be void,' and to take out the word 'and' in line 9."

Mr. Hottenroth — Mr. President, I suggest that the Secretary read the amendment as it is proposed to be amended.

The Secretary read the amendment as proposed to be amended as follows:

"No bill shall be passed unless it shall have been printed and upon the desks of members at least one calendar legislative day 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 except by the assent of a majority of the members elected to each branch of the Legislature. Any bill passed otherwise than as above provided shall be void. 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 without debate, and the yeas and nays entered on the Journal."

The Chairman — The question before the committee is upon the amendment of the gentleman from Sullivan.

Mr. Maybee — Mr. Chairman, the object of the amendment is to do away with any question as to whether this constitutional provision shall be held to be mandatory or only directory. The amendment which I propose I urged strenuously in the committee, but the sub-committee decided to report the amendment in its present form to the Constitutional Convention, eliminating the additional provision which I have inserted. I find that there is a general sentiment to the effect that the form in which the present amendment is submitted will not settle absolutely the question as to whether the amendment is directory only or mandatory. The amendment which I propose puts in plain and unmistakable language a provision that any bill passed otherwise than as provided shall be void, and so does away with the necessity or possibility of any judicial construction that would defeat the purpose of the amendment. The less important provisions of the amendment, as to the roll-call and the taking of the vote by yeas and nays, are left untouched by the provisions which I desire to incorporate. It seems to me that it is unwise and unsafe to leave as a matter for judicial construction a constitutional provision which, by absolutely plain and unmistakable language, may be removed beyond the bounds of any possibility of defeat by judicial construction.

Mr. Dickey — Mr. Chairman, we all remember the story of the boy who drew the picture on the slate and labeled it below, "This is a horse." It seems to me that the amendment proposed by the gentleman from Sullivan is somewhat of the same character; that is, to make an amendment, and then to say, "We mean this, this is the genuine, this is all it says," by implication saying as to the rest, "these may be enforced or not, as you please." It seems to me, Mr. President, that that is entirely unnecessary; that the amendment, as offered by the committee, is in good form and shape, and means just what it says, and says just what it means.

Mr. Vedder — Mr. Chairman, the Convention probably knows the

history of this proposition up to this present hour. It was introduced by me early in the session, in substantially the same form in which it now is. It went to the Committee on Legislative Powers and Duties, and was reported from that committee precisely as it is now, except that the phrase "or become a law" was inserted. In Committee of the Whole an amendment was proposed by the gentleman from New York (Mr. Root), and the next day it was referred back to the Committee on Powers and Duties of the Legislature with instruction to report thereon. When it came before the Committee on Powers and Duties of the Legislature, of which, by the grace of the President of the Convention, I am chairman, I referred it to a sub-committee, consisting of Mr. Mantanye, I believe, and Mr. Dean, Mr. Mullen, and two others, and they reported it in precisely this form without any suggestion whatever from myself. The bill as originally framed was that no bill should be passed unless it had been printed and upon the desks of the members one calendar legislative day prior to its final passage. There was some question, when it was in Committee of the Whole, whether these provisions were mandatory or directory. In order to be entirely sure in the matter, I sent a copy of the bill to ex-Judge Charles Daniels, ex-Judge Noah Davis, of the city of New York, and to Sherman S. Rogers, of Buffalo, asking an opinion from each of those three gentlemen. Two of these opinions, that of Judge Daniels and that of Judge Davis, I have before me, and they concur in saying that the provisions now in the bill are mandatory, and that no court in the world would ever hold them to be anything but mandatory. How Mr. Maybee, or anyone else, can read this bill and say that its provisions are not mandatory, is beyond my comprehension. I do not see how language could be employed which is plainer than this is and which would read any more smoothly. What does it say? It says: "No bill shall be passed or become a law unless it shall have been printed and upon the desks of the members at least one day prior to its final passage." That is one proposition. What is the next? The next proposition follows the language of the present Constitution, and goes a little farther: "Nor shall any bill be passed or become a law unless by the assent of a majority of the members elected to each branch of the Legislature." What language could be plainer than that? And that is the language of the present Constitution, except that to it is added, "shall not become a law." The present Constitution reads that no bill shall be passed without the assent of a majority of all the members elected to each branch of the Legislature; and there has never been a question raised upon that provision of the Constitution. I defy any delegate

in this Convention to find any case in the State of New York where that provision has ever been questioned that a bill must have the assent of a majority of all the members elected to each branch, and unless it has it cannot become a law; and that is what this says. This says, furthermore, that no bill shall be passed — and that is a direction to the Legislature in the first instance, that it shall not pass a law — which bill shall not have been printed one calendar legislative day before its final passage. It goes a step farther, and says to the Legislature, you not only shall not pass a bill unless it shall have been printed, but it says further that if you do pass it — which they would have the power to do by numbers — it shall not become a law. That is directed, of course, to the effect of the passage itself. It directs the Legislature, first, that it shall not pass a bill unless it shall have been printed and upon the desks of the members one calendar legislative day prior to its final passage.

Now, that is all there is to the bill, and I do not see how in the world it could be made plainer by putting in it that if the bill is passed contrary to its provisions is shall be void. That does not make it any stronger than to say that unless you pass it in the manner prescribed it shall not become a law. What is the difference? I admit that the amendment of the gentleman from Sullivan (Mr. Maybee) would prevent its becoming a law unless it had been printed and printed in full, and that it would not become a law under his amendment unless it had the assent of a majority of all the members elected to each branch. There is no doubt about that. Neither can anyone doubt, in my opinion, that when it says that no bill shall be passed or become a law unless it has been printed, that when it declares that no bill shall be passed or become a law unless by the assent of a majority of all the members elected to each branch, that it could not otherwise become a law. I think the language is better as it is. It takes up each proposition and says what shall become of it, and says what the effect will be unless it is done as prescribed. It follows the language of the opinion of Judge Daniels, which I hold in my hand, and he cites numerous cases. The last case he cites is 143 United States Supreme Court Reports. I believe, Mr. President, that the delegates to this Convention are aware that no one in the State of New York stands higher as a lawyer, as a judge, as a judge of the law, than ex-Judge Daniels. This was an opinion which he wrote to me, with this bill before him, and only suggests that the words "or become a law" be inserted so as to make it absolutely sure.

I hope, Mr. Chairman, that the amendment will not prevail, because it is the unanimous opinion of the Committee on Legislative

Powers and Duties with the exception, perhaps, of Mr. Maybee, that it should be presented to the Convention and be passed upon in its present shape, and I hope the amendment will not prevail.

Mr. Maybee — Mr. Chairman, the amendment which I propose puts in absolutely unmistakable language, language that cannot be made the subject of difference of opinion, precisely the idea which is sought to be carried out by incorporating this section into the Constitution. It does away with the possibility that there could be any question as to whether its provisions were mandatory or directory, merely. It seems to me very unwise and unsafe to attempt to accomplish by indirect language — language which may be made the subject of judicial construction — that which can be accomplished by direct and unmistakable language which cannot be made the subject of judicial construction or of difference of opinion. It does not involve any principle which attacks the integrity of the constitutional provision proposed. It does not change the purpose sought to be affected by the incorporation of this provision into the Constitution. It simply puts in direct and unmistakable language that which the committee sought to accomplish by indirect language, which might be made the subject of judicial construction; and in that view, and in that view alone, I have offered this amendment.

Mr. Deyo — Mr. Chairman, I have a suggestion to make as to one word in this proposed amendment, which I hope will be acceptable to the gentleman in charge of the proposition. In line three and in line five the word "unless" is twice repeated, which, I think, detracts from the strength of the sentence. I think the proper way way would be to insert in line three the word "until" in place of "unless" so that it shall read, "No bill shall be passed or become a law until it shall have been printed," etc. I move that as an amendment.

The Chairman — The question is upon the amendment to the amendment offered by Mr. Deyo.

Mr. Burr — Mr. Chairman, I move to strike out in the fourth line the word "one" and insert the word "three."

The Chairman — The gentleman is informed that, two amendments being now before the committee, a further amendment is not in order.

Mr. Burr — I offer, Mr. Chairman, as a substitute, the amendment as it now stands, with the word "one" stricken out in line four and the word "three" substituted.

The Chairman — The Chair will inform the gentleman that his proposition is not now in order. The question is upon the amendment offered by the gentleman from New York (Mr. Deyo).

Mr. Mantanye — I can, perhaps, make a little statement which may throw some light upon the subject to those who have not fully considered the matter. As to the suggestion made by the gentleman from New York (Mr. Deyo), that the word "unless" in the third line should be changed to the word "until," I would state that when the bill was before the Committee of the Whole on the other occasion, the word was "until," and that read very well then before the words "or become a law" were put in. So it read, "No bill shall be passed until it shall have been printed and upon the desks of the members." But even then some gentlemen here suggested that the word "until" should be stricken out, and the word "unless" substituted in place of it. Therefore, when the matter was in the committee again, and in the sub-committee having charge of it, and we had deemed it better to put in these words, "or become a law," so that it should read as it now does, "No bill shall be passed or become a law," we were satisfied that the word "until" did not read well, not so well as it did before, and we acted upon the suggestion that had already been made and changed it to the word "unless." It seemed to make better English of that sentence that, "No bill should be passed or become a law 'unless' it shall have been printed and on the desks of the members," etc. No matter if the word "unless" did occur later down in the next provision of the section, because they are separate propositions, in a certain measure, and require a repetition of the same word therein.

Now as to the proposition made by Mr. Maybee to change this by striking out the words "or become a law" in these two propositions, and insert at the end thereof that the bill shall be void unless the provisions of the section were complied with; that matter was brought before the Committee on Legislative Powers, and the sub-committee also, and it seemed to us that those words did not improve the section, at all; that it rather tended to make it seem a little awkward and more open to some misleading construction that might be put upon it. If he had said at the end of these two sections, or in the place where he now proposes to put his amendment, that the bill should not become a law unless these provisions were complied with, it would be a better legislative phrase, it would be better understood, and clearer, than it would to say that it should be void. That might need some construction, perhaps, as to what it meant, but, if he said it should not become a law, then perhaps there would be some force in his suggestion to put it

in there, and have some meaning. But why would it have greater meaning to put it in there than it would to put it in at the commencement of the proposition as we have done here, that "no bill shall be passed or become a law unless it shall have been printed and upon the desks of the members," etc., "nor shall any bill be passed or become a law unless by the assent of the majority of the members?" Where could anything be stronger? We were seeking in this way to make a section that will be concise and clear, because what is most concise is most clear, for the guidance of the Legislature in the passage of bills. The Constitution should be as free from uncertain words as can be. Every section should be so, and should be as concise and in as good English as possible. Therefore, this matter was fully considered. Mr. Maybee's proposition in the committee was that this phrase, that he seeks now to have interpolated in the middle of the section, should be put at the close of the section, which it was said might give rise to some technicality. As for instance, the last provision in the section that no amendment should be allowed on last reading and the final vote should be taken immediately, etc., that there might be some question raised as to the validity of the bill by claiming that it had not been technically done, and, therefore, we thought it was not proper to put it in there. Mr. Maybee has finally conceded that that was so, that it was better not to put it in at the end, and so now in the Convention he seeks to put it in after the two sections which are already covered by the words which we have put in, that the bill should not become a law unless it was printed, etc., and not at the end. He makes it general, so that it amounts to the same thing, and has the same effect as though placed at the end of the section. We think that this matter has been fully considered. It has been back in the committee three times. It has been reported here twice before. It has been in the committee three times and fully considered in full committee and in sub-committee and has been passed over and analyzed from beginning to end on all these several occasions; and it seems to me that if the committee stood for anything as to the purposes for which they are made, that it has made this bill about as good as it can possibly be made. Therefore, I hope that these amendments, which are merely technical and formal, will not pass.

Mr. Mullen — I happen to have the honor of being one of the sub-committee of three to which this bill was handed for consideration and for amendment, and to submit to the Committee of the Whole. The bill was very carefully and thoroughly discussed in the Committee of the Whole, and carefully considered by the sub-committee of three. We think that in the form in which the bill

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

Mr. Church — Mr. President, I desire to ask leave of absence on behalf of Mr. O. A. Fuller, who is detained at home by illness, and I am unable to state when he will be able to be present.

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

Mr. Redmond — Mr. President, Mr. George W. Clark desires to be excused from attendance on account of illness.

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

The President stated that a request had been received on behalf of Mr. Phipps, asking that he be excused to-day and to-morrow, on account of matters of pressing necessity requiring his presence in New York.

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

Mr. Maybee moved that the privileges of the floor be extended to the Hon. George M. Beebe.

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

Mr. Holls moved that the reading of the Journal of July 20th be dispensed with.

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

The President — General orders are in order. The Secretary will call the numbers of the general orders and the names of the delegates introducing them.

Mr. Lincoln — Mr. President, is there any opportunity to present petitions or memorials?

The President — After general orders, which are made special for to-day.

The Secretary read general order No. 6, introduced by Mr. Alvord, proposed constitutional amendment to amend section 7 of article 7 of the Constitution, entitled salt springs.

Mr. Alvord — Mr. President, for the reason stated before by me, I ask that that be passed.

The Secretary read general order No. 1.

Mr. Vedder — I move that, Mr. President.

The President put the question on the motion of Mr. Vedder that the Convention now go into Committee of the Whole on general order No. 1, and it was determined in the affirmative.

The House resolved itself into Committee of the Whole.

Mr. Alvord, chairman, announced that the order of business was on general order No. 1, and the Secretary read the proposed amendment as follows:

"Proposed constitutional amendment to amend section 15 of article 3, so as to secure greater publicity and deliberation in the passage of all bills.

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

"Section 15 of article 3 is hereby amended so as to read as follows:

"No bill shall be passed or become a law unless it shall have been printed and upon the desks of the members at least one calendar legislative day 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 shall be allowed, and the question upon its final passage shall be taken immediately thereafter and without debate, and the yeas and nays entered on the Journal."

The Chairman — This being an amended report of the committee, under instructions of the Convention, are there any amendments to be offered to this proposed amendment?

Mr. Maybee offered an amendment which was read by the Secretary as follows:

"By striking out in lines 3 and 8 the words 'or become a law,' and to add after the word 'Legislature' in line 9, 'any bill passed otherwise than as above provided shall be void,' and to take out the word 'and' in line 9."

Mr. Hottenroth — Mr. President, I suggest that the Secretary read the amendment as it is proposed to be amended.

The Secretary read the amendment as proposed to be amended as follows:

"No bill shall be passed unless it shall have been printed and upon the desks of members at least one calendar legislative day 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 except by the assent of a majority of the members elected to each branch of the Legislature. Any bill passed otherwise than as above provided shall be void. 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 without debate, and the yeas and nays entered on the Journal."

The Chairman — The question before the committee is upon the amendment of the gentleman from Sullivan.

Mr. Maybee — Mr. Chairman, the object of the amendment is to do away with any question as to whether this constitutional provision shall be held to be mandatory or only directory. The amendment which I propose I urged strenuously in the committee, but the sub-committee decided to report the amendment in its present form to the Constitutional Convention, eliminating the additional provision which I have inserted. I find that there is a general sentiment to the effect that the form in which the present amendment is submitted will not settle absolutely the question as to whether the amendment is directory only or mandatory. The amendment which I propose puts in plain and unmistakable language a provision that any bill passed otherwise than as provided shall be void, and so does away with the necessity or possibility of any judicial construction that would defeat the purpose of the amendment. The less important provisions of the amendment, as to the roll-call and the taking of the vote by yeas and nays, are left untouched by the provisions which I desire to incorporate. It seems to me that it is unwise and unsafe to leave as a matter for judicial construction a constitutional provision which, by absolutely plain and unmistakable language, may be removed beyond the bounds of any possibility of defeat by judicial construction.

Mr. Dickey — Mr. Chairman, we all remember the story of the boy who drew the picture on the slate and labeled it below, "This is a horse." It seems to me that the amendment proposed by the gentleman from Sullivan is somewhat of the same character; that is, to make an amendment, and then to say, "We mean this, this is the genuine, this is all it says," by implication saying as to the rest, "these may be enforced or not, as you please." It seems to me, Mr. President, that that is entirely unnecessary; that the amendment, as offered by the committee, is in good form and shape, and means just what it says, and says just what it means.

Mr. Vedder — Mr. Chairman, the Convention probably knows the

history of this proposition up to this present hour. It was introduced by me early in the session, in substantially the same form in which it now is. It went to the Committee on Legislative Powers and Duties, and was reported from that committee precisely as it is now, except that the phrase "or become a law" was inserted. In Committee of the Whole an amendment was proposed by the gentleman from New York (Mr. Root), and the next day it was referred back to the Committee on Powers and Duties of the Legislature with instruction to report thereon. When it came before the Committee on Powers and Duties of the Legislature, of which, by the grace of the President of the Convention, I am chairman, I referred it to a sub-committee, consisting of Mr. Mantanye, I believe, and Mr. Dean, Mr. Mullen, and two others, and they reported it in precisely this form without any suggestion whatever from myself. The bill as originally framed was that no bill should be passed unless it had been printed and upon the desks of the members one calendar legislative day prior to its final passage. There was some question, when it was in Committee of the Whole, whether these provisions were mandatory or directory. In order to be entirely sure in the matter, I sent a copy of the bill to ex-Judge Charles Daniels, ex-Judge Noah Davis, of the city of New York, and to Sherman S. Rogers, of Buffalo, asking an opinion from each of those three gentlemen. Two of these opinions, that of Judge Daniels and that of Judge Davis, I have before me, and they concur in saying that the provisions now in the bill are mandatory, and that no court in the world would ever hold them to be anything but mandatory. How Mr. Maybee, or anyone else, can read this bill and say that its provisions are not mandatory, is beyond my comprehension. I do not see how language could be employed which is plainer than this is and which would read any more smoothly. What does it say? It says: "No bill shall be passed or become a law unless it shall have been printed and upon the desks of the members at least one day prior to its final passage." That is one proposition. What is the next? The next proposition follows the language of the present Constitution, and goes a little farther: "Nor shall any bill be passed or become a law unless by the assent of a majority of the members elected to each branch of the Legislature." What language could be plainer than that? And that is the language of the present Constitution, except that to it is added, "shall not become a law." The present Constitution reads that no bill shall be passed without the assent of a majority of all the members elected to each branch of the Legislature; and there has never been a question raised upon that provision of the Constitution. I defy any delegate

in this Convention to find any case in the State of New York where that provision has ever been questioned that a bill must have the assent of a majority of all the members elected to each branch, and unless it has it cannot become a law; and that is what this says. This says, furthermore, that no bill shall be passed — and that is a direction to the Legislature in the first instance, that it shall not pass a law — which bill shall not have been printed one calendar legislative day before its final passage. It goes a step farther, and says to the Legislature, you not only shall not pass a bill unless it shall have been printed, but it says further that if you do pass it — which they would have the power to do by numbers — it shall not become a law. That is directed, of course, to the effect of the passage itself. It directs the Legislature, first, that it shall not pass a bill unless it shall have been printed and upon the desks of the members one calendar legislative day prior to its final passage.

Now, that is all there is to the bill, and I do not see how in the world it could be made plainer by putting in it that if the bill is passed contrary to its provisions is shall be void. That does not make it any stronger than to say that unless you pass it in the manner prescribed it shall not become a law. What is the difference? I admit that the amendment of the gentleman from Sullivan (Mr. Maybee) would prevent its becoming a law unless it had been printed and printed in full, and that it would not become a law under his amendment unless it had the assent of a majority of all the members elected to each branch. There is no doubt about that. Neither can anyone doubt, in my opinion, that when it says that no bill shall be passed or become a law unless it has been printed, that when it declares that no bill shall be passed or become a law unless by the assent of a majority of all the members elected to each branch, that it could not otherwise become a law. I think the language is better as it is. It takes up each proposition and says what shall become of it, and says what the effect will be unless it is done as prescribed. It follows the language of the opinion of Judge Daniels, which I hold in my hand, and he cites numerous cases. The last case he cites is 143 United States Supreme Court Reports. I believe, Mr. President, that the delegates to this Convention are aware that no one in the State of New York stands higher as a lawyer, as a judge, as a judge of the law, than ex-Judge Daniels. This was an opinion which he wrote to me, with this bill before him, and only suggests that the words "or become a law" be inserted so as to make it absolutely sure.

I hope, Mr. Chairman, that the amendment will not prevail, because it is the unanimous opinion of the Committee on Legislative

Powers and Duties with the exception, perhaps, of Mr. Maybee, that it should be presented to the Convention and be passed upon in its present shape, and I hope the amendment will not prevail.

Mr. Maybee — Mr. Chairman, the amendment which I propose puts in absolutely unmistakable language, language that cannot be made the subject of difference of opinion, precisely the idea which is sought to be carried out by incorporating this section into the Constitution. It does away with the possibility that there could be any question as to whether its provisions were mandatory or directory, merely. It seems to me very unwise and unsafe to attempt to accomplish by indirect language — language which may be made the subject of judicial construction — that which can be accomplished by direct and unmistakable language which cannot be made the subject of judicial construction or of difference of opinion. It does not involve any principle which attacks the integrity of the constitutional provision proposed. It does not change the purpose sought to be affected by the incorporation of this provision into the Constitution. It simply puts in direct and unmistakable language that which the committee sought to accomplish by indirect language, which might be made the subject of judicial construction; and in that view, and in that view alone, I have offered this amendment.

Mr. Deyo — Mr. Chairman, I have a suggestion to make as to one word in this proposed amendment, which I hope will be acceptable to the gentleman in charge of the proposition. In line three and in line five the word "unless" is twice repeated, which, I think, detracts from the strength of the sentence. I think the proper way way would be to insert in line three the word "until" in place of "unless" so that it shall read, "No bill shall be passed or become a law until it shall have been printed," etc. I move that as an amendment.

The Chairman — The question is upon the amendment to the amendment offered by Mr. Deyo.

Mr. Burr — Mr. Chairman, I move to strike out in the fourth line the word "one" and insert the word "three."

The Chairman — The gentleman is informed that, two amendments being now before the committee, a further amendment is not in order.

Mr. Burr — I offer, Mr. Chairman, as a substitute, the amendment as it now stands, with the word "one" stricken out in line four and the word "three" substituted.

form in which it is passed. It seems to me that great difficulty will arise in attempting to provide by constitutional provision that a particular bill shall have been in printed form and upon the desk of every member of the Legislature; for we know from experience in this body that our files, even of proposed constitutional amendments, are not all complete, and we know how difficult it would be, if it were a proper subject for judicial investigation, to establish in any case that the provision of the Constitution had been, in fact, complied with. It seems to me that the object can be gained by requiring at least one day's delay in each house of the Legislature after the bill shall have assumed the final form in which it passes that house. We know, as matter of practice, that in all legislative bodies these bills are printed and put upon the desks of members on the day following their introduction into either house. Hence my substitute provided simply that the Legislature shall not pass a bill on the day of its introduction into that body in the final form in which it passes, unless the Governor shall certify the necessity for its immediate consideration. I believe that would meet the difficulty which is now found and would cover the ground.

The Chairman put the question on the amendment of Mr. Deyo to strike out the word "unless" and to insert therefor "until," and it was determined in the negative.

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

The Chairman — The question now recurs upon the substitute offered by the gentleman from Monroe (Mr. Foote). Is the committee ready for the question?

Mr. Durfee — Mr. Chairman, I observe that in the form in which this proposed amendment was before the committee some days ago, as No. 290, there is a phrase, or a word or two, that seem to me to be valuable. Perhaps what I have to say, however, would come more opportunely after the Convention shall have passed upon the motion offered by Mr. Foote. At the moment when I arose it had escaped my attention that that was now before the committee. Being up, however, I will make the suggestion which I had intended to make, and it is this: In the former provision occurred this expression, "No bill shall be passed or become a law until it shall have been printed and been upon the desks of all the members of each house in its final form." That provision is omitted in the later proposed amendments to No. 365. It occurs to me that it would be very desirable to have that inserted, for a bill may be introduced, it may be printed, it may be amended after it is printed, with-

out the amendment itself being printed, although it be not upon the order of its third reading. I can imagine a case of that kind, and it seems to me such a case would not be clearly embraced within the purview of the proposed amendment as it now stands. Therefore, I will move, if it is now in order, or if not now in order, I would like to do so before the vote is taken on the substitute;—

Mr. Chairman — The gentleman is quite in order.

Mr. Durfee — Then I move that a clause be inserted after the word "passage" in the third line of the present proposed amended bill, so that it will read, "No bill shall be passed or become a law, unless it shall have been printed and upon the desks of all the members of each house at least one calendar legislative day prior to its final passage in its final form." Perhaps it will come in more appropriately after the word "members" in the second line: "No bill shall be passed or become a law unless it shall have been printed and been upon the desks of all the members of each house in its final form at least one calendar legislative day before its final passage." So that it will assuredly require that there shall be given to the bill proper consideration, and that the attention of members may be attracted to it in the form in which it is voted upon beyond any question. That, it seems to me at least, is a very desirable thing, and I offer that amendment.

Mr. Chairman — The question is upon the amendment proposed by Mr. Durfee. Is the committee ready for the question?

Mr. Foote — I rise to a question of order. I understood the question before the House to be upon the substitute offered by myself.

Mr. Chairman — The Chair will inform the gentleman that the substitute cannot be put before the House before the questions on the amendment are exhausted. The gentleman has now offered an amendment to the original proposition; and the substitute of the gentleman will be in order after that is passed upon.

Mr. Burr — I move to amend the amendment by inserting the word "three" where the word "one" occurs in the fourth line.

Mr. Chairman — The gentleman from New York, moves to further amend by striking out "one" and inserting "three" so that it shall read "three calendar legislative days."

Mr. Burr — In moving that amendment I wish to say that it appears to me if this amendment answers any good purpose it is the purpose of giving the legislators time to deliberate upon the business before them. But if my memory serves me correctly, in the early days of the session of this Convention, the introducer of this

amendment assured us that the duty of the minority was simply to hear and to obey. I think that the purpose of this amendment is to give the majority a chance to hear and to obey; and I believe one day does not give them ample or sufficient opportunity to hear and obey the voice of their constituents. I believe at least three legislative days are necessary for the purpose of enabling the people whom the legislators represent to harken to the bill, and to respond whether it is advisable or not. For that reason I move the amendment from one to three legislative days.

The Chairman — The question before the committee is upon the proposition of the gentleman from New York (Mr. Burr) to strike out "one" and insert "three."

Mr. Burr — "Three legislative days."

The Chairman put the question upon the amendment of Mr. Burr, and it was determined in the affirmative.

The Chairman — The question now recurs upon the amendment offered by the gentleman from Wayne (Mr. Durfee). Is the committee ready for the question?

Mr. Root — I hope the committee will agree to that amendment. It has already been suggested in Committee of the Whole, and agreed to by the chairman of the Committee on Legislative Powers. I understand that he now considers that it would be a wise and prudent change in the proposed amendment to the Constitution, that the provision should be that the bill in its final form should be printed and upon the desks of the members. As was suggested by the gentleman from Wayne (Mr. Durfee) I apprehend that the provision which we are now considering would be wholly inefficacious if it were not required to be in its final form. For, if we are correctly informed, one of the principal evils in the way of legislation is, that after a bill has been introduced and considered and treated in one form, at the last moment, in the twinkling of an eye, as it were, it is changed into a different form, and another bill, affecting different interests in different ways, is practically substituted for it and passes, before even the members of the Legislature know what they are doing — much less their constituents and the public, who keep watch of their proceedings. Unless the bill is to be printed in its final form for a specified time before its passage, I judge that it will be giving no relief and imposing no restraint at all.

The Chairman — The question before the committee is upon the proposition made by the gentleman from Wayne (Mr. Durfee).

Mr. Maybee — I ask for its reading.

The Chairman — It will be read by the Secretary for information.

The Secretary (reading) — "No bills shall be passed or become a law unless it shall have been printed and upon the desks of 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 for its immediate passage."

The Chairman — The question before the committee is upon the proposition of the gentleman from Wayne (Mr. Durfee).

Mr. Vedder — I do not seriously object to the amendment proposed, although I think it is entirely unnecessary, and for this reason: under this provision as it now stands no bill can become a law unless it shall have been printed three calendar legislative days prior to its final passage. Now, Mr. Chairman, supposing that there is a bill which is amended upon its third reading and passed immediately and without being printed, can anyone say that that bill was printed and upon the desks of members three calendar legislative days before it was passed? and particularly so, where the entire meaning is changed? Can any bill which is amended upon its third reading be said to have been printed three days before it was so amended? This provision means that the bill which is passed must have been printed three days before its passage; if amended on its third reading it could not possibly be a bill which had been printed three days before its passage. It seems to me, therefore, that the language is superfluous. But there are, I confess, a good many good men of great minds in this Convention who believe that that provision ought to be in. And to make assurance doubly sure, and so that there need be no possibility of a change in the twinkling of an eye, I am entirely willing that that provision shall be put in so as to obviate the change in such a short space of time.

Mr. Mantanye — So far as I am concerned I would have no objection to making this just as strong as it could possibly be in every respect, and at the same time use as good language as may be possible in the formation of this section of the Constitution. We had this very same matter before the committee and the sub-committee in considering the form of this section when it was before it. We had before us the amendments contained in No. 290, in which that clause which is now proposed to be inserted in line four was contained and in one draft which we made we put it in; and then we found, on reading it with the whole section in connection with it, that it seemed to be superfluous and rather spoiled the English of it. For instance, it would then read that "No bill shall be passed or become a law unless it shall have been printed and upon the desks of

members for at least three legislative days in its final form," and then, over at the latter end of it, it says that on third reading no amendments thereof shall be allowed.

Therefore, it would seem that this would follow, that the bill is in its final form, and it repeats it by saying that after the bill has been printed and upon third reading there shall be no amendments. To say also that it shall be in its final form would seem to be superfluous, and it would be the proper subject of criticism of this Convention. No doubt if we put it in it will be criticised in that respect by some of the gentlemen here. I call attention to it now so that those gentlemen may see what they are doing and may understand it fully.

Mr. Moore — It seems to me this bill as it reads gives sufficient protection to legislation which we are seeking to guard. We considered the amendments which were presented to the committee very carefully, and we finally made up our minds unanimously that this bill would give all that we were seeking — which was the best and the most careful legislation. It seems to me that line 1 on page 2 of the calendar, No. 173 (introductory No. 73), sufficiently answers all the questions here in relation to the matter of final passage. And, although I feel constrained to say that I think that one calendar day is sufficient, I am not opposed to the amendment introducing three calendar days.

The Chairman — That amendment has already been passed.

Mr. Moore — I would say that as now amended, I think I shall vote for the bill as it stands.

Mr. McMillan — I desire to suggest to the mover of this amendment that he change the form very slightly in line 4, so that it will read as follows: "No bill shall be passed or become a law unless it shall have been printed and upon the desks of members"— insert after the word "members" the following words: "In the form in which it shall have been enacted at least three calendar legislative days." That meets the objection made by Mr. Mantanye as to the King's English, and I think gives more force to the language suggested by the gentleman moving the amendment, and I would suggest, if agreeable to him and to the committee, that he accept that form.

The Chairman — Does the gentleman from Wayne (Mr. Durfee) accept that suggestion?

Mr. Durfee — I am not at all strenuous about phrases or phraseology. Whatever phraseology the committee may think is best suited to express the idea will meet with my concurrence. But now

that the amendment has been suggested, perhaps it would be better to take the sense of this body of gentlemen, who are familiar with the King's English, to see which phrase they prefer, and that I ought not to forestall its being passed upon by the Committee of the Whole, by accepting the amendment here, and, for that reason, I decline to accept the amendment.

The Chairman put the question on the amendment offered by Mr. Durfee, and stated that he was in doubt as to the decision.

Mr. Durfee — There seems to be some misunderstanding or lack of understanding with regard to what proposition is being put to vote.

The Chairman — Then the Secretary will read the amendment again to obviate misunderstanding or lack of undertime, and I hope the gentlemen will listen.

The Secretary — Mr. Durfee's amendment is, to insert after the word "members" in line four, the words "In its final form;" so that it will read, "No bill shall be passed or become a law unless it shall have been printed and upon the desks of members in its final form at least three calendar legislative days prior to its final passage."

The Chairman — The Chair understood the gentleman from Erie to move an amendment — or was it merely a suggestion?

Mr. McMillan — It was merely a suggestion. I am perfectly satisfied with the amendment.

Mr. Burr — I desire to offer an amendment; on line two, to amend by striking out the words "and without debate."

The Chairman — The gentleman may urge the grounds for this amendment if he desires.

Mr. Burr — I wish simply to call attention to the fact that the Constitution, as it stands at present, provides that no bill shall be passed unless by the consent of a majority of the members elected to each branch of the Legislature, and that the question upon its final passage shall be taken immediately upon the last reading. The innovation made by this proposed amendment is to provide that the vote shall be taken immediately thereafter, and without debate. I cannot understand any good purpose which can be served by the innovation, and, unless the introducer has some good reason for it, I am inclined to strike it out.

The Chairman — The Chair will inform the gentleman that he will put that before the committee upon the final coming in of the vote upon the original proposition made by Mr. Durfee. As many as are in favor of the proposition of Mr. Durfee, will please rise and

remain standing until counted. It is evidently carried, as a large majority have voted therefor. The question now is upon the motion of the gentleman from New York (Mr. Burr) as to a further amendment.

Mr. Burr — I move on page 2 to amend line 3 by striking out the words " and without debate."

The Chairman — The question is upon the proposition of the gentleman from New York (Mr. Burr).

Mr. Bowers — The proposed amendment as now amended doubtless accomplishes a very useful purpose. It only remains for us to consider whether these words which are now proposed to be incorporated into the Constitution will not do harm. If the bill as it has thus far progressed and been amended will doubtless accomplish good, let us pause for a moment and see why these words should come in, why they should be there. We propose to say by the Constitution that the Legislature shall not be permitted to debate upon the final passage of a bill. Why should we do that? All the safeguards being now provided, what is our object in saying that for all future years the Legislature may not, if it sees fit, under proper rules, even at the last moment, debate, change, improve and send back for printing again, and for still further consideration, any bill that may be before it? I hope that the amendment offered by the gentleman from New York will be accepted, and in that form, and that the committee will pass the amendment.

The Chairman put the question upon the amendment proposed by Mr. Burr, and it was determined in the affirmative.

Mr. Spencer — Mr. Chairman, I propose an amendment by adding after the word " Journal " in the last line on the second page the following: "And no bill shall be presented to the Governor for his approval nor become a law unless the presiding officer of the house shall have first certified that in the passage thereof the provisions of this section have been obeyed." It seems to me that having progressed this bill thus far, we shall lose what we seek to obtain, by striking out this passage which was a part of the bill as printed, and upon our calendar as 290. I know, sir, as stated by the gentleman from Cattaraugus (Mr. Vedder), that this is substantially what is provided for in the rules of each house; but shall we enter in the Constitution of the State a provision of this character such as we have already provided by our bill, and leave it to the rules of the House to determine whether those provisions have been complied with or not? Shall we not rather indicate in our provision something which shall guide the courts in their determination whether

the bill is valid or otherwise? It seems to me that it will be perfectly safe, and it is legitimate for us to provide that that question shall be one settled by the certificates of the presiding officers of each house; that their certificates should be final and not leave it for the Legislature or either body of the Legislature to delegate that authority to the secretary or to whomsoever they may see fit, or to leave the subject open. If they adopt the system that is now in vogue the question will be open and subject to inquiry when the validity of a statute shall be questioned in court, and I can very well understand how the question might be a question of fact, and the court might inquire into the proceedings of that house to know whether this provision has been complied with. And I think for the protection of the purpose of this law, and to make it clear and explicit, and to know definitely whether it has been complied with or not, this provision which was incorporated in the bill, as it was printed in 290, should be continued in its present form.

Mr. Dean — Mr. Chairman, is it the purpose of this Convention to establish two absolute vetoes upon any measure which may come before the Legislature? That seems to be the object of the proposed amendment. It puts in the hands of the Speaker of the Assembly and of the Lieutenant-Governor of the State or the presiding officer of the Senate, the absolute power to veto, by his failure to act, any measure which may come before the Legislature. It seems to me that that is an absurd proposition. It puts extraordinary powers into the hands of the Speaker and presiding officer of the Senate, and a power entirely inconsistent with our system of government.

Mr. Maybee — I hope that the amendment now proposed will not be agreed to. There is an evident disposition on the part of some delegates to put into the Constitution not only what is properly the subject of legislative enactment, but also what is properly the subject of the rules of procedure of the two houses of the Legislature. A provision of this kind ought not to be made a constitutional provision, but ought to be left in the discretion of the two houses of the Legislature, in the adoption of rules which govern their procedure. It ought to be left to them to prescribe the mode of passage of bills that are before them for consideration, and the form of any certificate which may be necessary for the passage of such a bill. To put in this form a constitutional provision would put it in the power of the presiding officer of the Senate or Assembly, by arbitrary refusal to certify, to defeat the enactment of the most salutary legislation. It would be unwise and unsafe to vest in the presiding officer of either branch of the Legislature such arbitrary and

unlimited power, and we should not attempt to adjust the matter that ought to be left to the rules of the two houses, and not be the subject of constitutional amendment.

Mr. Jesse Johnson — I desire to second the amendment proposed by Mr. Spencer. I believe it is absolutely necessary for the validity and certainty of the law. I will ask any gentleman here who would oppose the proposition, what he would say to a further amendment to our Constitution, that no articles we here enact shall be valid unless the formalities of laying on the desk and printing prescribed by our rules are observed? Would we, for one moment, leave our work here to the question of affidavit or testimony? Would we enact such a rule as to our work? Is it wise, sir, that the Constitution of the State for all time shall be open to question from the page who sits here, from every person in this room, who happens to be here casually or otherwise, to come forward and give testimony that some bill was not printed, and call on the opposing party to prove that it was? It seems to me we strike down the whole body of statute law unless some such amendmbent is adopted.

Mr. Gilbert — I would ask that the proposed amendment be read so that we shall make no mistake.

The Secretary read the amendment as follows:

Add at the end of the section: "And no bill shall be presented to the Governor for his approval, nor become a law, unless the presiding officer of each house shall have first certified that in the passage thereof the provisions of this section have been obeyed."

Mr. Gilbert — Mr. Chairman, I think there is possible danger lying in the proposed amendment. It is quite possible for us to go too far in the direction of prohibitive requirements. It is quite possible for us to go too far in providing that what appears to be a statute is after all no law at all. I think, Mr. Chairman, we have gone dangerously far already, and I should hope this committee would not take another step in that direction. I understand the rule of law, as declared by the courts of this State, and of other States, and of the United States, to be this, in substance, that when the presiding officer of each legislative body has certified that a law has been passed as prescribed by the Constitution and the rules and when it shall have received the Governor's signature or the president's approval, and when, beyond that, it shall have been deposited in the proper place for depositing the laws of a State or a nation, that such evidence of due passage shall be final, conclusive. I think, therefore, Mr. Chairman, that the proposed amendment is at least unnecessary. If it were put in, however, it might be con-

tended that it has some force and effect beyond the law as now interpreted by the court, and if it did go beyond it, I believe it would be objectionable. It seems to me that some things must be left to the rules of legislative bodies, and is it not a fact that when we have said that every bill before it passes into a law, shall have been, for the time prescribed, in its final form upon the desks of the members, have we not put up all the safeguards which it is well for the Constitution to attempt to erect? It seems to me that the proposed addition to this section is either unnecessary or dangerous. For one, I should be opposed to emphasizing any more, by repetition or otherwise, the safeguards which we have already proposed to put into the Constitution, and I hope the amendment will not prevail.

Mr. McMillan — Mr. Chairman, I sincerely hope that this amendment will prevail. We shall substantially accomplish nothing by the amendments which we have already adopted unless we put this amendment through in such form that we can compel the enforcement of such amendments. The object of the amendment is to prevent hasty and undue legislation. That is not very common. The suggestion of the gentleman, that we should leave something to the Legislature, would seem very properly to apply to leaving to the Legislature the question of passing upon all bills before them, believing that they would not unduly rush them through the legislative body. But our experience has taught us, Mr. Chairman, that under certain circumstances, and with certain bills, they do sometimes pass through those bodies between dusk and daylight. It is in order to prevent that that we have already provided in the amendment that the proposed bill shall be upon the files of the members for three legislative days. For what purpose? It is that it may be investigated. Now suppose it is desirable that some bill should pass without having been upon the desks for that length of time. How are you going to determine? It certainly is just as easy to keep the record on the journal as to the fact that the bill has been on the desks of the members for three legislative days by the sergeant-at-arms; then the journal will show the record, and when the presiding officer comes to make his certificate he will certify that it has been on the desks of the members for three legislative days, just the same as he can certify that it has received the majority vote. Every one of the bills, as the Chairman well knows, must be certified by the Speaker of the Assembly and the presiding officer of the Senate, and he makes a certificate on the journal. The journal shows that the bills have been upon the desks for five or three days. It will have the same result.

Mr. Vedder — Will the gentleman allow me to ask him a question? Is there any provision now in the Constitution requiring the officers of the House or Senate to certify to the passage of a bill?

Mr. McMillan — There is none whatever; nor is there any provision in the Constitution that it shall be on the desks for three days. It is to accomplish that purpose that we are enacting this amendment, and if we adopt the amendment which requires it to be on the desks for three days we must protect that by some provision so that we may know that it has been there, and that an act which has passed the Legislature without that certificate shall be void.

Mr. Veeder — Mr. Chairman, is there not danger by adopting this measure that we will place in the hands of a presiding officer either of the House or of the Senate such exclusive power as may enable him, if he chooses, to block all legislation?

Mr. McMillan — Will the gentleman allow me a question?

Mr. Veeder — Certainly.

Mr. McMillan — Does the gentleman think that there is any presiding officer who would have the hardihood to refuse to certify any bill that had been enacted and thus subject himself to impeachment?

Mr. Veeder — In answer to that allow me to say, the hardihood not only of the presiding officer but of the Legislature itself for the past few years is notorious. They declined for years to have an enumeration. They declined for years to allow this Convention to assemble, and I submit that it would be unwise, in my opinion, to confer upon any single officer of the Legislature this power.

Mr. Vedder — I am more than astonished, Mr. Chairman, that a proposal should be seriously presented to this Convention that we should put into the Constitution of the State a provision to clothe the presiding officer of each house with the power to block all legislation. That is the effect of this amendment; I pretend to say that if these gentlemen desire to destroy the effects of this proposed amendment of the Constitution, they could take no better course than they are now adopting. It is a well-known trick in legislation to overload a bill so that even its friends will not vote for it. I do not believe that there is one-hundredth part of the intelligent people who will vote next fall upon such a proposition as that, who would vote to give the presiding officer of the Assembly or the Lieutenant-Governor of this State power over all legislation. And that is what it would do. The gentleman from Buffalo (Mr. McMillan) says he would like to see the presiding officer of a body who would dare do

these things. Buffalo has had the experience of what a presiding officer dare do. (Applause.)

Mr. McMillan — Yes, we have had the experience, and the presiding officer, who dared to do the things to which my friend refers, has been relegated to the rear. (Applause.)

Mr. Vedder — But if an important measure were passed by the State of New York, and the presiding officer under this proposed amendment should refuse to certify it, it could not become a law and, thereby, great rights might be injured or wholly destroyed. When party spirit runs high and men who are bold and brave are in the chair, as presiding officers in the Assembly or Senate, they dare do things that the gentleman from Buffalo (Mr. McMillan) may not dream of. I for one am opposed to having three Governors of one State, and that is what it means. If a bill cannot become a law unless it is certified to by the presiding officer of each House, it clothes him with the power of the Governor. His veto is absolute, because the Constitution says so. Now, under the present Constitution, supposing the presiding officer of the Senate refused to certify to a certain bill; who should stand up and say that he is wrong in doing it? Supposing that he should say, "I will not certify it; I am not certain that this bill was printed and upon the desks of the members for three days," and refuse to certify for that reason; who will say that he is wrong? He would appeal to the people and say: "I could not blister my conscience by signing a certificate which I did not know to be absolutely true." And no man could come up and say that he did know it, any more than when the gentleman from Buffalo (Mr. McMillan) puts a witness on the stand and he says, "I do not remember," that you can predicate perjury upon it. The question was asked the gentleman from Buffalo (Mr. McMillan), by the gentleman from Brooklyn (Mr. Veeder), if there was any authority in law or Constitution prescribing that these certificates should be put upon the bill, and he says, no. We have a provision that unless a bill is passed by two-thirds majority it shall not be a law. Is there any provision of the Constitution prescribing that they shall certify to that? And yet the rules of the Senate and Assembly prescribe that, if the bill under section nine of article one is a two-thirds bill, the presiding officer of each house must certify that it is a two-thirds bill, and this is the form of the certificate, not prescribed by the Constitution, but prescribed by the rules of the House for its orderly government, and the enunciation is not that unless they sign these certificates the bill shall not become a law. Here it is: "State of New York, in Senate, 1894, this bill was read the third time and passed, two-thirds of all the

Senators elected voting in favor thereof, three-fifths being present. By order of the Senate," signed, "William F. Sheehan." Prescribed by whom or by what? By the order of the Senate. In rule 5 it says it shall be done, and rule 5 reads now: "The President shall, immediately, or as soon as the bills are engrossed, certify the passage of all bills by the Senate, with the date thereof, together with the facts whether passed as a majority, three-fifths or two-thirds bills; and also that the same was printed and upon the desks of members three days before its final passage, as required by the Constitution, and deliver such bills to the clerk." The merest amendment of the rules of the Senate would cover the point and avoid the necessity of having the State of New York and its legislative branch controlled by veto of a presiding officer. A bill which actually passed both branches last winter was held, as I understand it, three weeks before he certified to it. He was sick and unable to do it. Supposing we had a provision in the Constitution that it could not become a law unless he certified to it, and in the meantime he died; it would not have become a law, would it? The whole State of New York might be put at peril by their appropriation bill or other important measures, simply upon the ground that the bill could not become a law unless certified by the presiding officer, and a thousand things might prevent his signing that certificate. Under the Constitution as it now is, there is nothing to prevent a bill from becoming a law except the law-making power. The Governor cannot stand in the way of the people and in the way of good legislation. The legislative power of this State is vested in the Senate and Assembly. The Governor has the power to veto, but no matter how the Governor may stand upon a bill; he may be opposed to it, he may interpose his veto and yet the people through their Legislature will say that notwithstanding his veto it shall become a law. The voice of the people, as represented in the Senate and Assembly, is the voice of God, so far as the passage of law is concerned, and not the presiding officer of the Assembly or of the Senate. I am astonished, Mr. Chairman, at the learning of the law displayed by Mr. Johnson, of Brooklyn, in saying that in the courts where the question of the passage of a bill was up page boys would be summoned to determine whether a bill was passed or not. There is no such law either as found by the court or upon the statute books of the State of New York, that a page boy, or a clerk, or a member, or an officer of either branch could be summoned by the court to testify in regard to whether the bill was properly passed or not. The highest court of this State and the highest court of the United States have decided that the courts cannot go back of the

certificate of the presiding officer; that when he says that the bill has been properly passed by the requisite majority, and puts his signature to a certificate of that nature, the court cannot, and never did, go back of that certificate. There is not a case that has been decided or reported where a contrary doctrine has been held. Mr. Chairman, I want the legislative power of the State to be vested where it now is, in the Senate and the Assembly. The Governor even, according to our Constitution, is no part of the legislative branch. He may veto a bill, but the Legislature may pass it over his veto. This means that so far as the making of laws is concerned the Legislature is the sole and ultimate power in the State. The doctrine that the presiding officer of either branch of the Legislature may interpose an absolute veto by withholding his certificate is un-American and monstrous. It is said that, "The aspiring youth that fired the Ephesian dome outlives in fame the pious fool that raised it." Give the power which is asked by the advocates of this proposed amendment, and some presiding officer could sit upon the ruins of our fair fabric of State, and outlive (at least in infamous fame) the pious fools that raised it. I hope this amendment will not be adopted, and I am free to say that, if it is, I, for one, will not vote for it, here nor at the polls next fall. (Applause.)

Mr. Crosby — I rise simply for the purpose of determining the position taken by the gentleman from Cattaraugus (Mr. Vedder) as to the authenticity of the passage of a bill. It is provided by the Legislature that the assent of two-thirds of each branch of the Legislature is requisite to appropriate public moneys. Then follows the legislative prohibition that no bill shall be deemed to have been passed by the assent of two-thirds of the members elected to each house unless so certified by the presiding officer of each house. It was held by the Court of Appeals, in the 23d of New York, that the certificate of the presiding officer indorsed upon the original bill was conclusive proof of the fact that a two-thirds vote had been received. Now, it was deemed by the Legislature when the Revised Statutes were adopted that that was a sufficient safeguard with this important restriction upon the passage of bills requiring a two-thirds vote, with this restriction imposed by the Legislature at an early date, and it has been from that time to this sufficient, satisfactory and conclusive proof of the number voting for it. And so, if it is necessary, it is a matter of legislation, not of fundamental law, whether the same principle shall be applied to cover this proposed amendment. It seems to me that we are getting

within the boundaries of the duties of the Legislature rather than our own duties here, in providing constitutional enactments.

The Chairman — The question before the committee is on the proposition of the gentleman from Fulton (Mr. Spencer).

Mr. Mantanye — Mr. Chairman, I desire to say a few words in addition to what has been said, although it seems to me that it should be clear to every gentleman here on reading this proposition and considering it a little, that it would be a great mistake to tack this amendment upon this proposed provision of the Constitution. It does almost seem as if it was done for the purpose of discrediting it and bringing the opposition of even its friends upon it. It has been very forcibly stated here and clearly shown what power it would give to the presiding officer of either house, a power to veto greater than that of the Governor, because it could not be overridden. The gentleman from Buffalo (Mr. McMillan) has suggested, in regard to that, that no presiding officer perhaps would do such a thing, but that we should leave it to the body of the Legislature itself to provide the rules for their own action and the manner of certifying it. We are here not for the purpose of making a Constitution, but as representatives of the people to formulate a Constitution to be adopted or not adopted by them; and, if adopted, it is to be a general rule to govern the action of their representatives in the Legislature, the members of the Assembly and the Senate, who are just as much representatives of the people as the members of this Convention. And, I say, for us to go beyond laying down the general rules which are to govern that Legislature in the exercise of its powers, would be treating them as mere school boys, and that we should make rules for them is going too far. In all matters of government there is to be recognized one principle, that there are in all political societies opposing forces, and in every Legislature and in each body of the Legislature are the two opposing forces, the members of the two parties, who are in constant watch upon each other and a check upon each other, and they, of themselves, will see that there is no wrong done to the Constitution. It is an insult to the members of the Legislature to be hereafter chosen to even suppose that it is necessary to make rules for them, and appoint some man to certify that they have been good boys and have done their duty as they should have done. It it, further than that, too much to presume for 128 members of Assembly, of both parties and all parties, and thirty-two members of the Senate, with the Lieutenant-Governor, all of different parties, perhaps, to combine together to pass a law that would be void if put upon the statute books. I say it is too violent a presumption. I

would rather presume that one presiding officer might go wrong than that the whole body of both branches of the Legislature should do so.

Mr. Moore — Mr. Chairman, I hope that the amendment will not prevail. I wish to say a few words upon this question. I do not believe it is competent for us in Constitutional Convention to vote to enact third houses, and that is just exactly what this proposed amendment does. In effect it practically creates a third house in the person of the individual who shall have the say to certify to the passage of these bills. I oppose the amendment as wrong in principle, in theory and in practice, and shall, therefore, vote against it.

The Chairman — The question before the committee is upon the proposition of the gentleman from Fulton.

The Chairman put the question upon the proposition as stated, and it was determined in the negative.

The Chairman — The question now recurs upon the substitute offered by the gentleman from New York (Mr. Deyo).

Mr. Foote — Mr. Chairman, in view of the adoption by the committee of the change of from "one" to "three," I have drawn my substitute, substituting three days for one, and I beg leave to introduce it in place of the other.

The Chairman — It will be so ordered. The question now before the committee is upon the substitute.

The Chairman put the question upon the proposition as stated, and it was determined in the negative.

Mr. Vedder — Mr. Chairman, I move that the committee do now rise and report this bill to the Convention and recommend its passage.

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

The committee thereupon rose, and President Choate resumed the chair.

Mr. Alvord — Mr. President, the Committee of the Whole have had under consideration the amendment to the Constitution No. 365 (introductory No. 73), entitled "Proposed constitutional amendment to amend section 15 of article 3, so as to secure greater publicity and deliberation in the passage of all bills," have gone through with the same, have made sundry amendments thereto, and, as amended, have instructed me, their 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, and adopting the amendment recommended by them, as amended. The Secretary will read it as it comes from the Committee of the Whole, amended.

The Secretary read the proposed amendment as follows:

"To amend section 15 of article 3 so as to secure greater publicity and deliberation in the passage of all bills.

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

"Section 15 of article 3 is hereby amended to read as follows:

"No bill shall be passed or become a law unless it shall have been printed and upon the desks of the members in its final form, at least three calendar legislative days prior to its final passage, 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 least 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."

The President — This amendment as reported by the Committee of the Whole is now subject to debate.

Mr. Rogers — Mr. President, as the Secretary read the proposed amendment it omits the words "calendar legislative days," which should be in the fourth line of the first page.

The Secretary — The amendment so reads, "three calendar legislative days."

Mr. Foote — Mr. President, I desire to inquire of the chairman of the Committee on Legislative Powers and Duties, whether his understanding of this amendment is that the bill must have been printed and upon the desks of the members in each of the houses three days before its passage in each house, or whether the provision means that three days before the final passage in the last house it must have been printed and upon the desks of all the members of the other house?

Mr. Vedder — Mr. President, the question of the gentleman suggests that he may not be accustomed to the rules of legislative bodies. When a Senate bill is printed it is put upon the Senate files of the Assembly, precisely the same as it is in the Senate, and *vice versa*. This means that it must be upon the desks of the members

of the house which votes upon it three legislative days before that house votes upon it, so that they may read it and understand it. That is the object of the amendment. From necessity, it is also in the other house at the same time, because they always go together.

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 report is agreed to, and the bill goes to the Committee on Revision. The Secretary will proceed with the call of general orders.

The Secretary read general order No. 4 (introductory No. 183), proposed constitutional amendment, introduced by Mr. Hill, to amend section 5 of article 2 of the Constitution, relating to the manner of elections.

Mr. Hill moved that the Convention go into Committee of the Whole on general order No. 4, introductory No. 183.

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

The Convention resolved itself into Committee of the Whole, and Mr. Veeder, Chairman, announced the order of business to be upon general order No. 4.

The Secretary read the proposed amendment under consideration, as follows:

"Proposed constitutional amendment to amend section 5 of article 2 of the Constitution, relating to the manner of elections.

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

"Section 5 of article 2 of the Constitution, is hereby amended so as to read as follows:

"Section 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."

Mr. Moore — Mr. Chairman, I would like to ask if this is introductory 183, 289-303?

Mr. Hill — Mr. Chairman, I would say in answer to the question of the gentleman from Clinton, that this proposed amendment was introduced as No. 183. It also appears amended as No. 289 and also as finally amended as No. 303, and general order No. 4. Mr. Chairman, the Constitution now provides that "All elections by the citi-

zens shall be by ballot, except for such town officers as may by law be directed to be otherwise chosen."

There is some diversity of opinion among lawyers and judges, as to the extent or meaning of the word "ballot" as used in this provision of the Constitution. The word "ballot" is derived from the Italian word "ballotta," meaning little ball, and is defined in the Century Dictionary as follows:

"(1) A little ball used in voting; (2) A ticket or slip of paper used in voting; (3) A method of secret voting by means of small ballots or by printed or written ballots."

Mr. Cushing (Leg. Assembly Sec. 103) defines "ballot" as "a piece of paper, or suitable material with the name written or printed upon it, of the person to be voted for," which definition has been adopted by Judge Cooley in his work on Constitutional Limitations, at section 761.

The Supreme Court of California in the case of the People v. Holden (28 Cal., 123) define it as follows: "A ballot or ticket is a single piece of paper, containing the name of the candidates and the offices for which they are running."

Thus it is doubtful whether the etymology of the word "ballot," or its use or judicial construction, would warrant the use of mechanical devices, known as voting machines, in general State elections. They do not appear to fall within the definition or construction of the words "by ballot." Occasionally they have been used at annual town meetings in some parts of the State by virtue of the authority given in the exception of the present constitutional provision, but their use has not, as yet, been extended to general State elections. And it is claimed by some constitutional lawyers, that the expression, "All elections by the citizens shall be by ballot," does not authorize such use. In matters of so great importance as the phraseology of constitutional electoral provisions, it is unwise, in the language of Dr. Johnson, "to tread upon the brink of meaning." The Constitution should be explicit and free from ambiguity.

The proposed amendment to section 5 of article 2, now under consideration, reads as follows:

"Section 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."

This amendment retains the phraseology of the original section, but re-arranges some of its clauses and adds to the section thus re-arranged, after the word "ballot," the following words, viz.: "Or

by such other method as may be prescribed by law, provided that secrecy in voting be preserved." This does not disturb the judicial construction of the original section, and it provides for voting by methods, other than by "ballot," should the Legislature, in its wisdom, deem such other methods advisable. It also preserves the secrecy of the "ballot," which is deemed an essential requisite to free voting. Secrecy in voting was recognized in the polity of some of the Grecian States, as well as in that of the Roman republic. It was introduced into this country at Salem in 1629, and became the legal method of voting in Massachusetts as early as 1634. (1 Ban. U. S. Hist., pp. 228-247.)

In the case of the People v. Pease (27 N. Y., 81), Chief Judge Denio says: "The right to vote by secret ballot has been considered an important and valuable safeguard of the independence of the humble citizen against the influence which wealth and station might be supposed to exercise."

The present constitutional provision for voting by "ballot" became a part of the organic law of the State in 1821 (Convention proceedings of 1821, page 559). Since that time it has remained unchanged. All the States of the Union except Kentucky, and nearly all continental governments, conduct their elections by ballot. Thus the ballot-box has become the "high arbiter" of political controversies.

"A weapon that comes down as still
As snow-flakes fall upon the sod,
But executes a freeman's will,
As lightning does the will of God;
And from its force, nor doors, nor locks,
Can shield you —'tis the ballot-box."

Upon its purity rests the fabric of representative government. However, no uniform method of casting ballots prevails in this country. Each State prescribes its peculiar method. The ingenuity of legislators is being fully tested to provide such legislation as will secure free, fair and honest elections, and duly authenticated election returns. It is thought that the use of voting devices, when properly constructed, will aid in the accomplishment of these desired results. That by means of them the voter may freely express his will on any and on all political questions, and that the aggregate thereof, so expressed, may be preserved inviolate.

The inventive talent of the age is being directed toward the perfection, among other things, of such mechanical devices. The results thus far obtained warrant the assumption that before the lapse of another generation they will have been so perfected, and so

generally adopted throughout the country, as to supersede almost entirely the present cumbersome and expensive method of voting by "ballot." Provision should now be made to admit of an adjustment of the manner of our elections to the improved methods of voting, thus likely to come into use, and the proposed amendment is considered adequate to the accomplishment of that result. Its phraseology is not novel and its words have a well-defined judicial meaning. The exigency seems to have arisen when the organic law should contain some such a provision, in order that the Legislature may authorize the use of some one of the devices now being perfected, or possibly some electrical voting device, that will, as the poet declares, as speedily

———"execute a freeman's will,
As lightning does the will of God."

(Applause.)

Mr. Chipp — Mr. Chairman, recognizing the importance of this subject, I also introduced an amendment which will be found as introductory No. 98, a portion of the language of which seems to have been adopted by the committee in the amendment reported. In the amendment offered by myself, I omitted the words in regard to town officers, for it was my understanding, sir, that at the present time there were no town officers who were elected otherwise than by ballot; therefore, I omitted those words as surplusage. But my amendment as originally introduced includes another clause, that is, that not only shall the secrecy of voting be preserved, but that the right of suffrage shall not be restricted. As I understand the working of the Myers voting machine, it does not permit the elector to vote for anyone he chooses to vote for; he can only vote for those parties whose names are put in the machine. If he wishes to vote for John Smith, John Doe or Richard Roe, he is not able to do it; and in that way, as I understand, it restricts the vote as to right of suffrage; and I thought that it was important to provide that in the use of the machine the right of the voter to vote for whom he chooses shall not be restricted.

The Chairman — Will the gentleman please state the motion before the committee? The Chair has not heard any motion.

Mr. Chipp — I have not made the motion yet, Mr. Chairman, but for the purpose of bringing up the subject I move to amend the report of the committee by substituting my amendment, introductory 98, in place of that report. It was very carefully drawn, after consultation with competent parties, and I believe that it embodies the substance of the amendment as it should be enacted. At all

events, whatever objections may exist to it I should like to have pointed out by the Committee on Suffrage, and hear what reasons they have for rejection of the language of my amendment or adopting it only in part.

Mr. Hawley — Mr. Chairman, I desire to offer the following amendment.

The Secretary read Mr. Hawley's amendment as follows:

"All elections by the citizens shall be by ballot, except for such officers as may by law be directed to be otherwise chosen."

Mr. Hawley — Mr. Chairman, the amendment which I propose introduces no new idea, and no new phraseology. It is the section of the Constitution precisely as it has so long existed, striking from it the single word "town." It seems to me, Mr. Chairman, that it covers the whole subject which is designed to be embraced by the proposed amendment; confides to the Legislature the whole power over the subject; and also that it meets the criticism of the gentleman last upon the floor as to restriction of the right of suffrage. If the Myers ballot machine, as it is now used, and with which I am quite unacquainted, is one which restricts the right of suffrage, then it is not a lawful machine under the Constitution as it now stands, because the Constitution confers upon every citizen the right to vote, to exercise his franchise at even a town election, and the introduction of no device would be constitutional, in my judgment, under the section as it now stands, which deprives any citizen of the full right of suffrage which he has enjoyed heretofore under this section of the Constitution. So it seems to me that, if we are to adopt this innovation in the Constitution at all, we would proceed wisely if we preserved entire the phraseology with which we have so long been familiar, the language which, as it has been stated, has received judicial construction, and simply strike out the single word from the section as it now stands.

And it occurs to me, Mr. Chairman, that the provision which the committee has thought necessary to attach to the end of the proposed amendment, and which also appears near the end of the amendment proposed by the gentleman who was just upon the floor, that secrecy in voting should be preserved, is quite unnecessary, and is not exactly in accordance with the facts as they have existed in the past. Because we know that it has been for years and years the struggle of the Legislature, the supreme effort of the wisest men that we could send to the Legislature, to devise some method by which voting by ballot should be a secret process, and that they have pursued those efforts until they have involved us in

a maze of statutes and provisions, the meaning of which very few of us understand, and the machinery of which very few of us know enough to operate; and the secrecy of the ballot has not yet been attained. And so I submit that if the Convention shall deem it wise to sanction any innovation of the character here mentioned, and about which, perhaps, I may have something to say later, that it will most wisely accomplish its purpose by the substitute or amendment which I propose.

Mr. Lincoln — Mr. Chairman, I am in favor of striking out from this section all after the word "ballot;" and I think the amendment suggested by the gentleman who last addressed the committee will accomplish all that can be desired.

Now, secret voting by American citizens is not practicable under present conditions. It has never been a part of our fundamental law, and I believe it ought not to be, that a secret ballot should be imperative, because that would disfranchise a good many citizens. If this amendment were adopted, as suggested by the Committee on Suffrage, I would like to ask some member of that committee what would become of the present provision of the election law, which permits persons who are physically disqualified to receive assistance in preparing their ballots? Certainly those men do not cast a secret ballot. I think it unwise to put into our Constitution any provision upon this question. When our first Contitution was adopted, in 1777, it was somewhat doubtful whether voting by ballot was advisable. It seems that at that time voting was *viva voce*, but I recollect that the Constitution suggested to the Legislature that as soon as the revolutionary war was over some law be passed for the purpose of trying the experiment of voting by ballot; and in 1787 the first ballot law of this State, so far as I have been able to discover, was enacted. That provided for a secret ballot in this way. It provided for a ballot-box. It provided for voting on slips of paper, on which should be written the name of the candidate. It provided that the ballot should be folded or tied or closed in some way so that the contents of it should not be visible; that that ballot should be handed to an election officer and deposited in the box unopened; and that, substantially, has been the law until this day. Until now no suggestion has been made that that ought to be put into the Constitution. If it were to be put in, it seems to me it could be put in in another form, by providing that all elections should be held by secret ballot, or by some other similar method, and we would at once get into difficulty there, because, as I suggested, it might disfranchise a good many citizens. I am in favor of striking out this provision in reference to voting machines. I would rather trust a man

than a machine to vote, at any time. I do not believe we ought to abandon our intelligence and individuality in elections by putting the whole result into a machine. A man must make the machine, and if man is imperfect, possibly the machine might be imperfect also. I understand that even this much-boasted Myers ballot machine sometimes fails; that it does not always record the correct result. It seems to me that the plan we have followed for more than a century, requiring the voter to deposit in a box or hand to an election officer for deposit in a box, a paper, upon which he shall write or print the names of the candidates for whom he wishes to vote, is the most consistent method of voting that has yet been devised. Now, there is a practical objection also to this, which possibly could be overcome by the amendment suggested by Mr. Hawley. Every other year we are called upon to elect representatives in Congress. I find that the statutes of the United States provide that all votes for representatives in Congress must be by written or printed ballot, and that all votes received or recorded contrary to this provision shall be of no effect. We cannot use a voting machine to vote for members of Congress, and if you undertake to incorporate into our Constitution or undertake to put into our laws of elections a provision that all elections shall be by voting machines, we still would necessarily have two systems of election every other year, by one of which we might vote for ordinary officers, and by the other for representatives in Congress. It seems to me hardly worth while to undertake two systems. I do not suppose we could overcome the law even by a constitutional amendment. We would still be bound to follow the law of Congress, because Congress, under the Constitution, has the power to regulate the manner of election of representatives in Congress. That is one of the difficulties. But I think now I am in favor of the amendment suggested by Mr. Hawley, that the question of voting by other methods be left to the Legislature and if it shall be found advisable and practicable to substitute for certain officers some other method of voting by ballot, the Legislature in its wisdom will probably find such method, although I am not very much in favor of it; and I hope the Legislature will not very soon adopt any other method than voting by ballot.

Mr. Mereness — Mr. Chairman, there is one suggestion that occurs to me in connection with this matter which does not seem to have been alluded to by any gentleman who has thus far spoken upon the subject, and as it goes to the root of the whole subject it is as pertinent in connection with the amendment suggested by the gentleman from Seneca as it will be upon any other phase of the question. As these amendments are introduced, and as this one has

been reported by the committee, it seems to me that it gives the Legislature of the State of New York power to force every election district in this State (of which I believe there are about five thousand) to adopt a voting machine, whether they want it or not. The price, I believe, of these voting machines, at the present time, is about $400, and it seems to me that before this committee or this Convention confers upon the Legislature the power to impose upon the taxpayers of this State a burden of two million dollars in the purchase of voting machines, very great deliberation should be had. We who live in the rural portions of this State are already aware of the fact that the cumbrous system of voting which is now in vogue is a great burden to the people; and if the question could be submitted to the people, whether they would still have the present system, or would go back to the old times under the old system, I think there would be an overwhelming voice against any change from the old system, with perhaps the possible exception of the booth and the guard-rail system. I am in hopes, Mr. Chairman and gentlemen, that the system will be very much modified from that we now have, with perhaps the two features I have mentioned, and that eventually the small communities in this State, where there are but a limited number of voters, shall not be compelled to maintain a great horde of election officers for three, four or five days every year, and thus increase the local burdens of taxation. Mr. Chairman, the amendment of the gentleman from Seneca, as I have said, strikes at the root of this whole subject; and, for one, I am opposed to conferring upon the Legislature the power to place upon the taxpayers of the State this great burden, because we know that sometimes legislators have done such things when they ought not to have done them; and, for one, as I have said, I am in favor of retaining (for this reason as well as for the reasons suggested by other gentlemen who have spoken) the simple system of voting by ballot.

Mr. Platzek — Mr. Chairman, it seems to me there can be no harm, and that some benefit may arise, from the adoption of an amendment which permits some other method, whether now known or hereafter to be discovered, to be adopted in voting at elections. All that we say by this amendment is that if, within the next twenty years, some one shall devise a method or a machine which will simplify and assist at elections, the Legislature may adopt such a method or such means; and it is fair to assume that legislators in the future will always possess a fair degree of intelligence and considerable conscientious effort. I am afraid there is a tendency on the part of a great many of the delegates here to arrogate to them-

selves all the intelligence and all the virtues; and are fearful that no body of men will ever assemble in this chamber, as legislators, who will be half as good or half so desirous to accomplish their duty toward the State and the people. Now, I say that we ought not to tie the Legislature down to a system for twenty years. We can trust the representatives of the people, and should not be afraid to do so. So far as the suggestion has been made as to the conflict between the federal law and our law, the Legislature will very readily see that until the federal law is changed they cannot change the law for voting in this State. Those are all matters that will take care of themselves, and we need not fear them. I believe in moving forward at all times. I believe in reform in every direction, conservative, of course; never radical. Therefore, we need not and ought not to bind the Legislature for the next twenty years to come, so that if a method which is desirable is devised they cannot accomplish the work in that way.

Mr. Chipp — Mr. Chairman, I am one of those who believe that fair elections, honestly conducted and correctly declared, are worth even as much as $400. If the ingenuity of man is able to give us a machine or other appliance which will enable us to have elections conducted in a more satisfactory manner than they are now conducted, I believe that the Legislature of the State of New York ought to be enabled by this Constitution to take advantage of such means and appliances. It was with that view that I offered this amendment. Now, we do not compel the Legislature to do anything. We simply put it in their power, if they be so advised, to adopt that machine or such other machine as shall seem good to them, for an improvement in the conduct of elections. I think that the provision in regard to secrecy in voting should be observed, for if that is left out the Legislature may enact that it shall be a *viva voce* vote, and to prevent a *viva voce* vote is the only reason for the insertion in the present Constitution of the provision that all voting shall be by ballot, and the great objection to a *viva voce* vote is that it does not enable the electors to preserve secrecy, but subjects an elector to intimidation and other improper coercive forces. I think that should be preserved in the amendment; and I have been told by a gentleman who claims to know, that the present ballot machine will enable a man to vote for a person who is not on any of the tickets and not in nomination. If that be so that objection is obviated. I think this provision should remain in the amendment, so that any appliances adopted by the Legislature for the purposes of election shall not restrict the free vote of the electors. And I still insist, sir, that the amendment offered by me is in substance and in

form nearer to what ought to be adopted than is the amendment reported by the committee.

Mr. Augustus Frank — Mr. Chairman, it occurs to me that it may be of interest to the members of this Convention to hear something in relation to the workings of the machine which this proposed amendment will give to the electors of the State. For two years past it has been in use in the town of Warsaw, in which I reside, and with complete success. I do not think there is a single voter there who is in any way opposed to its continued use. It is simple; it is secret; it is effective. It does its work thoroughly, and when the polls close the result of the vote as to each candidate voted for is immediately announced. There can be no objection to it. I approve of the proposed amendment to the Constitution offered by the gentleman from Erie (Mr. Hill), as amended by Mr. Hawley. It covers all the ground. It is all that is necessary. The objection made as to expense is easily answered. The present law allows the towns of the State to vote upon the question whether they will have the machine or not, and no town will have it, except it first votes for it and pays for it. It is no expense to the State in any way, and will be no expense to any of the towns or election districts unless they ask for it and vote for it. The fact mentioned by Mr. Lincoln, of Cattaraugus, regarding the federal law, as to the election of members of Congress, that they must be voted for in a certain way and by a certain ballot, would work no great hardship in this State, even if we had to elect members of Congress, as made necessary by the United States law; and before many years Congress will probably change that law and allow just what we propose to do to-day — use voting machines in all elections. That law was passed because a large number of individuals who had recently become voters throughout the United States were not allowed to vote, or at least were not allowed to vote in a way that was proper and right for them to do. It was for that reason that the federal law was passed; and every man, rich or poor, high or low, black or white, was given the privilege of voting a similar ballot. I do not see any great inconvenience in that; and whatever inconvenience there is can be remedied easily. Were the members of this Convention better acquainted with the proposed mode of voting there would be little or no opposition to the amendment offered by Mr. Hill, allowing such mode of voting as may be deemed best by the Legislature.

Mr. Dickey — Mr. Chairman, as this amendment of Mr. Hill's is a step forward in the way of progress, I am in favor it it. It has been well said by a gentleman of this Convention in private conversation that it permits the use of a machine to beat a machine.

Something has been said about the expense of some particular machine, the Myers machine. I have no interest in that. I have never seen it in its workings except when it was on exhibition here in this building. This amendment does not call for the procurement, purchase or use of the Myers machine, or of any other particular machine. As I understand it, it merely permits the Legislature in its wisdom, at some time before the next Constitutional Convention meets, if they see fit, to adopt some system of voting other than by ballot, and if it costs $400 in the first instance to procure a machine that will take the place of the ballot, we must not lose sight of the fact that thereby we will be doing away with the large expense of printing ballots. I have had handed me the statistics of the cost of printing ballots in the State, and I quote a few figures: "Allegany county, printing 208,000, at $3.50 per thousand; Broome county, 240,000 at $3.60 per thousand." And so on through the different counties — some of them paying as much as $6 per thousand for 46,400 ballots — Clinton county, printing 125,000 ballots at $3.50 per thousand — and so on through. The expenses of this State at each election is said to be nearly a million dollars. If this large sum is saved in the printing of the ballots by the purchase of a machine that takes the place of the printed ballots, the first cost of the machine will soon be saved in many localities at the first election, to say nothing of the elections that are to follow. Therefore, I think, we may safely vote for this amendment, and leave it for the Legislature to determine whether they shall make use of the privilege thus accorded them or not.

Mr. Foote — Mr. Chairman, I beg leave to call the attention of the members of the committee to the proposed constitutional amendment, No. 225 (introductory No. 223), that was presented by me upon this subject after consultation with the company which manufactures the Myers voting machine. That amendment puts at the end of the present section the following: "It being understood that the term ballot includes any method of voting authorized by law which shall secure an equal opportunity to freely vote in secrecy." That provision, as it seems to me, provides against the contingency which has been suggested here as an objection to the measure.

Mr. Moore — I would like to ask the gentleman a question, if he will permit me? Does the gentleman think that absolute secrecy in voting is possible?

Mr. Foote — No, sir. I was about to say that the language of this provision is that the Legislature may authorize anything which secures an opportunity equal to that now existing by voting by

ballot, to prepare a vote in secrecy, and an equal opportunity to freely vote in secrecy. It seems to me, sir, that the language adopted in the report of the committee is preferable for that reason. Now, Mr. Chairman, this matter has come up this morning unexpectedly. The Myers ballot machine, as some of you may know, is manufactured in our city. I have had the pleasure recently of inspecting still another machine which has been invented in that city by a very intelligent gentleman, the model of which he showed me a few days ago. I would be very glad if the Convention would see fit to defer further action upon this amendment until to-morrow, and for that purpose I move that the committee rise, report progress, and ask leave to sit again.

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

Thereupon the committee arose, and President Choate resumed the chair.

Mr. Veeder — Mr. President, the Committee of the Whole have had under consideration the proposed constitutional amendment, No. 303 (introductory No. 183), entitled "Proposed constitutional amendment to amend section 5 of article 2 of the Constitution, relating to the manner of elections." They have made some progress with the same, but not having gone through therewith have asked leave to sit again.

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

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

No. 5 was not moved.

The Secretary announced general order No. 7, introductory No. 64, introduced by Mr. Holls, entitled "Proposed constitutional amendment to amend section 4 of article 2 of the Constitution, empowering the Legislature to enforce by law the duty of voting."

Mr. Holls — Mr. President, for reasons stated before, I do not move it at present.

The Secretary announced general order No. 8, introductory No. 258, introduced by Mr. Lauterbach, entitled "Proposed constitutional amendment to amend article 2 of the Constitution, relative to suffrage."

No. 8 was not moved.

The Secretary announced general order No. 10, introduced by

Mr. Vedder, entitled " Proposed constitutional amendment to amend section 7 of article 4 of the Constitution."

No. 10 was not moved.

The Secretary announced general order No. 11, introductory No. 362, proposed by the Judiciary Committee.

No. 11 was not moved.

Mr. Cornwell asked unanimous consent to introduce an amendment.

O. 363.— No objection being made, Mr. Cornwell introduced a proposed amendment to the Constitution to prevent discrimination in charges either by railroad, telegraph or telephone companies, corporations or common carriers doing business within the bounds of this State.

Referred to the Select Committee on Constitutional Amendments.

Mr. Marks asked leave to introduce an amendment to the Constitution.

O. 364.— No objection being made, Mr. Marks introduced a proposed amendment to section 7, article 1, relating to the taking of private property for public use.

Referred to the Select Committee.

Mr. Church asked unanimous consent to offer an amendment to the Constitution.

O. 365.— No objection being made, Mr. Church offered a proposed amendment to article 6 of the Constitution, by adding new sections creating a court of compulsory arbitration.

Referred to the Select Committee.

Mr. Maybee — Mr. President, I move that we take a recess until eight o'clock this evening.

Mr. Moore — Mr. President, will the gentleman withdraw his motion to give me an opportunity to make a request?

Mr. Maybee withdrew his motion for the present.

Mr. Moore — Mr. President, I desire to be excused from attendance to-morrow and a part of Thursday.

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

Mr. Lincoln — Is the presentation of a petition in order?

The President — Not if the motion to take a recess is renewed.

Mr. Lincoln — I have the petition of a large number of Indians of the Cattaraugus reservation asking for an amendment to the Con-

stitution prohibiting the sale of cider and beer on the reservation; and it is accompanied by a letter from the United States Commissioner of Indians.

Referred to the Committee on Indians.

Mr. Farrell presented a request to be excused from attendance on Tuesday and Wednesday of next week on account of business engagements which could not be postponed.

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

The Secretary read the amendments of committee meetings.

Mr. E. A. Brown asked to be excused from attendance to-morrow.

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

Mr. McMillan — Mr. President, I understand that everything on the Clerk's desk has been disposed of, and that there is nothing remaining of general orders. I, therefore, move that the Convention do now adjourn until to-morrow morning.

The President put the question on Mr. McMillan's motion, that the Convention adjourn until to-morrow morning, and it was determined in the affirmative.

Thereupon the Convention adjourned to Wednesday, July 25, 1894, at ten o'clock A. M.

Wednesday, July 25, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber, at the Capitol, Albany, N. Y., July 25, 1894, at ten o'clock in the morning.

President Choate called the Convention to order.

The Rev. Joseph H. Mangan offered prayer.

Mr. Acker moved that the reading of the minutes of July 24th be dispensed with.

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

The President announced the order of presentation of memorials, and stated that the Chair had received a memorial from one of the vice-presidents of the Pennsylvania Railroad Company on the subject of free passes.

Referred to the Railroad Committee.

Also, a petition in respect to the civil service.

Referred to the Select Committee on Civil Service.

Also, a memorial from the general assembly of the Presbyterian Church in the United States of America, urging the adoption of an amendment forbidding appropriations of public money for sectarian charities, and a resolution passed by that body.

Referred to the Committee on Charities.

Also, a memorial from the Reform Club of the city of Brooklyn in favor of an amendment in reference to free speech.

Referred to the Committee on Preamble and Bill of Rights.

Also, a communication from Mr. James R. Cox, of Auburn, in respect to oaths to be administered to referees.

Referred to the Committee on Judiciary.

The President announced the order of communications from State officers, and the Secretary read the following communication (communication No. 17, Doc. No. 31 in response to resolution No. 140):

"*Hon. Charles E. Fitch, Secretary Constitutional Convention, Albany, N. Y.:*

"DEAR SIR.— In reply to the request contained in resolution of the Constitutional Convention, adopted the 18th inst., asking this office for certain information relative to the Onondaga Salt Springs reservation, I have to say:

"The State of New York came into possession of the lands known as the Onondaga Salt Springs reservation, by treaties with the Onondaga Indians. The first was held at Fort Schuyler, September 12, 1788, by the fourth section of which it was provided that the Salt Lake (Onondaga) and the lands for one mile around the same, should forever remain for the common benefit of the people of the State of New York and of the Onondagas and their posterity, for the purpose of making salt, and should not be granted or in any wise be disposed of for other purposes.

"At a council of the sachems, chiefs and warriors of the Onondaga Nation of Indians, held at Fort Stanwick, June 16, 1790, the above treaty was ratified and confirmed.

"By the treaty with said Indians, held at Cayuga Ferry, July 28, 1795, the following appears:

"'Now, know all men further by these presents, that in order to render the said common right and the said lands adjoining to the creek aforesaid more productive of an annual income to the said Onondaga Nation, it is covenanted, stipulated and agreed by the said Onondaga Nation that they will sell and they do, by these presents, sell to the people of the State of New York and their suc-

cessors forever, all and singular, the common right in the said Salt lake and the one mile of land around the same, together with all and singular the lands comprised within one-half mile of the creek between the northern boundary of the land reserved to them by the agreement of one thousand seven hundred and ninety-three, and the said Salt lake, to have and to hold the same to the people of the State of New York and their successors forever, in consideration of which cession and grants it is covenanted, agreed and granted on the part of the people of the State of New York, that they shall pay, and do now pay, to the said Onondaga nation, in the presence of the witnesses who have subscribed their names hereunto, the sum of five hundred dollars for the common right aforesaid, and also the sum of two hundred dollars for the one-half mile of land adjoining the said creek in the extent aforesaid, and the people of the State of New York do further promise, covenant and agree that they will pay to the said Onondaga Nation, in manner hereinafter specified, the further sums of five hundred dollars and of two hundred dollars, and also one hundred bushels of salt to be delivered at the Salt lake aforesaid on the first day of June next ensuing the date hereof, and annually forever thereafter on the first day of June in each year, the said sums of five hundred dollars and of two hundred dollars, and the said one hundred bushels of salt, and, it is further covenanted and agreed that as well the said eight hundred dollars hereinbefore mentioned, as the said several sums of five hundred and two hundred dollars, and the sum of five hundred dollars stipulated to be paid to them by the treaty at Fort Schuyler, first aforesaid, making together the sum of two thousand dollars shall in future be annually paid them forever hereafter.'

"Nowhere in any of the above-named treaties is the extent of the Onondaga Salt Springs reservation given in acres. The field notes of survey of the Onondaga Salt Springs reservation on file in this office do not state the acreage, and this office has no official information as to the number of acres in said reservation.

"A careful examination of the volumes of State Releases on file in this office shows that there have been released to the people of the State about 825 acres of land in the Onondaga Salt Springs reservation.

"The aggregate number of acres of such lands now belonging to the State cannot be obtained in this office for the reasons that a large number of patents of said lands contained expressions similar to the following:

"'All that certain piece or parcel of land situate in the county of Onondaga, and distinguished as Block No. 8, in the village of Salina

in the Onondaga Salt Springs reservation as the same has been surveyed, and is designated on Randall's new map of said reservation on file in our Surveyor-General's (State Engineer and Surveyor's) office;' thus not giving the number of acres conveyed; and not knowing the number of acres originally in the reservation, nor the number of acres sold, it is impossible to tell the number of acres still belonging to the State in said reservation.

"The information desired in reference to leases cannot be obtained from this office for the reason that leases of lands in the Onondaga Salt Springs reservation are made by the superintendent of the salt springs, and are not on file in this office.

"The Commissioners of the Land Office leased or set apart to individuals or corporations lands in the Onondaga Salt Springs reservation for the manufacture of coarse salt. The following action of the Commissioners of the Land Office, October 9, 1855, will be a fair sample of such coarse salt leases:

"'David S. Earll made application for a lease to him of certain lots and parcels of land, in the Onondaga Salt Springs reservation for the manufacture of coarse salt, which application is in the following terms, viz.:

"'The undersigned, your petitioner, respectfully sets forth that it is his intention to erect works for the manufacture of coarse salt, that the amount of capital intended to be invested by the undersigned in such erections is thirty thousand dollars, and the quantity of land necessary for such purpose is twenty-two acres.

"I, therefore, make application to your body to set apart to me the lands owned by the State for such purposes, and described as follows: Farm lot one hundred and seventeen (117) of the Onondaga Salt Springs reservation, and also the right of way to the Oswego canal along the north side of lot (118), and also a lot of twelve rods square from the southwest corner of lot 118, on the berme bank of the Oswego canal, for the erection of a storehouse and for other purposes in the manufacture of salt.

"'Onondaga County, ss.:

"'David S. Earll, being duly sworn, doth for himself depose and say the above application is made in good faith, and that the facts set forth in the above application are true.

"'DAVID S. EARLL.

"'Sworn before me this 25th
day of September, 1855.

"'J. HUNT,

"'*Commissioner of Deeds, Syracuse.*

"'Thereupon,

"'Resolved, Said application be granted, and that the land applied for be set apart to David S. Earll for the manufacture of coarse salt, pursuant to the provisions of section 4 of title 10 of chapter 9 of the first part of the Revised Statutes.

"'But there is hereby reserved to the State the right to dig for salt springs and to lay logs for conveying salt water on said premises, and also the right of way to the salt lands of the State.'

"In order to furnish full and complete information covered by the resolution of the Convention, it will be necessary to examine the records in the clerk's office of Onondaga county, the office of the State Engineer and Surveyor and the office of the Secretary of State, and in cases where the acreage of the land is not given in the conveyances, actual surveys of such lands would be necessary. An investigation of such a character would require much time and would involve considerable expense, to cover which this office has no available funds.

"Yours respectfully,

"JOHN PALMER,

"*Secretary of State.*"

Mr. Alvord — Mr. President, I move that this communication be printed and laid upon the table until the incoming of other information in regard to this matter, which will be asked for at the proper time.

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

The Chair announced the order of notices, motions and resolutions, and the Secretary called the roll of districts.

Mr. Roche — Mr. President, some time during the month of May a resolution was adopted calling for information from the clerks of certain counties relative to naturalization in those counties during certain years. The information has been obtained. I think there were half a dozen or so of the counties. The information is in possession of the Secretary. It is in short and handy form, and I desire to move now that the Secretary be requested to tabulate it and present it to the Convention in order that it may be available for the members.

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

The President — Mr. Roche, did you intend to include printing for circulation among the members in your resolution?

Mr. Roche — Yes, sir.

Mr. I. S. Johnson offered the following resolution:

R. 146.— Resolved, That the Superintendent of the Onondaga Salt Springs be directed to furnish this Convention a statement of any and all leases of salt lands of this State now in operation, and of any and all contracts under or by which any person, firm or corporation is entitled to the use of any such lands, or to have brine furnished by the State for the manufacture of salt, giving the date of such leases or contracts, where filed or recorded, and when the same will expire.

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

Mr. Lincoln — Mr. President, some time ago, following the resolution introduced by Mr. Roche, I offered a resolution calling upon the county clerks for information as to the persons naturalized in the various counties during the year 1893. Nearly all the counties have responded to the communication of the Secretary of the Convention. I have tabulated those returns, but that tabulation is not in very good form for presentation to the Convention. I move that the Secretary be requested to furnish and have printed for the use of the Convention a brief statement of the result of the inquiry pursuant to my resolution, so that it will show the number of persons naturalized in each county in 1893, and the nationality of each, according to the returns.

The President — The Chair understands the resolution passed on Mr. Roche's motion to include all that is included in Mr. Lincoln's motion. However, there is no objection to its passage.

Mr. Lincoln — I think, Mr. President, that Mr. Roche's resolution does not embrace everything that is in my resolution, because it only included a certain number of counties and it does not embrace the same subject.

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

Mr. Dean asked the privilege of presenting out of order a memorial in reference to sectarian appropriations.

Received and referred to the Committee on Charities.

R. 147.— Mr. A. H. Green — Mr. President, a communication has been sent from his honor, the mayor of the city of New York, giving certain information in reference to railway franchises, and also from the railway commissioners on the same subject. I would move that

they be referred to the Committee on Railroads, to be printed, if, in the judgment of that committee, they ought to be printed.

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

The President announced the order of propositions for constitutional amendments.

O. 366.— Mr. Dickey presented a proposed amendment to section 6 of article 6 of the Constitution, so as to create an additional judicial district from territory in the second and third judicial districts.

Referred to the Select Committee on Amendments.

The President announced the order of reports of standing committees, including reports on resolutions referred to them for a report.

The Secretary called the list of the committees.

Mr. Vedder, from the Committee on Powers and Duties of the Legislature, to which was referred the proposed constitutional amendment introduced by Mr. Roche (introductory No. 99), entitled "Proposed constitutional amendment to amend article 3 by the addition of a new section prohibiting the Legislature or any division of the State from granting pensions to any civil officers or employes, not, however, including existing police and fire department pension funds," reported in favor of the passage of the same, with some amendments.

The President — The Secretary will read it as it stands amended by the committee.

The Secretary read as follows:

"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 the addition of the following section: 'Neither the State nor any division thereof shall impose a tax for the purpose of creating a pension fund or paying a pension fund to any class of civil officers or employes, nor shall any public moneys be paid by way of pension, bounty, retired pay, or gift to any civil officer or employe, or to any person who has served as such, or to the family or representative of any such officer or employe of deceased. This section shall not be held to repeal or modify any existing law by virtue of which pension funds have been created in any municipality, but there shall be no appropriation of public moneys or of moneys raised by taxation for the

benefit of such funds to any greater extent than is now authorized by such law."

The President — This retains its place on general orders.

Mr. McKinstry, from the Select Committee on Further Amendments, to which was referred the proposed constitutional amendment introduced by Mr. Tucker (introductory No. 357), to provide for the gratuitous and non-sectarian education of any child of school age, and for the furnishing of free meals to the children of destitute persons attending school, reported that the said proposed amendment had been found to relate to subjects already under consideration by the Committee on Education, and had, therefore, been transmitted without printing directly to that committee for its information, in accordance with rule 73.

Mr. McKinstry, from the Select Committee on Further Amendments, to which was referred proposed constitutional amendments introduced by Mr. H. A. Clark (introductory No. 358), entitled proposition to amend section 7 of article 1 of the Constitution, reported that said proposed amendment had been found to relate to subjects already under discussion by the Committee on Preamble and Bill of Rights, and had, therefore, been transmitted without printing directly to that committee for its information, in accordance with rule 73.

Mr. McKinstry, from the Select Committee on Further Amendments, to which was referred the proposed constitutional amendment, introduced by Mr. C. H. Truax (introductory No. 359), entitled proposed constitutional amendment to amend section 6, article 1, reported that said proposed amendment had been found to relate to subjects already under discussion by the Committee on Preamble and Bill of Rights, and had, therefore, been transmitted without printing directly to that committee for its information, in accordance with rule 73.

Mr. McKinstry, from the Select Committee on Further Amendments, to which was referred the proposed constitutional amendment, introduced by Mr. Tucker (introductory No. 360), to provide for the construction, etc., by the State of public works, reported that said proposed amendment is under consideration in the Committee on Railroads and Corporations, and had been transmitted to that committee in accordance with rule 73.

Mr. McKinstry, from the Select Committee on Further Amendment, to which was referred the proposed constitutional amendment introduced by Mr. Cornwell (introductory No. 363), reported that the same refers to subjects under discussion in the Committee

on Railroads and Corporations, and has been referred to that committee, under rule 73.

Mr. McKinstry, from the Select Committee on Further Amendments, to which was referred the proposed constitutional amendment of Mr. Marks (introductory No. 364), reported that the same relates to subjects under consideration by the Committee on Preamble and Bill of Rights, and has, therefore, been referred to that committee, under rule 73.

Mr. McKinstry, from the Select Committee on Further Amendments, to which was referred the proposed constitutional amendment introduced by Mr. Church (introductory No. 365), reported that the same has been found to relate to subjects already under consideration by the Committee on Industrial Interests, and has been referred to that committee, in accordance with rule No. 73.

Mr. McKinstry, from the Select Committee on Further Amendments, to which was referred the proposed constitutional amendment introduced by Mr. T. A. Sullivan (introductory No. 361), entitled proposed amendment to article 5 of the Constitution, in relation to State officers, by the creating of the office of Superintendent of Incorporations, reported that, in the opinion of the committee, the same ought to be printed and referred, under rule 32.

The President put the question on agreeing to the recommendation contained in the report that the proposed amendment be printed and referred, and it was determined in the affirmative.

The President — The calendar of unfinished business on general orders will now be taken up, and will be called by the Secretary.

The Secretary called general order No. 6, introduced by Mr. Alvord, to amend section 7 of article 7 of the Constitution, entitled Salt Springs.

Mr. Alvord — Mr. President, I hope that will lie upon the table until the incoming of another report.

General order No. 6 was not moved.

The Secretary called general order No. 4, proposed amendment to amend section 5 of article 2, relating to the manner of elections, introduced by Mr. Hill.

Mr. Hill — Mr. President, I have been requested to let that matter remain until to-morrow.

General order No. 4 was not moved.

The Secretary called general order No. 2, introduced by Mr. Roche.

The President — The amendments proposed by the Committee on Legislative Powers and Duties, No. 2, have not been printed, and cannot be moved until printed, under the rules.

General order No. 2 was not moved.

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

General order No. 5 was not moved.

The Secretary called general order No. 7, introduced by Mr. Holls, proposed amendment to amend section 4, article 2, of the Constitution, relating to the enforcement of the duty of voting.

General order No. 7 was not moved.

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

General order No. 8 was not moved.

The Secretary called general order No. 10, introduced by Mr. Vedder, proposed amendment to section 7, article 4, of the Constitution.

Mr. Vedder — Mr. President, I move that the Convention go into Committee of the Whole on general order No. 271.

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

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

The House resolved itself into Committee of the Whole, with Mr. Gilbert in the chair.

The Chairman — The Committee of the Whole has under consideration proposed constitutional amendment No. 269, printed No. 368, general order No. 271, which the Secretary will please read.

The Secretary read as follows:

"Section 7 of article 4 of the Constitution is hereby amended so as to read as follows:

"Section 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 Lieu-

tenant-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 be rendered incapable of performing the duties pertaining to the office of Governor, the same shall devolve upon the Speaker of the Assembly, until the vacancy is filled or the disability is removed."

Mr. Vedder — The only amendment to the section is to provide an additional safeguard against the State of New York not having at any time a Governor. As the law now is, if the Governor of the State is absent from the State, either in command of its army or for any other cause, the Lieutenant-Governor shall act as Governor, and there it stops. If both should be absent from the State for any cause at any one time, the State would then be without an executive head. I have, therefore, by this amendment, attempted to provide an additional safeguard against such a contingency, so that, if for any reason the Lieutenant-Governor should not act as Governor when he was acting as such and the Governor of the State is absent, then the duties of the Governor would devolve upon the Speaker of the Assembly. That is the only change. The duties of the Governor would devolve upon the President of the Senate first and then upon the Speaker of the Assembly. The law now is that if the Governor is absent, the Lieutenant-Governor acts, and, if the Lieutenant-Governor is absent, then the President *pro tempore* of the Senate acts as Governor. I simply provide further than if the President of the Senate *pro tempore* be absent, then the Speaker of the Assembly shall act as Governor. That is all there is to the amendment. The amendment, as you will observe, is simply this part which is printed in italics, "and, if the President of the Senate for any of the above causes"— that is, a cause which shall make the Governor incapable of acting, or the President *pro tempore* of the Senate incapable of acting —" shall be rendered incapable of performing the duties pertaining to the office of Governor, the same shall devolve upon the Speaker of the Assembly until the vacancy is filled or the disability is removed." If the Secretary will read the title, I will make a motion.

The Secretary read as follows:

"Proposed constitutional amendment to amend section 7 of article 4 of the Constitution."

Mr. Vedder — I move that the committee do now rise and report this bill to the Convention, and recommend its passage.

Mr. Hawley — I would like to offer an amendment to it.

Mr. Vedder — Then I will withdraw that motion, as Mr. Hawley desires to offer an amendment.

Mr. Hawley — If we are to do anything with this section, I propose, as an amendment upon line seven of the first page of the proposed amendment, to strike out the words "be impeached, displaced, resign, die or," so that it shall read: "If, during a vacancy of the office of Governor, the Lieutenant-Governor shall become incapable."

Then, in line one upon page two, I propose to amend by striking out the words "for any of the above causes shall be rendered," and insert in lieu thereof the word "become."

And, in line four upon page two, to strike out the words "is removed," and insert the words "shall cease." I propose these amendments in order that the phraseology shall be exactly the same as in the old section.

What I have to say about the first part of the proposed amendments, Mr. Chairman, is that it seems to me that the words which I propose to strike out in line seven in the present Constitution are superfluous words, and, if we are to deal with this section at all, and such shall be the judgment of the Convention, then, I think, it is well enough to make that change. And, if that change be made, or is proper to be made, then the second suggestion, to strike out the words "for any of the above causes shall be rendered," occurring in line one upon page two, would follow, as matter of course. And the final suggestion, to insert "shall cease," instead of "is removed," at the end of the last line of the proposed amendment nearly makes the proposed amendment conform to the exact phraseology of the corresponding sentence in the present Constitution.

I suppose that if an officer is impeached, displaced, resigns or dies, he thereby becomes incapable of performing the duties of his office; and, if we say that when he becomes incapable of performing the duties of his office, then somebody else succeeds him, it is quite unnecessary to make a catalogue of the things which may possibly make him incapable of performing the duties of his office.

That is one suggestion. I will make another. It is that the word "is," at the beginning of line four, be stricken out, and that the word "be" be substituted, so that the phraseology of the last member of that sentence shall be exactly the phraseology of the

corresponding last member of the sentence of the present section of the Constitution. This is nothing but a matter of phraseology; does not affect the substance of this amendment in any manner whatever; no argument is necessary upon it, and I am quite willing to submit to the judgment of the Convention.

Mr. Vedder — I did not propose in my amendment to change the language of the present Constitution. The gentleman from Seneca (Mr. Hawley) is criticising on line seven, etc., the language of the present Constitution. That I have not changed. There is nothing of this amendment which is mine, excepting that which is printed in italics. All of the other words and phrases are in the Constitution as it now is. Now, Mr. Chairman, I think when I make the suggestion to the gentleman from Seneca (Mr. Hawley) he will not insist upon his amendment by striking out, in line seven, the words "be impeached" and the rest. At present, it reads like this: "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," etc. Now he asks that the words "be impeached, displaced, resign, die or" shall be stricken out, so that under the term "become incapable" shall be necessarily included all those other terms. That is not quite true. There is no place in the Constitution, except right here in this very section, where the Lieutenant-Governor is rendered incapable of performing his duties when he is impeached. I desire to call the attention of the Convention to this strange fact — that under the Constitution of the State of New York the impeachment of the Lieutenant-Governor does not render him incapable of performing the duties of Lieutenant-Governor. The only place in the Constitution of this State where the Lieutenant-Governor is made incapable of performing his duties, as such, is when he is acting as Governor, as prescribed in this section. If you strike out the words suggested by Mr. Hawley from this section, with reference to impeachment, then the Lieutenant-Governor could be impeached, and could still act as Governor of the State in the absence of the actual Governor — which, I do not believe, he desires. It is a strange condition of the law, but it is true, that under the Constitution, as it stands to-day, the Lieutenant-Governor of the State can be impeached (the court for the trial of an impeachment is composed of the Senate and the judges of the Court of Appeals, or the major part of them), and, yet, under the Constitution, as it is to-day, the Lieutenant-Governor could sit as President of the Senate in the trial of himself before that

high court of impeachment. I do not think Mr. Hawley desires that a Lieutenant-Governor, after being impeached, may still act as Governor of the State.

The other amendments which Mr. Hawley suggests, which are printed in italics, and which are mine, I am entirely willing should be made. In fact, I hold in my hand now an amendment precisely similar to that which Mr. Hawley desires, and following the language of the present Constitution, providing that "the Speaker of the Assembly shall act as Governor until the vacancy be filled or the disability shall cease." I had proposed offering that amendment myself. The reason why I used the language I did was to avoid tautology. I used terms meaning precisely the same, but I thought that I would not repeat the identical language applying to the Speaker of the Assembly that I had used as applying to the President of the Senate, so as to avoid what the literary chaps call "tautology." That is all. Mr. Barhite called my attention to it the other day, and I supposed that he had an amendment to the same effect. I drew one this morning. I am willing to accept those amendments, but I do not think that the word "impeached" ought to be stricken out, because, as I say, under the Constitution, as it is, you can have this anomaly — that a man who was impeached by the Assembly of the State could yet act as Governor while he was impeached — which ought not to be. I, therefore, move the recommendation of the amendment which is in italics.

Mr. Hawley — I desire, Mr. Chairman, to accept the suggestion of the gentleman from Cattaraugus (Mr. Vedder) in regard to the striking out of the words referring to impeachment. I observe, what had escaped me for the instant, that, when articles of impeachment are preferred, or charges looking to an impeachment, no one but the judicial officers of the State are prevented from exercising the duties of their office; and, I think, that the criticism which the gentleman from Cattaraugus has made upon my proposed amendment is entirely just, and that the words in regard to impeachment should remain in the section. So we are at one in the amendment which I have proposed, and, possibly, that may affect what the gentleman from Kings (Mr. Cochran) has to say.

Mr. Cochran — Mr. Chairman, it seems to me that this amendment is very objectionable.

Mr. Maybee — I ask, Mr. Chairman, that the amendment be read by the Secretary, so that the committee may know what it

is acting upon. At present a discussion is going on here without the committee knowing what it is all about.

The Secretary — On page two, line four, strike out the word "be" and insert the word "is." Also, strike out the words "is removed" and insert the words "shall cease," on page two, line four.

Mr. Vedder — I accept that amendment.

Mr. Hawley — The Clerk did not read the amendment on page one, which is to strike out the words "displaced, resign, die," in line seven.

The Chairman — The Chair understood that the proposed amendment on line seven was entirely withdrawn, but that was not correct? You do not intend to withdraw your amendment as to line seven?

Mr. Hawley — Not entirely. I will send my amendment up to the Clerk in a moment.

Mr. Cochran — Mr. Chairman, I have endeavored twice to say that it seems to me that this amendment should not prevail, for the reason that, on the death or disability of the Governor and the Lieutenant-Governor of the State, the duties of the office might devolve upon one who was of the opposite political faith, and I do not think that, therefore, we should provide for filling the vacancy as is proposed in this amendment. I believe that, if any such contingency as this is provided for, the office should be filled by one of the same political faith as he who is superseded. We are all aware that the Governor is very frequently of a different political faith from the Speaker of the Assembly, and for that reason I would move to amend this amendment by striking out, in line three of page two, the words "Speaker of the Assembly," and insert in lieu thereof the words "Secretary of State." I believe that the duties of the office would be better performed, and at the same time the incumbent would more frequently be of the same political faith as he who is superseded.

Mr. McDonough — I would like to ask the gentleman from Kings (Mr. Cochran) if the Secretary of State is now of the same political faith as the Governor?

Mr. Hawley — It is more frequently so.

Mr. Dean — I would like to ask, also, if the President *pro tem.* of the Senate is always of the same political faith as the Governor and Lieutenant-Governor?

Mr. Cochran — My answer is that it is more commonly the

case that the State officers are of the same political faith, than that the chief executive is of the same political faith as the Speaker of the Assembly.

Mr. Lester — I am opposed, Mr. Chairman, to the amendment proposed in line seven. It seems to be very clear that the words "become incapable of performing the duties of his office" imply the continued existence of the person who becomes incapacitated. Now, sir, those words are not intended to include the case of the removal of an officer by death. The conjunction of the words "death or disability" so often appearing in the statutes shows that there is a distinction intended between a man's death and his disability to perform the duties of his office. Therefore, it seems to me that the word "die" ought, with as much reason as any other word, to be allowed to remain in line seven. But, on general principles, I am opposed to changing the present language of the Constitution, unless some good reason can be shown therefor, and, on that basis, I am opposed to any change in line seven.

The Chairman — The question now is upon the amendment proposed by the member from Kings (Mr. Cochran) to the effect that "Secretary of State" be substituted in place of "Speaker of the Assembly."

Mr. Spencer — I ask that the amendment be separated, and that we may be permitted to vote upon the amendments proposed in line seven of page one separately.

The Chairman — The Chair will inform the gentleman that the question now is upon the amendment proposed by the gentleman from Kings (Mr. Cochran).

Mr. Cochran — I saw some of the gentlemen smile when I proposed that amendment, but I do not think they realize the full force of it or they would not have done so. They should remember that the Secretary of State is an officer who is elected by the entire voters of the State, whereas the Speaker of the Assembly is one who is elected from a single district, and does not, or is not supposed to, represent the spirit of the people of the State in its entirety, but only that of a single district. For the reason that we should have some one succeed to the chief office of this State who has been elected by the entire vote of the people, I have offered my amendment.

Mr. Hottenroth — It seems to me, Mr. Chairman, that the

amendment proposing to strike out the words "displaced, resign, die," is not properly before the Committee of the Whole.

The Chairman — The Chair will inform the gentleman that the question now is upon the amendment proposed by the gentleman from Kings, which is, in effect, to substitute the Secretary of State for the Speaker of the House. Are you ready for that question?

Mr. Peck — There is one suggestion that I would like to make on this subject, and a single one, and that is that we always have a Secretary of State, but we often have no Speaker of the Assembly. I think, therefore, that "Secretary of State" would be a safer amendment than "Speaker of the Assembly" on that account. The Chairman put the question on the amendment offered by Mr. Cochran, and it was determined in the negative.

The Chairman — The question now is upon the amendment proposed by the gentleman from Seneca.

Mr. Spencer — Mr. Chairman, may I have a division of the question?

The Chairman — Certainly.

Mr. Spencer — I am, on principle, opposed to changing the language of the present Constitution — of the Constitution as it is — simply, in the interest of literature and good language. I desire the question to be divided by taking a separate vote on the amendment proposed to line seven of page one. The other amendments may be voted upon together.

Mr. Hottenroth — Mr. Chairman, is this amendment quite proper in line seven?

The Chairman — It is.

Mr. Hottenroth — It seems to me it is improperly there. A proposition to amend any section of the Constitution must originate as has been provided by the rules. If we desire to amend such a proposition, it seems to me that that is proper to be done in Committee of the Whole, but here is absolutely a new amendment, and, I think, it would be establishing a bad precedent to take a section and for the first time, in Committee of the Whole, suggest an absolutely new amendment. We might be met with surprises, and it seems to me, under those circumstances, entirely out of order.

Mr. Hawley — I think the gentleman misapprehends the phraseology of this proposed amendment. The proposed amendment reported from the standing committee is that "sec-

tion 7 of article 4 is hereby amended so as to read as follows." Now, we have just as much right, and just as much authority, and are just as much required to amend the phraseology, which the committee did not amend, as to talk about the phraseology which they have added to the section. The whole section, as it now stands, is reported to us by the committee, and is the legitimate subject of our discussion and action.

Mr. Hottenroth — In answer to the gentleman, I would say that a rule was adopted here, or a proposition was carried, to the effect that in each instance where an amendment is proposed, the particular amendment shall be underscored in the proposed amendment and shall be, by the printer, printed in italics. Now, none of this section, except that portion, as I understand it, which was submitted in the form of an amendment, was so printed. While we might well assume that the printer could make a mistake in the portion which is not in italics, I do not consider that, under those circumstances, we would be justified in assuming that such a mistake was intended as a correction or alteration to a constitutional provision.

The Chairman — The Chair holds that the whole subject-matter is properly before the committee, and that the rule has been observed. The new matter proposed in this proposed amendment is printed in italics. The amendment now before us is to the effect that something already in the Constitution be stricken out, and on that there is to be a division of the question. The question now is upon striking out the words "displaced, resign, die," in line seven of page one. Are you ready for the question?

Mr. Maybee — Mr. Chairman, I am opposed to the amendment proposed by the gentleman from Seneca, because it changes the language of the old Constitution in a respect which is entirely unnecessary. Here is a provision which has stood for fifty years as part of the Constitution of this State. The proposed amendment does not change the purpose of the amendment proposed by the Committee on Legislative Powers and Duties, but is simply a change in phraseology. Now, we ought not to waste any more time in this Convention, either in the Convention itself, or in Committee of the Whole, upon mere questions of phraseology. It is a waste of the time allotted to this Convention for its duties to spend any considerable part of its session in the discussion of mere questions of phraseology or language. Any attempt to change the language of the old Constitution, which has stood the test of fifty years of experience, where the change proposed is a

mere matter of phraseology, a mere matter of verbal expression, seems to me unauthorized and unnecessary. For this reason I hope that the amendment proposed by the gentleman from Seneca will not be favorably considered.

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

Mr. Forbes — Mr. Chairman, I propose, as an amendment, to strike out from line five the word "therein," at the end of the sentence, so that the sentence shall read "but shall have only a casting vote." Now, from the remarks that have been made —

The Chairman — The Chair would inform the gentleman that the question next before the committee is upon the other half of the amendment now under consideration, which the Secretary will read.

The Secretary read the proposed amendment as follows:

On page two, line four, strike out the word "is" and insert the word "be." In the same line strike out the words "is removed" and insert "shall cease."

Mr. Vedder — I accept those amendments, Mr. Chairman.

Mr. Forbes — Mr. Chairman, I desire to speak upon that question. As I began to say a moment ago, I introduced a resolution some weeks ago, which looked toward the changing of the phraseology of the Constitution of 1846, to correspond with the phraseology of that proposed in 1867; and this is the first opportunity that I have had to call the attention of the Convention to the advantages of the phraseology of the proposed Constitution of 1867. That Constitution changed, in line ten, the word "be" to "is" — "until the vacancy is filled," and struck out the word "shall." "Or the disability shall cease" was made to read "or the disability cease." The gentleman who introduced this proposed amendment used common, ordinary language when he said, on line four, page two, "until the vacancy is filled." Of course, we desire to have the phraseology of the whole section alike, and that is the reason that I speak against the proposed amendment which is to change the word "is" to "be." This may be a matter of small importance, but, if we settle it at this time, we will settle it, probably, for the remainder of the Convention. Now, you will find in line five the word "therein" in this clause: "But shall have only a casting vote therein." The word "therein" adds no force to the sentence or clause, and it would be clearer if we said: "But shall have only a casting vote." Therefore, I am opposed to the present amendment, and, if there is only one amendment

pending, I would offer an amendment that the word "therein" be stricken out from line five.

The Chairman — The Chair would inform the gentleman that the proposed amendment on page one is not now in order. We are confined now to the proposed amendment affecting line four. Is the committee ready for the question?

Mr. Forbes — Then I offer an amendment to the amendment so that the line shall read as follows: "Is filled or the disability cease."

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

The Chairman — The question now recurs on the amendment of the gentleman from Seneca (Mr. Hawley).

Mr. Abbott — I desire to offer the following amendment: In line one, page two, strike out the words "be rendered" and insert the word "become."

The Chairman — The Chair would inform the gentleman that that is not now in order.

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

Mr. Abbott — Now, I move to strike out the words "be rendered" in line one of page two, and insert the word "become," so as to make it correspond with the phraseology of the original section. Also, strike out the words "the same shall devolve upon" in lines two and three and insert after the words "Speaker of the Assembly," in line three, the words "shall act as Governor," so that the amendments shall correspond with the phraseology of the original section.

The Chairman — Mr. Abbott will please send to the desk the proposed amendment in writing.

The Secretary read the amendment as proposed as follows:

By Mr. Abbott — On page two, line one, strike out the words "be rendered" and insert the word "become." Strike out the words "shall devolve upon" in lines two and three and insert after the word "Speaker" the words "shall act as Governor."

Mr. Vedder — Mr. Chairman, the amendments now before the committee are all amendments which have been suggested in relation to the italicized portion. If read, they will include all the amendments and read smoothly, and it will be seen just what is intended. If I understand it aright, it will read something like this: "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." That is precisely as everybody wants it.

Mr. Crosby — Is there is a question before the committee?

The Chairman — There is. The question is on the amendment offered by Mr. Abbott, which has been read by the Secretary.

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

Mr. Crosby — Mr. Chairman, I move to amend line one, page two, by inserting after the word "above" the word "mentioned" so that it shall read "the above mentioned."

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

Mr. Vedder — Mr. Chairman, I believe now, all the amendments have been suggested. I move the committee now rise, report this amendment to the Convention and recommend its passage.

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

The committee thereupon rose and President Choate resumed the chair.

Mr. Gilbert — Mr. President, the Committee of the Whole have had under consideration proposed amendment No. 368 (introductory No. 269), entitled proposed constitutional amendment to amend section 7, article 4 of the Constitution, have gone through with the same, and made some amendments thereto, and report the same to the Convention and recommend its passage.

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

The President — The amendment goes to the Committee on Revision. The Secretary will proceed with the call of general orders.

The Secretary called general order No. 11.

Mr. Becker — I move that, Mr. President.

The President put the question upon going into Committee of the Whole on general order No. 11, introduced by the Judiciary Committee, and it was determined in the affirmative.

The Convention resolved itself into Committee of the Whole.

Mr. Cochran, chairman, announced that the Convention was in Committee of the Whole on general order No. 11 (introductory No. 362).

The Secretary read the amendment as follows:

Section 18 of article 3 of the Constitution is hereby amended by adding after the seventh subdivision thereof the following:

The Legislature, may, however, provide for the appointment of a commissioner of jurors in any county by the justices of the Supreme Court residing in the judicial district which includes such county and the county judge of such county, or by a majority of them. The Legislature shall prescribe the duties and fix the compensation of such commissioner, and he shall hold office during the pleasure of the appointing power.

The Chairman — Are there any amendments?

Mr. Becker — Mr. Chairman, I will explain briefly the scope and purpose of this proposed amendment.

Mr. Alvord — Mr. Chairman, I rise to a point of order. My point of order is that there is no motion before the committee.

The Chairman — Mr. Alvord's point of order is well taken. Mr. Becker is not in order.

Mr. Holcomb — I move to amend by inserting after the word county —

Mr. Kerwin — Mr. Chairman, I raise the point of order that Mr. Becker had the floor.

The Chairman — Mr. Kerwin is not in order. Mr. Holcomb has been recognized.

Mr. Holcomb — I move to amend by inserting after the word "county" the words "except the county of New York."

The Chairman — Mr. Holcomb moves to amend by inserting in line five after the word county the words "except the county of New York." Are there any other amendments?

Mr. Holcomb — The reason I offer this amendment, Mr. Chairman, is that there has been no county judge in the county of New York since the county has existed. There is now nobody who performs the duties of county judge in that county, and there would be no board to make the appointment in the county even if this amendment should prevail. Manifestly, if the Judiciary Committee desires to include the city of New York in this amendment, and have it covered by the amendment, it would be necessary to name some other person than the county judge.

Mr. Becker — Mr. Chairman, lest there may be any mistake about it, I now move to strike out all after line four in this amendment, and I will address the Convention briefly on the subject-matter of this proposed amendment. I trust that the gentleman from Onondaga (Mr. Alvord) will concede that I am now in order. As the law now stands, the Constitution provides that no private or local bill shall be passed providing for the drawing or empaneling of grand or petit jurors. There is also a provision that no private or local bills shall be passed which shall contain more than one subject, and that subject to be expressed in its title. As to the provision which states that the judges of the Court of Appeals and the justices of the Supreme Court shall not hold any office or place of trust, a jury bill which was prepared by the citizens of Buffalo last winter, unanimously supported by them and by the press of that city, providing that there should be a commissioner for that county to be appointed by the court, was passed by the Legislature with little if any dissent, and was vetoed by the Governor. He vetoed it on the ground, first, that the judges under this provision of section 1 of article 10, I think it is, could not be authorized to make this appointment, because it was holding an office or place of trust within the meaning of the prohibition of that section. We endeavored, under the authority of the Brooklyn Park case, reported in the 96th of New York Court of Appeals Reports, to avoid the other question as to its being a private or local bill, by providing that it should only apply in counties of over 300,000 inhabitants, which would include the county of Erie, and excepting from its operation the counties of New York and Kings. The Governor, however, saw fit to veto this bill on that additional ground, that it was a private and local bill, although we made it apply to counties of a certain class, as we thought, within the meaning of the decision of the Court of Appeals. Now, I will state the purpose and object and effect of this amendment. As the law now stands, in the counties of the State outside of New York and Kings county, which have special laws and have now each a commissioner of jurors, it is the duty of certain town officers to place upon the lists of jurors those citizens who are eligible to act as jurors. In the cities the power is vested — and I mean the cities outside of New York and Brooklyn — in certain specified officers. In our city the power is vested in the board of assessors, whose duty it is to place upon the list of jurors the names of those qualified. We have found in our county, and I understand from gentlemen throughout the State, in other counties, not necessarily in all counties, but in many of them, that these town officers

have a tendency not to perform their full duty. In some instances they place upon the list a number of names of those who are not qualified. In other instances they leave off the names of those who are qualified, for the purpose of currying favor and friendship with one class or the other; those who do not wish to serve, by leaving their names off from the list; those who desire to get upon the jury and earn a little money by serving as jurors, who may not in some instances be competent to do so or eligible under the statute, by placing their names upon the list. Also it appears that in the city of New York where for many years before the passage of this constitutional amendment, which I believe was adopted in 1874, and which I have referred to, forbidding the passage of private or local bills providing for the drawing or empaneling of grand or petit jurors, they have had a provision for a commissioner of jurors, and his duties are prescribed at length in that provision. The same law exists for the county of Kings, and we are informed by gentlemen residing in that county, and gentlemen residing in New York county, members of this Convention, and judges of the courts, that the bill works well in each county; that putting this matter into the hands of a single responsible person who can be held strictly to the performance of his duties by the court a much better class of jurors is obtained than in other counties where the responsibility is divided. In addition to that, under the provisions which could be embodied in an act to be passed, under this proposed amendment — which you will see is not mandatory, but is simply directory — a commissioner of jurors can have before him a large number of those who are empaneled to perform jury duty, can listen to their requests for exemption, can pass upon those requests, so that when the court convenes, instead of taking up as it is the custom throughout the State, except in New York and Kings county, pretty nearly a whole day in listening to excuses of jurors and drawing and empaneling them, the jurors are there ready to be sworn and can be sworn, and the court can proceed with its duties. Also, a large number of persons who are summoned, owing to the peculiar workings of the friendship, who are not competent, who are not eligible to serve, may be by the commissioner excluded from the jury list, and will not be brought into court and be paid a *per diem* allowance for coming there, to say nothing of the fees of the sheriff in summoning them and the various fees which are allowed by statute in such cases. Now, the purpose of this bill is to place in the hands of the judges of the court of record of the judicial district where any county is located to which the Legislature sees fit to

apply an act for that purpose, together with the county judge of that county, who is the man best qualified to know the character and ability of anyone who is proposed for the office, the duty of selecting a commissioner. The amendment provides that the Legislature shall prescribe the duties and fix the compensation of the commissioner, but that after he is appointed he shall be under the control and domination and superintendence of the judges of those courts in which the jurors sit, and form a component part of the machinery of justice. Consequently, if a commissioner does not perform his duties well and faithfully, if in the practical experience of these judges holding court in these counties, in which courts the jurors drawn by this commissioner shall serve, if it appears that he is not putting on eligible jurors or that he is leaving off those who are eligible, or in any other respect is failing to perform the important responsible duties which will be entrusted to him under this bill, the judges will have power over him; they can call him to account; they can say, "Sir, at such a term of court your panel of jurors was not up to the standard of what jurors should be who pass upon the lives, the liberty and the property of our citizens." And if he does not do better they can remove him and appoint his successor. Now, as I have stated before, the provisions of this bill are not mandatory. They simply provide that if in any county the people of that county, represented in Senate and Assembly, desire to have a bill passed which provides for a commissioner of jurors, they may have such a bill and may not be confronted with the objection that if the power of appointment is vested in the judges of the courts of record in which these jurors serve, and of which this commissioner should be an officer, a component part of the machinery of justice, that they can have such a bill, but that, if they do have it, the power of appointment shall be vested in the judges who have to do with that commissioner, and have to do with the jurors whom he should summon. This bill is reported unanimously by the Judiciary Committee. The original proposed constitutional amendment, No. 87, which I introduced, differed from this in providing that the judges themselves should fix the compensation and prescribe the duties, but the Committee on Judiciary were of the opinion that that power should not be left to the judges, but that they had ample and sufficient power over the commissioner if the power of removal was left in their hands, and that it was wiser and better that the powers and duties of the commissioner should be prescribed in the bill providing for his appointment by the Legislature, so that the people, who are asking for such a bill in any particular county of this State, would know exactly what they were

going to have, and would not be remitted to the judgment and discretion of the judges in that particular.

I do not know, gentlemen, that I can add anything more to what I have said in favor of this amendment. It seems to me to be a long stride in the direction of the purification and strengthening of our jury system. I voted against the provisions of the proposed amendments the other day, although with some hesitation, in regard to jurors, providing for less than unanimous verdict, and giving them certain powers of passing upon appraisements of land; but with such an amendment as this, if it was in force throughout the State so that the quality of our jurors could be made better, so that in a measure, so far as possible, the selection of jurors should be taken out of politics and placed in the hands of our judiciary, of whose court the jurors are a part, then I should be very strongly inclined to favor some of these proposed amendments. But if we have not done one thing, let us say that we have done the other; if we have not changed the jury law in any other respect, let us, at least, say that we have permitted the judiciary to have part and lot, in a responsible way, in the selection of these jurors in their courts. I trust that this amendment will be adopted.

The Chairman — The question is on the motion of the gentleman from Erie to strike out all after the enacting clause.

Mr. Becker — I now withdraw my motion.

The Chairman — The question is now on the motion of Mr. Holcomb.

Mr. Becker — One moment, Mr. Chairman, I see no objection, unless the other members of the judiciary object, to accepting Mr. Holcomb's amendment providing he will add Kings county to it.

Mr. Holcomb — We have no county judge there. There would be a failure of the appointing board.

Mr. Becker — I will simply accept the amendment.

The Chairman — The Chair rules that the gentleman has no power to accept the amendment.

Mr. Veeder — I further move to amend by excepting the county of Kings. We have a commissioner of jurors there appointed by legal authority, and there is no criticism on our jury system that I am aware of.

The Chairman — The question is on the amendment offered by the gentleman from Kings (Mr. Veeder).

Mr. Cookinham — Mr. Chairman, I hope the amendments offered by the gentleman from New York (Mr. Holcomb) and the gentle-

man from Kings (Mr. Veeder) will not prevail. It would be a remarkable spectacle for this great Convention to enact a provision in the Constitution that would not affect almost one-half of the population of the State of New York. I have drawn, Mr. Chairman, an amendment which it seems to me would meet both of the objections made by the gentleman from New York and Kings. I will read it as a part of my argument against the amendments. It is follows: "After line seven insert: In counties having no county judge, the appointment of a commissioner shall be made by the justices of the Supreme Court." Now, Mr. Chairman, if the justices of the Supreme Court are not a proper power in which to lodge the right to make this appointment, I fail to see where we can safely repose it. I shall most certainly vote against any provision in the Constitution that excepts the county of New York and the county of Kings. I am very sorry that the gentleman from Erie (Mr. Becker) expressed himself as being willing to accept those amendments. If this were a legislative body, if we were legislating for one year upon some subject of small moment, it would do to except some county, as is frequently done; but, gentlemen of the Convention, one of the most effective ways of killing a bill in the Legislature, or of killing an amendment in this body, will be that some delegate move to have his county excepted from the operations of the amendment. I hope, Mr. Chairman, that the Convention will vote against the proposed amendments, and then I will offer my amendment, which, it seems to me, meets the objection, and places in the hands of the justices of the Supreme Court the power to make this appointment.

Mr. Cassidy — Mr. Chairman, in the light of the information furnished us by the gentleman from Oneida (Mr. Cookinham), I move to except from the provisions of this amendment the county of Schuyler. We are perfectly satisfied with the jury system as it now exists in that county.

The Chairman — The amendment is not now in order. There are two amendments pending.

Mr. Kerwin — Mr. Chairman, when the jury system was brought up in this Convention I for one, not being a lawyer, did not propose to have anything to say in relation to it. But when we come to consider all the amendments that are before the Convention in relation to home rule for cities, and then see that the Convention this morning tolerates an amendment excepting one city from this measure, there does not seem to be any home rule connected with it. I say that the only measure for home rule we want is for every city to be governed by the same law. If this law is good for

Albany, it is good for New York. Further than that, Mr. Chairman, I do not believe in making the judge that is going to try a case an autocrat. I am opposed to autocracy. Do not believe in it. I do believe in letting somebody else besides the judge who sits in the case appoint the jurors. For that reason, Mr. Chairman, I opposed the amendment, and will oppose all amendments excepting any city. The Albany jury system suits Albany.

Mr. Abbott — Mr. Chairman, it seems to me the gentleman who offers this amendment is laboring under a misapprehension. The very scope of the proposed amendment is to the effect of making it local. The amendment is offered to section 18 of article 3 of the Constitution, which, in its effect and terms, limits legislation and provides that there shall be no local legislation upon this subject. It limits the power of the Legislature to legislate locally concerning the selecting, drawing, summoning or empaneling grand or petit jurors. Now, the effect of this amendment is to add to the power of the Legislature, to enable them to pass local acts, acts affecting any one county. I think that the amendment is wrong. I am opposed to the amendment of the gentleman from New York (Mr. Holcomb). I am opposed to the proposed amendment because it gives additional power to the Legislature in regard to local legislation. I think we should guard against that, and should limit its powers instead of enlarging them. If this amendment, in theory, is correct, the easiest way to reach it, it seems to me, would be to strike out the provision of the existing Constitution as to drawing, summoning or selecting grand or petit jurors. If that is stricken out it enables the Legislature to pass special acts and to reach the matter desired by the gentleman from Erie (Mr. Becker). I am opposed to the proposition; I am opposed to all the amendments to it, and to the proposed constitutional amendment, from the fact that it encourages local legislation.

Mr. Veeder — Mr. Chairman, I presume the immediate proposition before the committee is on the proposition presented by myself and that does not involve the merits of the question of the necessity of a reform or change as to some other county. As to the county of Kings, we have recently passed through a very severe test of the integrity of our jury system. It has been found essentially correct. Jurors have been drawn and served and performed their duties without any interference, and as honest men. I know, as I said in offering this amendment, of no complaint whatever, or no criticism, of the jury system in the county of Kings. For that reason, if this provision of the Constitution is to prevail, and it is a

necessity for any locality, then except from its provisions the localities that have now a proper system.

Mr. Griswold — Mr. Chairman, from the experience of the country districts, so far as I am informed, I think it is eminently proper that there should be some system of selecting jurors substantially as proposed by this amendment of the Constitution. I think the delegates from the country districts generally will agree with me that the present system has given us jurors in many cases not fit to sit as such. At present the petit jurors are selected by the supervisor and the assessor of the several towns, the poorest little political town officers we have. Those men propose their neighbors and men utterly unfit and incompetent to sit as jurors. Now then, some system, I am not particular which, nor as to what amendments are made, but some system substantially as proposed by the committee reporting this amendment I hope will be adopted. It may be different in other counties, but so far as I know, and in several counties, it has got to be a positive grievance that jurors are selected, to try and determine important rights, who are incapable of understanding the instructions of the judge or of understanding the evidence. I hope that the amendment substantially as proposed by the committee will be adopted by this Convention.

Mr. A. H. Green — Mr. Chairman, I have listened to the discussion with great interest and attention, and have no word to offer in regard to the appointment of commissioners of jurors in the country districts if they so desire. I am entirely in accord with the suggestion of the gentleman from New York (Mr. Holcomb), in excepting New York from the provisions of this bill. I think that it is (what no amendment of the Constitution should be) an interference on the part of the judiciary with the functions that belong to other departments. I am opposed to any increase of the powers of the judges of the Supreme Court in this direction. I would prefer to abridge and very much lessen the amount of patronage that they now enjoy. The exercise of that patronage according to my observation brings the courts to the confines of the political machines; and I should hope that no further patronage would be conferred upon the Supreme Court either in the country or in the city. In late acts I observe it even goes so far as to confer upon the Supreme Court judges the power to fix salaries, and powers in various other directions; and I think it is time that we put a stop to it. These gentlemen are, some people say, very much overworked now; and I think, in their behalf, that we should cease to impose upon them any further burdens. I think it is mischievous in its tendency and ought to be stopped.

Mr. Spencer — Mr. Chairman, it is with some hesitation that I rise to oppose the amendment which I understand was unanimously concurred in by the Judiciary Committee.

The Chairman — The Chair would inform the gentleman that no amendment is now in order. The question is on the adoption of the amendment of the gentleman from Kings (Mr. Veeder).

Mr. Spencer — That is what I am going to speak to. I think, sir, that the object sought here, must have been largely influenced by the desire of the gentleman from some of the larger cities; and I believe that by excluding the cities of New York and Kings, it will take away probably the only purpose possible which the committee had in view in favoring this amendment. I think I can speak with some degree of authority as to the country districts, and I do not believe there is that general dissatisfaction with the manner of selecting jurors in the smaller cities and in the counties of the State that will justify this Convention in making an attack upon the jury system. I am aware that in several of our cities there are already commissioners of jurors, something after the plan that is suggested by this proposed amendment. I am not aware as to the manner in which these commissioners are appointed, but I presume that they are appointed by some local authority from the people. Any attempt to change our jury system, which takes the selection of the jurors from the body of the people, and confers it in any way directly or indirectly upon the bench, seems to me an attack upon a vital principle in our jury system. The jurors are from the people; they are selected from the body of the people, the common-place, every-day men, to decide questions of fact that arise between men in their business affairs; and it is in this view that these men, representing the body of the people, are more able to decide these questions of fact than are men trained to the law. I fear that if this power of appointing a commissioner should be placed in the hands of the judges of the district and county judge, that it would inevitably lead, practically, to the appointment of the commissioner by the county judge of the county. It would be delegated to him to select the commissioner of his county; and I cannot believe that any system which would directly or indirectly permit the county judge to select a commissioner and that commissioner to select the jurors from the body of the people would be satisfactory to the people. I do not believe that it is in harmony with our system of keeping the jury apart from the bench; and, therefore, I am opposed to the amendment upon principle, and feel constrained to vote against it either as referring to the cities or to the country.

Mr. Dean — Mr. Chairman, I desire at this time to offer a substitute.

The Secretary read the substitute offered by Mr. Dean, as follows:

"The Legislature may, however, provide for the election of a superintendent of jurors in any county. The Legislature shall prescribe the term and duties and fix the compensation of such office."

The Chairman — The substitute will lie on the table until the amendments are disposed of. The question is on the amendment offered by the gentleman from Kings (Mr. Veeder) to except the county of Kings from the provisions of this amendment.

Mr. Becker — Mr. Chairman, a single word with regard to one or two of these amendments. I do not quite see the necessity of the amendment proposed by the gentleman from Kings (Mr. Veeder). There might be something in the amendment proposed by the gentleman from New York (Mr. Holcomb), because there is no county judge in that county, but that point could be covered by the proposed amendment of Mr. Cookinham, which provides that in counties where there is no county judge the power shall be in the justices of the Supreme Court. But in the county of Kings they have a county judge, and in both New York and Kings counties they have now a special law providing for a commissioner of jurors, who is holding office and acting under that law, and giving good satisfaction. This proposed amendment does not change the law in that respect a particle. It does not interfere with either New York or Kings, or any other county of this State, Schuyler county or any other county. It simply leaves it in the power of the Legislature, if the people of that county want to have such a change, that they may have it.

A single word as to striking out the provisions of the section relative to the drawing or empaneling of grand or petit jurors and the passage of a private or local bill for that purpose. I think, and the committee thinks, as I judge by consulting with them, that that is a good thing; that that provision ought to be in the Constitution. If you strike that provision out of the Constitution you place it in the hands of the Legislature, for instance, to vest this power of appointment in the county judge alone, and you will have this condition of things — such a bill was proposed, and very nearly passed the Legislature, relative to the county of Albany last winter — you will have the county judge of your county appointing the commissioner of jurors and then turning around and practicing law in the court before the same jurors whom his appointee had selected. If you strike out the provisions I spoke of, which

now limit the passage of bills providing for drawing grand and petit jurors, the Legislature may vest that power in any other responsible officer; may vest it in the constable, in the sheriff, in any political hireling that they desire to vest it in for their purposes. So that we thought best to leave that portion of the law just as it was, except that, if any change should be made, the power of appointment and the power of removal should be vested in the justices of the courts in which the jurors are to sit who are selected by their appointees. If the gentlemen from Kings (Mr. Veeder) does not wish a change in the existing law he need not have it. He would have to go to the Legislature and ask for it in order to get it. If his commissioner of jurors is performing his duties well, as he says, if he is doing well in drawing the jurors, what chance would there be of changing the law for the county of Kings? The same rule would apply to the county of New York, if Mr. Cookinham's amendment is adopted providing that the law shall be general throughout the State and the appointment in counties not having a county judge may be made by the Supreme Court judges alone. If the New York county commissioner of jurors is performing his duties well, there would be no attempt to change the law. We are making provisions in this Convention which we hope will become a part of the organic law, which shall be safeguards against the Legislature, which shall require bills to be printed and lie upon the table, and require the locality to have a voice in their passage, and have an opportunity for criticising them and calling upon representatives of that locality to protect it from bills attacking its autonomy. All those things will serve as additional safeguards, and, away over, back, beyond and behind this proposed constitutional amendment is what I believe to be the vital principle of it, on which it must stand or fall, and it is the provision that the man who performs jury duty shall be selected by some single responsible head, and not by a divided responsibility which, for purposes of favoritism and feathering their own political nests, will put incompetent men upon the jury lists or leave off competent men, as we all know is repeatedly done throughout the State. Here we have a complete system which protects the people. It is for the interests of the judges to have good jurors. They want intelligent jurors. They cannot perform their own duties without the assistance of the very best jurors that are in the counties in which they hold their courts. For my part, if it lay in my power, I would strike from the statute book every exemption from jury duty. I would put every citizen of the State of New

York, who is twenty-one years of age, who can read and write the English language and is otherwise competent, in the jury-box, and compel the juries to be drawn from that list. But these exemptions have crept into the statute book until the exemption is the rule and non-exemption is the exception. There must something be done to purify our jury system, or the complaints which are made against it on the floor of this Convention, which are spread broadcast through the State by the press, will have a tendency to break down its usefulness and the respect which the people of this State entertain for that system, time honored as it is. It seems to be that by preserving the provisions of article 18, that no private or local bill shall be passed for these purposes, by thus putting it out of the power of the Legislature to appoint some political favorite, which has been attempted to be done, and providing that, if they attempt to make any change or any reform, they shall make it through the medium of the courts where these jurors are to serve, we shall have gone a long ways in purifying our jury system. I see no force in the objection made by my venerable and distinguished friend from New York (Mr. Veeder) as to the power of the judiciary. No one would object more than I do to give judges the power to fix compensation and perform other duties of that kind. I have always opposed that except so far as it relates to their own duties. But I do not see anything in this objection. Do not the courts appoint their clerks to-day? Is there any complaint in regard to that? Do not the courts appoint their criers, and their court attendants and their officers; and is not the commissioner of jurors just as much an officer of the court as an interpreter? What force then is there in that objection? Gentlemen of the Convention, I sincerely hope that you will consider this matter with care. I believe that by keeping the hands of the Legislature from the jury system, except by the enactment of general laws, and limiting the power in this way if they choose to pass them, you are taking a long step in the direction of the purification of the jury system of this State.

Mr. Veeder — Mr. Chairman, I beg the pardon of this committee for again addressing it upon this subject. I have endeavored to avoid discussing the merits of this subject as relating to other localities than my own, but I am at a loss to understand on general principles why any member should desire this proposition to prevail. Why make autocrats of the judges of the Supreme Court? Why give them the power to name who shall be jurors before whom a trial shall be conducted? Why give them the power to coerce a jury into a verdict? I submit that the Constitution upon that subject is broad enough at present. There was a proposition here

that, by general law, provision should be made for the employment of commissioners of jurors if commissioners of jurors are desired. We are trying to prohibit special legislation by the Legislature. We have thrown slurs at the Legislature. It is believed, almost, that you cannot trust the Legislature. Are we saints that we should decide everything? I submit that the American people have confidence in their representatives. Power should be lodged in the legislative body. Restriction after restriction is sought to be enforced upon the people, tying them up, and now along comes a proposition to amend the Constitution, which is already broad enough, by providing for special legislation. Moreover, look at the last paragraph, if you please, of this provision: "These officials are to hold office at the pleasure of the appointing power." What is more autocratic? What could be more embarrassing than that one should be continually under the apprehension that he has incurred the displeasure of the appointing power. I submit that we are not here as a legislative body at all. We are here to endeavor to amend the organic law in such way as will meet with the approval of the people, leaving to the legislative, the executive and the judicial branches of the State government the duties that devolve upon them. I submit that this is only an innovation, which should not find a place in the proceedings of the Convention for the reformation of the Constitution.

Mr. McDonough — Mr. President, for fear that the impression may go abroad that the Governor is opposed to all commissions for the selection of jurors, I desire to say that he signed an Albany bill last winter which provides that the county judge, the surrogate and the county clerk shall constitute a body to select a commissioner of jurors, and he found no constitutional reason for opposing that law. It was signed, and is the law of this county to-day. It is possible that there may be something in the Constitution which would prevent a Supreme Court judge, who, I believe, is prohibited from holding any other office, from exercising the duties that would be put upon him by the act of the Legislature. But, under the present law, such a provision was made for Albany county, and, I think, the same thing could be done in other counties, if they thought fit to have it.

Mr. Lyons — Mr. Chairman, one point which is made here is, that placing the selection in the hands of a commissioner of jurors would take it out of politics. Now, in the county in which I reside there are fifty-four assessors, and it seems to me that the result of putting it in the hands of a commissioner of jurors would be to put it into politics. It would put the appointment into the hands of one

man, representing one single party; whereas, speaking for my own county, the fifty-four assessors represent all political parties. Not only that, but the appointments, as now made by the assessors, are made by each assessor from his own town, and from people with whom he is acquainted. I am in favor of excepting the county of Kings, and in favor of excepting every county in the State from the operation of any such provision.

Mr. C. A. Fuller — Mr. Chairman, I think that this is an important and valuable proposed amendment. I know that the method of selecting jurors in my own county is not very satisfactory. Oftentimes, when the jury is brought to court, it is found that names are incorrectly given; it is found that many men who have legal exemptions have been drawn, and that the panel is very imperfect and incomplete. I think that if this duty was imposed on one man in the county, selected by the Supreme Court judge and the county judge, he would be a man of such intelligence and character that he would give his time and attention to the business and would see to it that a much better quality of men was selected than is now picked out in the various towns by the town boards. Our assessors are not men of that care and consideration, judging from my own town and what I know of the towns in my own county; they are not the quality of men that we would expect in a commissioner of jurors who was selected by the court of record judges. I, therefore, believe that this permissive clause, allowing the Legislature to do this thing, to select this officer, giving the Legislature the idea which this Convention has in regard to the matter, would be a very wise provision upon our part, and, for one, I hope that any suggestion to exempt New York and Kings counties will not prevail. I think we have had quite enough legislation on the part of our Senate and Assembly in enacting really local bills, by saying that they shall only apply to cities of a million or two million inhabitants, and I hope that this Convention will not adopt any such error as that. But the suggestion of the member from Oneida county will cover all that; and if they have no county judges in those counties, then it might be very well to leave it to the other court of record judges. I hope the main proposition will prevail, and that this suggestion for exempting some portions of the State from the operations of the law will not prevail.

Mr. C. B. McLaughlin — Mr. Chairman, I am surprised at the suggestion made by the last speaker, Mr. Fuller, coming from the rural districts and knowing the manner in which juries are there selected, that he should for one moment think that the proposition before the Convention is an improvement upon the system now in

force, under the present law. As I look upon it, this proposition is vicious in principle. Let us see if I am not correct in that statement? What is proposed by this amendment? To lodge in the justices of the Supreme Court in each judicial district and the county judge in each county the power to select a commissioner of jurors for each of the counties of the State. Now, instead of drifting away from politics in many of the judicial districts of this State, you are drifting right into politics, and centering that power at a place which this Convention should strive to take it from. Trial jurors are now selected, as this Convention knows, by the assessors in the respective towns in the different counties of the State — (I am not now speaking of the cities which have their special modes of selecting jurors) — and the jurors are there selected from the best men in the town. Now, I would like to have the gentleman, or anyone else advocating this principle, state to this Convention how justices of the Supreme Court or the county judge can select better men than the men selected by assessors who live right in the immediate locality in which the jurors thus selected live.

Mr. C. A. Fuller — Mr. Chairman, may I ask a question? As I understand this proposition, it in no manner provides that the justices of the Supreme Court and the county judge shall select the jurors, but that they shall appoint a commissioner who shall do this.

Mr. C. B. McLaughlin — That is all very true, Mr. Chairman. I am attacking the principle embodied in this proposition, namely, that it asks that the justices of the Supreme Court and the county judge shall do what? Name the man who shall select the jurors. One man, if you please, whereas, under the present system, the assessors in the respective towns, who know the men, select them. It seems to me that I would not only except the counties of New York and Kings, but every county in this State, because the present system is infinitely better than the one suggested in his proposition.

Mr. Kellogg — Mr. Chairman, I had supposed, sir, that one of the solemn duties of this Convention would be, not to enlarge the powers of the Legislature, but rather to further restrict, if possible, the floodgates which are let loose upon the people at each annual session. By this amendment it is proposed to confer upon the Legislature the right to pass laws creating a new horde of office-holders, and at the same time destroy and tear down the time-honored jury system of the State. It proposes to make it possible to take this system out of the hands of the people and give it to a man appointed by the Supreme Court and by the county judge. It seems to me that the proposition now under consideration is in the same direction as many others before this Convention. It is

evidently becoming a popular fad here to seek to take away the power now possessed by the people of the State and confer it upon some one man. If we cannot depend upon the people to elect assessors and supervisors who will give us proper jury lists for the selection of jurors, to try the cases in the courts of justice, then, sir, I exclaim we might as well, here and now, surrender republican form of government in the Empire State. Give to a commissioner of jurors the sole power to make up the jury lists and then draw jurors for the trial of civil and criminal cases! Give to a commissioner of jurors sitting in a chair in the city of Albany, the right to select men who are required to have certain property and moral qualifications, in the remote sections of the county! How can he possibly perform the duty as well as the assessor or supervisor, who resides in the town? Let this commissioner make up the panel for the Circuit Court alone and by himself? Why, sir, Mr. Chairman, you make him a greater autocrat than the Czar of Russia or the Emperor of Germany. Remove the way and manner of the selection and empaneling of our jurors from politics, you say. I undertake the assertion that if you pass this amendment this Convention will pave the way for a more disgraceful political machine than ever traduced the fair name of our great State. Never, sir, Mr. Chairman, with my vote, will you take away a single right or privilege now possessed by the people of this State. I steadfastly maintain that her citizens are as capable of local self-government, are as intelligent, moral and patriotic as are contained in any State in this great American Union.

Mr. McIntyre — Mr. Chairman, it seems to me quite common here for members to rise and state their views, which, I suppose, represent the locality from which they come. Coming as I do from St. Lawrence county, I am decidedly opposed to this amendment, for the reason that we want to have Kings county and New York county stand by us and help beat the whole proposed amendment. To my mind we should have much poorer jurors than we have at the present time, in the country. Whatever it may be in the city of Buffalo, I know not, but I know that the men who reside in the towns and have the ability and character and information to be proper assessors know better than anybody else who are proper jurors, better than any commissioner in one large county like ours would know. It would only make a place for somebody, with a salary attached; and as the gentleman from Essex (Mr. McLaughlin) said it is quite a suspicious amendment, as far as that is concerned. It is taking the power from the people, and giving it to commissioners that they do not want to have it, and I hope that

the gentlemen of this Convention will not only vote down the amendment but that they will then vote down the proposed amendment to the Constitution.

Mr. A. B. Steele — Mr. Chairman, in addition to the reasons assigned by the last gentleman, it seems to me there are some few other suggestions that might be made. I am opposed to this amendment upon this principle, if upon no other, that whatever is done here should apply equally to the entire State. If we are to have a commissioner of this kind, if we are to vote upon this question, I want the gentleman from New York to be interested like myself in the result. We know this fact, that if the amendment is passed as proposed here, the county judge of a county will have the say as to who the commissioner shall be in that county. To illustrate, suppose that the honorable gentleman who occupies the position of county judge should desire to use his influence so as to control jurors. In some of the counties, and if I am not mistaken, in all of the counties of the State, the county judge is a trial lawyer. He has a right to try a case in the Supreme Court. Now, to go a little farther with the illustration; suppose the gentleman who occupies the position of county judge is of that mind that he desires to be corrupt. He says to the commissioner of jurors, "I want only a certain kind of jurors appointed in your county." The jurors feel that they are selected by the commissioner. The commissioner is at the mercy of the county judge. Whenever the county judge, if he controls the appointment of the commissioner, sees fit to take off the head of the commissioner, so to speak, he can do so. Therefore, there is apparently an obligation that he is under, a certain obligation that reaches to the commissioner. Now, I will go a little further. In the district in which I live, taking the various counties together, there would be twelve persons to take part in appointing the commissioners. Every person belongs to the same political party without exception, county judge and Supreme Court judge. Suppose now that they wanted to obtain some political control. The county judge who belongs to that party says to the commissioner, "I want so and so as jurors. A question is coming up in the afternoon." The direction of the county judge is carried out. The jurors thus named are influenced in their verdict. Then do we get justice? For these reasons, Mr. Chairman, I am opposed to any such change being made in our Constitution.

It is said that there are abuses. I concede that, Mr. Chairman. but will you tell me where there are not abuses? I have a friend in New York to whom I was speaking in reference to commissioners of jurors, and he said, "If I had fifty dollars I could sit on any

jury. I would not be at all troubled." And that is in the city of New York, where they have a commissioner of jurors, and I have no doubt that their system is as good as could be made in any place. But upon the question, to which I referred a few moments ago, in reference to the drawing of jurors: there is not a town, and I do not believe there is a county in the State of New York, but what the towns have assessors who belong to different political parties, and the assessors being the ones who draw the jurors will mix them so that there will be a fair representation of the people. I had the honor of holding the office of district attorney during the time when violations of the excise law were being prosecuted before grand juries. I remember several instances where the supervisor, interested in a certain way, put into the jury-box only the names of persons who would act in accordance with his ideas. But that is not general, it is only occasional. The abuses under the present system are very few, Mr. Chairman, and, for the reasons that I have stated, I am opposed to the bill, and also opposed to the amendment.

Mr. Root — Mr. Chairman, this proposed amendment was aimed at what the Judiciary Committee was satisfied constituted a real evil in many parts of the State. Personally I have little familiarity with the conditions which were reported to the committee as existing and as calling for some relief, because in the city of New York we have a commissioner of jurors, and the jury system works to the general satisfaction of the people. But, sir, we were told, and there came from many counties of the State very urgent representations, that there were evils which the Legislature ought to have the power to remedy. This proposed amendment was designed solely to remove any existing doubt as to the power of the Legislature. Now, sir, I cannot refrain from yielding my assent to many things which have been said here to-day in criticism of this bill. I recognize the fact that grave objections have been presented. It may be that they can be obviated. It may well be, as to some of them, that if they cannot be obviated the bill ought not to pass. I should like an opportunity for the introducer of the measure, and for the members of the committee who have reported it, to consider these various objections, to see whether they can be obviated, and the evil, which we believe exists, be reached without incurring the just criticisms which have been made to-day; and with the consent of the introducer of the measure, therefore, I move that the committee now rise, report progress, and ask leave to sit again.

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

The committee thereupon rose and President Choate resumed the chair.

Mr. Cochran — Mr. President, the Committee of the Whole, having had under consideration proposed constitutional amendment No. 369 (introductory No. 362), entitled "Proposed constitutional amendment to section 18 of article 3, of the Constitution, to permit the appointment of commissioners of jurors in any county of the State," have made some progress with the same, but not having gone through therewith, have directed their chairman to report the same, and ask leave to sit again.

Mr. Veeder — I move to disagree with the report of the committee, and that the bill be referred back to the Judiciary Committee, with instructions to report it adversely.

The President — The question is on Mr. Veeder's motion to disagree with the report of the Committee of the Whole and to refer it back to the Judiciary Committee, with instructions to report adversely.

Mr. Cassidy — Mr. President, I desire to amend Mr. Veeder's motion by moving to strike out the enacting clause and all the lines from one to ten, inclusive, of the amendment.

Mr. Veeder — Mr. President, the trouble with that is that there is no enacting clause. We are not a legislature.

The President — The Chair rules that the motion of Mr. Cassidy is out of order, and the question is on Mr. Veeder's motion.

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

Mr. Becker — Mr. President, I hope this motion will not prevail. I am not going to make any extended speech, but I wish merely to say that my original bill, No. 87, provided that it should only apply to counties containing a certain number of inhabitants. The great trouble with the present method of selecting jurors, I should say, from the statements made upon this floor to-day, does not exist in the rural counties of the State, but it grows out of political conditions existing in the great cities of the State very largely. It may be, as suggested by Mr. Root, that if this bill is allowed to go back to the Judiciary Committee, they may be able to provide some sort of an amendment which will meet the objections specified by the gentleman on the floor of the Convention this morning.

Gentlemen of the Convention, I say to you, with the utmost earnestness, that in my own county we are suffering from the rottenest system for the selection of juries that exists in any county

in this State. A measure was prepared for the relief of this condition of things. It went to the Governor, and was vetoed because of the constitutional objections which are sought to be removed. When it got to the Judiciary Committee they thought it was a good thing, and that it should apply to the whole State. You have heard upon this floor that the commissioner system is working well in New York and Brooklyn. Why not give us a chance in Erie county, and, perhaps, extend it to some of the other counties in the State in which large cities are located, so as to have the same thing there that they have in New York and Brooklyn? I beg of you, do not vote it down now. Let it go back to the committee. Give us a chance to look it over and see if we cannot frame some thing that will obviate the objections which have been presented. If we cannot, we will have to suffer for it, and then you can vote it down as well as you can now. But at least be courteous enough, in view of the feeling that exists upon this subject in our section of the State, and in other sections where large cities exist, to make some provision by which we may protect ourselves against these evils.

Mr. McDonough — Mr. President, I move to amend the resolution by striking out so much of it as requires the committee to report adversely.

The President — You ask to have the vote taken separately upon disagreeing with the report of the Committee of the Whole?

Mr. McDonough — Yes, sir.

The President — The first question will be on disagreeing with the report of the Committee of the Whole.

Mr. McDonough — My idea is that this should go back to the committee. Let them report as they may see fit. I move to amend so much of the resolution as requires the committee to report adversely, leaving the committee to report as it pleases.

Mr. Maybee — Mr. President, I hope the motion of the gentleman from Kings will be adopted by this Convention. The proposition to refer this matter back to the Judiciary Committee, with instructions to propose amendments, only involves unnecessary delay. It is evident from the general opposition that is manifested among the members of the Convention to this proposition in any form, that its favorable consideration at this time by this Convention, in any form that may be suggested, is a forlorn hope. I am satisfied that the citizens of nearly all the counties of this State are opposed to any such modification of the manner of selecting jurors as is involved in this proposed amendment. I do not believe that there is any

general dissatisfaction with the present mode of selection. The proposed amendment also involves an additional expense to the taxpayers in the creation of a new office, in the payment of salaries and compensation. I hope the motion of the gentleman from Kings will be adopted.

Mr. Veeder — Mr. President, I think the motion should prevail, because I believe we have thoroughly discussed this proposition, and that we thoroughly understand it. Moreover, you will find that you are constitutionalizing the office of commissioner of jurors; you are creating a new office. By the Constitution, as it stands to-day, the Legislature may provide, by a general law, for the manner of selecting and empaneling juries. Now, here, by this special legislation, that you propose to put into the Constitution, you undertake to create the office of commissioner of jurors, to constitutionalize it. Then, if you have a system that works worse than the one you now have (and of which my friend from Buffalo complains), you cannot get rid of it. If, by general law, the Legislature cannot be prevailed upon to cure the evil, what else can we do, unless we resolve ourselves into a legislative body? That we have not the power to do, and the people have not sent us here for that purpose. The organic law is all that we are here to deal with. The legislative power, and the judiciary, and the executive, must all remain; and the people must be trusted to select their representatives.

Mr. Foote — Mr. President, it seems to me that some action of this Convention is necessary in reference to this subject. The constitutional provision at present is as follows: "The Legislature shall not pass a private or local bill in any of the following cases: Selecting, drawing, summoning or empaneling of grand and petit jurors." Now, under that provision, it seems to me, it may very well be doubted whether the act creating the commissioner of jurors in the city of New York is constitutional. I do not know that the question has ever been raised, but if this provision of the Constitution means anything, it means that such laws shall apply to the whole State, and not to the city of New York, or the city of Brooklyn, or the city of Albany. Now, sir, it seems to me that the present provision of the Constitution might, perhaps, be so amended as to meet the difficulty which exists and to constitutionalize the present act, applicable to the city of New York, by adding a clause to the present section to provide that special laws, or local laws, may be passed upon this subject applicable to counties containing large cities. And in that view I hope the matter will go back to the committee, in order that the question may be there considered.

Mr. Veeder — Mr. President, the law providing for commissioners of jurors in New York and Kings counties was passed prior to this amendment to the Constitution. The apprehension about its not being within the power or scope of the Legislature, I believe, will be removed by that consideration.

Mr. Foote — Very well, Mr. President, if that be so, we have had it stated to us that an act has been already passed applicable to the county of Albany, to which this objection must exist.

Mr. Barhite — Mr. President, coming as I do from the most beautiful, the most cultured and the best governed city in the State of New York, I cannot adequately appreciate the corruption which exists in the city of Buffalo. But, sir, I take it from the words of delegates from that city, that they need some relief as to the manner in which their juries are selected; and I hope that the motion of the gentleman from Kings will not prevail. I do not think it quite fair to the introducer of this amendment, or to the Judiciary Committee, that they should not have another opportunity to pass upon this proposed amendment and see if they cannot eliminate some of the objectionable features to it. I say, sir, that as to the amendment in its present form, I am opposed to it. I do not believe in placing in the hands of the county judge, or in the hands of the justices of the Supreme Court, any power which will give them more influence over juries than they have at the present time. Under our present system, we have two distinct parts to every court, one is the judge of the law, the other is the judge of the facts. And, as was well said the other evening, by the gentleman from New York (Mr. Root), when we were discussing the question of trial by jury, that system was designed and has always been used as a protection against the judges themselves. I do not believe, sir, in making any amendment to the Constitution of this State which will give the judges any more power over the selection, or over the deliberations of a jury, than they have at the present time; but still, Mr. President, I recognize at the same time that our system of selecting jurors is not perfect. I know that in the country districts, and I know that in city districts, promises are often made by gentlemen who are up for minor offices that they will put certain men upon the grand jury and upon the petit jury in consideration of work at the polls on election day. Now, if any system can be devised that will do away with that, I am in favor of it; and, feeling as I do, that some system may be devised which will be an improvement, but, at the same time, being opposed to the amendment in its present form, I certainly hope that this motion

will not prevail, and that the Judiciary Committee may have another opportunity to look the matter over.

Mr. Kerwin — Mr. President, I hope the motion to disagree will prevail. As every person in this Convention knows, we are trying to form a Constitution which the people will indorse. I, as the representative of four hundred thousand workingmen in this State to-day, do not want any amendment to go back to the committee which will give the people a chance to say, when the question is asked, "What is the Constitutional Convention doing?" It is giving the judges of this State autocratic power, not alone in rendering decisions, which shall put us in prison for contempt, but allowing them to form their own juries, which will try us for contempt, and send us to State prison on the same charges. I do not wish to attack anybody in this Convention. I want every vote that I can hold to sustain our own measure. And, Mr. President, I feel proud, standing upon this floor to-day, to say that I do not know who I am antagonizing, because the amendment before the house is the only amendment on our files that does not bear the name of the introducer. I do not know who introduced it. I do not want to know. But, in the name of these four hundred thousand workingmen in this State, who are entitled to a vote for the indorsement of the work of the Constitutional Convention, I hope this body will disagree with the report of the committee, and let the people of the State of New York see that the delegates to the Convention are doing some work, and that they are not going to clothe our judges with more power.

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

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

The President — The first question is upon that part of Mr. Veeder's motion, which moves that we disagree with the report of the Committee of the Whole, by which they ask leave to sit again upon this amendment. Does Mr. Veeder insist upon his call for the ayes and noes upon that part of it?

Mr. Veeder — No, Mr. President.

The President put the question on disagreeing to that part of the report of the committee by which they asked leave to sit again upon the amendments, and it was determined in the affirmative.

The President — The question is now on the other portion of Mr. Veeder's motion to commit this amendment to the Judiciary Committee, with instructions to them to report adversely on the same, and upon that question Mr. Veeder calls for the ayes and noes,

Mr. McDonough — Mr. President,I move to amend that part by striking out so much of it as requires the committee to report adversely. That was my motion.

The President — The question is on Mr. McDonough's amendment.

Mr. Vedder — Mr. President, I rise to a point of order. A motion in Committee of the Whole to rise and report progress, and then a motion that the report be disagreed to, kills the bill. The bill is dead now.

The President — The Chair holds that the point of order of Mr. Vedder is well taken.

Mr. Maybee — Mr. President, I move to reconsider the vote disagreeing with the report of the Committee of the Whole, and to lay that motion upon the table.

The President put the question on laying the motion of Mr. Maybee upon the table, and it was determined in the negative.

The President put the question upon the motion of Mr. Maybee for a reconsideration of the vote, and it was determined in the negative.

Mr. Mulqueen — Mr. President, I move that we now adjourn.

The President — Before the motion to adjourn is put, the Chair would like to present to the Convention a communication from Mr. Herman H. Trapper, in which he asks that various expenses of his in attempting to maintain his contested seat in this Convention be in some way provided for. What is the pleasure of the Convention in regard to it?

Mr. Deady — Mr. President, I move that Mr. Trapper's matter be referred to the Legislature. We have no power to award any compensation for any expenses that he has incurred in this controversy.

Mr. McMillan — I move to amend by having the matter referred to the Committee on Contingent Expenses.

The President — Does Mr. Deady accept that amendment?

Mr. Deady — I do not, Mr. President, because I do not think the Committee on Contingent Expenses have any authority whatever to consider the matter. If anybody has power to award compensation to these gentlemen, of course they deserve it, and they will get it in time; but the proper authority to award that compensation is the Legislature, and not this body, nor any committee of it. I, therefore, do not accept the amendment proposed by Mr. McMillan.

Mr. McMillan — Mr. President, I do not think the resolution to send this account to the Legislature ought to prevail. We should dispose of it here. We should not sanction it in any way by sending it to the Legislature from this body. We should either determine that we have no control over the matter, or we should refer it to some committee and ask them to report — either the Judiciary Committee or the Committee on Contingent Expenses.

Mr. Tekulsky — Mr. President, this bill is a matter for this Convention to decide upon, as to what should be done with it. The bill for the expenses of the other delegates was referred to the Committee on Elections and on Contingent Expenses. I hope this matter may be sent to the same committees, so that it may be decided as a question of law. I believe there are plenty of lawyers upon those two committees who can decide whether we have any power or not.

Mr. McMillan — Mr. President, I accept the suggestion of Mr. Tekulsky.

The President — The question is on Mr. McMillan's amendment, substituting for the Legislature the joint Committees on Privileges and Elections, and on Contingent Expenses.

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

The President put the question on the adoption of the resolution as amended, and it was determined in the affirmative.

Mr. Mullen — Mr. President, if it is in order, I desire to rise to a question of privilege, and to state to the President and gentlemen of the Convention that in reference to the contest in the Sixth Senatorial District, the case is printed and was placed upon files of the members yesterday, and is known as Document No. 28. I also desire to say that the contestees had prepared their brief and had it printed, but, owing to the fact that the case has been printed, it is necessary for the contestees to make some amendments to their brief, and we propose to place the brief in the hands of the printer this afternoon, and, if possible, will endeavor to have it on the desks of members to-morrow. In the meantime, inasmuch as we understand that the contestants have placed their briefs in possession of the members, we trust that the members will wait until both briefs are before them, so that they may consider the briefs and the case together.

Mr. Pratt — I am obliged to ask to be excused from attendance on Thursday and Friday of this week, and possibly Tuesday and Wednesday of next week.

The President put the question on the request that Mr. Pratt be excused from attendance, and he was so excused.

Mr. Rogers — Mr. President, I ask to be excused from attendance on Thursday and Friday of this week.

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

Mr. Kimmey — Mr. President, I desire to be excused on Thursday and Friday of this week.

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

Mr. J. I. Green — Mr. President, I ask to be excused to-morrow and next day.

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

The Secretary read the announcement of meetings of committees.

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

Whereupon the Convention adjourned to Thursday, July 26, 1894, at ten o'clock A. M.

Thursday, July 26, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber at the Capitol, Albany, N. Y., July 26, 1894, at ten o'clock in the morning.

President Choate called the Convention to order.

The Rev. A. Kennedy Duff offered prayer.

Mr. O'Brien moved that the reading of the Journal of July 25, 1894, be dispensed with.

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

The President — The calendar of general orders will now be taken up.

Mr. Abbott — Mr. President, before the calendar is taken up, I desire to ask to be excused from attendance upon the Convention to-morrow and next Tuesday.

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

Mr. McClure — Mr. President, I ask to be excused from attendance to-morrow, by reason of an engagement in court.

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

Mr. C. H. Lewis — Mr. President, I desire to ask for an excuse for Mr. Goodelle, for to-day and to-morrow. He is detained at home and unable to be present.

The President put the question on the request of Mr. Goodelle to be excused from attendance, and it was determined in the affirmative.

Mr. Arnold — Mr. President, I ask to be excused from attendance to-morrow.

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

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

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

Mr. Roche — Mr. President, I ask to be excused from attendance to-morrow.

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

Mr. Lester — Mr. President, I ask to be excused from attendance to-morrow on account of important business engagements.

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

Mr. Hill — Mr. President, I would like to be excused from attendance on Friday of this week and Tuesday of next week.

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

Mr. Smith asked unanimous consent to introduce a proposed constitutional amendment at this time.

O. 367.—Proposed constitutional amendment to section 6, article 1 of the Constitution, for the better protection of natural and personal rights.

No objection being made the same was received and referred to the special committee.

Mr. Cochran — Mr. President, I ask leave of absence until Tuesday for Mr. Towns, on account of his continued illness.

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

Mr. T. A. Sullivan asked unanimous consent to introduce a resolution directing that proposed amendment No. 361, which has been heretofore referred to the Committee on Corporations, be also referred to the Committee on Governor and State Officers.

No objection being made, it was so referred.

The President — The Secretary will call the list of general orders.

The Secretary called general order No. 2 (introductory No. 99), proposed constitutional amendment to amend article 3 by the addition of a new section prohibiting the Legislature or any division of the State from granting pensions to any civil officers or employes, not, however, including existing police and fire department pension funds, introduced by Mr. Roche.

Mr. Roche moved that the Convention go into Committee of the Whole upon general order No. 2.

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

The Convention resolved itself into Committee of the Whole, and Mr. Vedder took the chair.

The Chairman — The Convention is now in Committee of the Whole on general order No. 2, printed No. 371, the last one, introduced by Mr. Roche, to amend article 3 by the addition of a new section, prohibiting the granting of pensions to any civil officers or employes.

Mr. Roche — Mr. Chairman, the proposition as now reported from the Committee on Powers and Duties of the Legislature, is No. 371. When it was in committee the other day, two or three amendments were offered for the purpose of taking care of the health officials' pension funds and of park police pension funds wherever they were established. I was not aware at the time that there were such funds, and, therefore, the amendment to the proposition as originally introduced related entirely to existing police and fire department pension funds. These proposed amendments only show the extent to which the pension system has gone and the danger of its continued extension, not only in the cities in which it now exists, but also in the larger municipalities of the State.

Now, the proposition as reported from the committee makes no mention of police or fire department pension funds, but undertakes to recognize all those which have been created under existing laws, whether they relate to park police, health officers, firemen, policemen or other officers or employes. The section reads:

"This section shall not be held to repeal or modify any existing

laws, by virtue of which pension funds have been created in any municipality." So that it is broad enough to take care of any pension funds, no matter to whom they relate, which have been established pursuant to existing laws. I think it only fair and just that this should be done, because whatever may be our views relative to pensions to civil officers or employes, it would hardly seem just that when they have been established for a number of years and the beneficiaries or intended beneficiaries have themselves contributed to the creation of these funds to the sums which they now contain, that they should be rudely done away with, and that we should be thrown into a mass of confusion and probably of great litigation at the instance of these beneficiaries.

Now, when the matter was up the other day, it was also proposed that nothing in this section should be held to withdraw from the present judges the compensation which they were to receive pursuant to section 13 of article 6 of the Constitution. Those amendments were also referred to the Committee on Powers and Duties of the Legislature. That committee have thought best to have this matter reported back to the Convention, without making any provision for these judges, and to leave it to the Convention itself to say whether it will take care of those who have been already elected, and will continue to them the compensation which they were to receive pursuant to that provision. My own judgment about it is that the good faith and honor of the State of New York are pledged to continuing the compensation which it was agreed, at the time of the election of these persons, they should have; and I do not believe that a great State like this can afford to have its good name and faith in any way tarnished by refusing to do what the people, through its organic law, agreed that they would do in reference to these public officers. It is a question entirely apart from any contract. I do not believe that there is any contractile relation between the public treasury and these officers. It is a question, in my opinion, entirely apart from any vested interest, as it is said. I do not believe that a public officer has any vested interest in the salary which is attached to the office, to an extent that would prevent the Legislature from either abolishing the office or reducing the salary at any time during its continuance. But, Mr. Chairman, in my opinion, it is a question away beyond these. It is a question, as I have said, of good faith, and of honor. It is not one of saving some tens of thousands of dollars, which would otherwise be paid to these gentlemen, because I believe that the good faith and the good name of the State are priceless. They are above all question of dollars and cents. And, therefore, believing that the matter will

come up fully and squarely in this committee upon that aspect of it, I shall in proper season propose an amendment in these words: "Nor shall this section be held to apply to the compensation to be paid to any judge of the Court of Appeals, or justice of the Supreme Court who was elected prior to January 1, 1894, who shall have served, or who may serve as such for ten years or more, and whose term of office has been or will be abridged pursuant to the provisions of the Constitution in force at that date, but such compensation shall be continued to such persons as therein provided."

Now, Mr. Chairman, in addition to what was said the other day relative to these pension funds, I want to say further that the figures which were submitted by Mr. Van Denbergh have surprised me, and, I think, have surprised most of the delegates to this Convention. They emphasize the necessity of putting in this Constitution some provision stopping pensions to civil officers and employes. It appears from these figures that with what has already been paid to these judges and what will be paid to such of them as are now upon the bench, pursuant to this provision of the Constitution, nearly a million dollars will be withdrawn from the public treasury. There are but forty-six justices of the Supreme Court and seven justices of the Court of Appeals, making fifty-three officers in all; a very small number, who will have received this enormous sum of money. Now, when you take into consideration the thousands of employes throughout the municipalities of this State, in its fire, its health, its police, its educational departments, you get some idea of the magnitude of the sums that will be withdrawn from public or local treasuries if this pension system is to be extended, and the enormous burdens that will be imposed upon the taxpayers. As I said the other day, it is only a question of time when, if it is engrafted upon the charter of one locality, it will be extended to others. It has been suggested, "Can you not trust the Legislature in this matter?" I say, no. I say no, not because I mean to deride the Legislature, to doubt the good faith and honesty of the vast majority of its members, but I say so merely because of the way things are done, as I know they are done, as we all know they are done in the Legislature. For instance, a proposition comes to the Legislature from the city of Troy for pensioning school teachers or firemen. A member has sat here for months. He has become well acquainted with his fellows, and is considered a good and respectable man among them. He has voted for their local measures. A man from Buffalo, or a man from New York says, "This is something that affects only the city of Troy. It takes no money from my people, it is to be taken from the taxpayers of the city of Troy alone, and

if they want it up there I will vote for it." And so that is engrafted upon the laws relating to the city of Troy. The Troy man does the same thing when some measure comes up for Elmira or Buffalo; and, as I say, it is only a question of time when this system will be engrafted upon every populous locality within the State of New York. Not because the members of the Legislature believe that it is wise, but because in their good nature they have consented that at the instance of the local man it shall be given to his locality, and at the instance of some other member from some other place it shall be given to his locality.

Now, Mr. Chairman, it seems to me, we ought to be warned in regard to this matter by what we know has already occurred in the State and the nation. I am myself a believer in pretty liberal pensions for the men who fought in the armies of the Union in the late rebellion, but we know that there are great scandals and abuses connected with the system of military pensions, and that many undeserving men are to-day receiving the bounty of the government. We also know that what was thought to be but a small sum, when it was proposed to retire army and naval officers, at a certain age, and continue their pay or a portion of their pay, has grown into an enormous amount of money, which is withdrawn every year from the public treasury for the benefit of men who have reached the age of sixty-two years, and who continue to live well up into the eighties and nineties, performing no public service, and yet receiving large sums of money from the national treasury. What will be done in one case with these military officers and employes, will likewise be done in the case of civil pensioners.

Now, it has been said, Mr. Chairman, that some of these employes should receive these pensions because of the extra risk which they take in connection with their employment. I deny that they take any such extra risk. But, conceding that they do, they are invariably well paid for it. The man who receives two thousand dollars a year as a police captain, as a molder in the foundry never earned more than nine hundred or a thousand dollars. He had his time of strikes, he had his days when the foundry was shut down for repairs or for some other reason. There was a good portion of the year in which he earned nothing at all. He has since received public employment. He has had much larger wages. He has lost no day in the year, Sundays and holidays included.

I have received, Mr. Chairman, from a gentleman in Brooklyn to-day a letter upon this subject, which presents it even in much better light than I could present it to the Convention, and a few extracts from which I will read. Referring to this system, he says:

"It is undemocratic and un-American to create a privileged class of civil servants. Policemen and firemen are not liable to compulsory service as such, but on the contrary, eagerly seek such service and are liberally remunerated therefor. No class of skilled mechanics are so well paid and regularly paid, and they are fortunate above ordinary citizens in obtaining such steady and remunerative employment. It is not true that their occupation is of an extra hazardous character, for the mass of laboring men and mechanics are exposed to and receive more disabilities and fatalities than do the policemen and firemen as a class; but even if their calling was extra hazardous, it is not obligatory, and the occupation is eagerly sought. Why should a public servant, after having been favored for twenty years, retire and live a life of leisure on a pension that exceeds the average earning capacity of the vast majority of his fellow-citizens of his own grade of ability? We have here many men retiring in the prime of life after twenty years' service, still robust men, and often rich, and loafing all the rest of their days at the expense of the industrious and frugal citizens who have been less fortunate. The New York Sun of the 13th inst. referred to a case in this city of a sergeant of police retiring on half pay, and incidentally stated that he was 'well fixed,' being the owner of several houses and lots in this city. Many others are doing a good business while drawing half pay as retired policemen and firemen. One of our park policemen, doing full duty at full pay, is also drawing half pay as a retired city policeman. Already our taxpayers are groaning under excessive burdens, and our hard-working, thrifty mechanics are discouraged from purchasing homes because of the excessively high taxes; and when they see these favored people, who, after the good fortune of a city job, had good pay of twenty years, living a life of leisure or entering some profitable business on the savings of those twenty years of prosperity, and still receiving a pension that in amount exceeds the average total earning of our skilled mechanic, there is good reason for complaint. In other walks of life, where the danger to life and limb is far greater, with pay less by one-half than received by a policeman or a fireman, work is sought in vain by eager and worthy citizens. Take all classes of railroad men, for example, trainmen, switchmen, etc., their employment is five times as hazardous, far more arduous, longer hours and less than half as much pay, yet how many are glad, very glad to get the work. This deserving class by enhanced taxes helps pay these unearned pensions to policemen and firemen. This civil pension business belongs to monarchical governments, but has no

proper place in a government of the people, by the people and for the people."

Mr. Schumaker — Mr. Chairman, I would like to ask the gentleman a question.

The Chairman — Does the gentleman from Rensselaer give way?

Mr. Roche — Yes, sir.

Mr. Schumaker — Mr. Chairman, I ask the gentleman to give us the name of the writer of this letter.

Mr. Moore — Mr. Chairman, I would like to ask Mr. Roche if this bill contemplates taking away the pensions from those who are in the employ of the health board of New York city, who have been injured, or disabled by reason of their contact with infectious diseases?

Mr. Roche — It does not, Mr. Chairman. On the contrary, it distinctly preserves the pensions that have already been established.

Mr. Moore — Can the gentleman state what those pensions are, for my information?

Mr. Roche — I do not know what they are.

Mr. Schumaker — Mr. Roche, will you give to the Convention the name of this gentleman who states several instances of outrageous conduct?

Mr. Roche — I do not believe that he has stated any instances of outrageous conduct.

Mr. Schumaker — This Convention is entitled to his name. You cannot send anonymous communications of this character here without giving the name of the person sending them.

Mr. Roche — I do not think, Mr. Chairman, that the Convention is entitled to his name. I do not think he has stated any case of outrageous misconduct. I think the gentleman has simply referred to the fact that even under existing laws, greater abuses may arise than have in fact arisen, and as the gentleman who sent me this letter —

Mr. Mulqueen — Mr. Chairman, I rise to a point of order. My point of order is that the gentleman is out of order in reading an anonymous communication unless he makes the same a part of his remarks. If he indorses the sentiments and makes them his remarks, then they are entitled to go upon the record, and otherwise not.

The Chairman — I think the point of order is not well taken; that the gentleman has the right to refer to the letter in making his

remarks. It is a question of delicacy or good faith, perhaps, in reference to giving the gentleman's name.

Mr. Schumaker — Mr. Chairman, I do not wish to be captious, nor do I wish to hold any gentleman to a very strict line of debate, but he instances a case in the police department where a sergeant, in resigning, says: "I am well fixed, and I own several houses, and I can get along without my salary." Now, Mr. Chairman, I know most of the sergeants who have resigned in the city of Brooklyn. They are my friends, and I think I would be very unjust to them if I did not get up in this Convention and say: "Whom do you refer to? Which one do you mean?" I do not believe in this underground, unfair mode of attack. If the gentleman stands for what his correspondent says, I am perfectly willing to say no more.

The Chairman — Mr. Schumaker will have a chance to properly criticise it at the proper time.

Mr. Dickey — Mr. Chairman, I would be glad to ask a question of Mr. Roche, with his permission.

The Chairman — Mr. Roche has the floor; if he gives way, you may ask him a questionn.

Mr. Roche — Certainly, Mr. Chairman.

Mr. Dickey — I would like to inquire whether the term "employes," as used in this proposed amendment, meant to include National Guards who are at the service of the State, and may be injured in the performance of that duty?

Mr. Roche — In my opinion it does not, Mr. Chairman, because the proposition very clearly relates only to civil officers and employes, and men who are in the military guard of the State of New York, in the militia of the State, are in the military service of the State.

Mr. Dickey — I would like to ask, Mr. Chairman, may they not be included in the general term of employes, when they are in such service?

Mr. Roche — If the gentleman will look at the amendment, he will see that the word "civil" qualifies not only officers but employes. Now, I will state further, Mr. Chairman, that I do not know in regard to the facts that are referred to in this letter. I do not undertake to say that they are or are not the case. The writer of the letter mentions a public newspaper in the city of New York as authority for the statement that a sergeant of police —

Mr. Moore — Mr. Chairman, I rise to a point of order. My point of order is that the gentleman is not right in attempting to state the

contents of the letter; that it should be sent to the Secretary's desk and read by the Secretary for the information of the Convention.

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

Mr. Roche — If the facts stated in this communication are not true, they are subject, of course, to correction or inspection at the hands of any person who is acquainted with them. I do not feel authorized in disclosing the name of the writer, though I should think from the heading of the letter that he is a responsible and respectable citizen; because the communication does not authorize me to mention his name, and I do not choose, therefore, to take that liberty without authority. If the facts, however, are not true, they can, as I say, be denied. Now, Mr. Chairman, it has been further suggested, that, perhaps, by continuing the pension system, or holding out to the public officers or employes the idea that they will obtain pensions after a certain number of years of service, you will thereby procure a better class of employes. It seems to me the idea is a very far fetched one. The highways to public office and preferment are to-day choked with applicants, men and women. There is no trouble in getting men of high character and ability for all kinds and classes of public service, and instead of encouraging others to go in there, of a different or higher quality, it seems to me that you simply increase four-fold the number of applicants for public place. You add to the quantity without at all improving the quality. It seems to me that all the arguments which were made here the other day are conclusive as to the wisdom and as to the necessity of incorporating in the Constitution now, before this system shall go any further, not only a check upon it, but a prohibition upon it, in order that we may not have fastened upon the taxpayers of the State within the next five or ten or fifteen years, a huge system of taxation for the benefit of civil officers and employes.

Mr. Spencer — Mr. Chairman, I would like to know what the motion is before the House, as I desire to speak to that motion. If there is no motion before the House, I desire to make one.

The Chairman — I suppose the motion Mr. Roche made was to strike out the section for the purpose of explaining it. He withdraws his motion, I understand.

Mr. Spencer — Then, sir, I will speak to that motion.

The Chairman — He has withdrawn it, I understand.

Mr. Spencer — Then I will renew the motion, with the permission of the Chair. I can see no good to be accomplished by the adoption of this proposed constitutional amendment. If I have learned

anything from the discussion that has ensued this morning, and from that which took place the last time it was before the committee, the single purpose and object of this proposed amendment is to abolish the compensation that is now being paid to retired judges, or to prevent a continuance of that scheme. I do not understand that it is contended by anyone that civil pensions are an existing evil in this State. I do not understand that anyone claims that there is any danger in their becoming a serious evil in this State. I do not understand it is the desire of this Convention to interfere with the legal rights of the gentlemen who are now, as judges or retired judges, drawing their pay under the provisions of this Constitution. But if I understand the intent of those who are favoring this measure, it is simply to cut off any further payment of such salary or compensation to judges who may be hereafter elected. My objection, therefore, to this proposed amendment is that it is too broad and sweeping. It attempts to do too much. Now, sir, it is pointed at pensions, and there are, practically speaking, no pensions paid by this State to any officer or class of officers. The doctrine of paying civil pensions, as has been repeatedly stated here, is un-American and obnoxious to the people of this State, and no Legislature, and no body representing the people, will ever pass any law, I believe, that will seriously entrench upon the rights of the people in this regard. Therefore, if this proposed amendment does not reach and touch the evil which has been pointed out here in respect to judges, then, sir, it does no good, and is liable to do great harm. It would appear from the long talk of the gentlemen here that there is danger of interfering with pensions that are being paid to police officers and policemen, and members of fire and health departments, and I do not know how many other departments in the municipalities of the State that are being compensated after their service has ceased, by reason of the danger attending their employment. And I think, sir, there is this danger in passing so sweeping a proposition, that it may interfere with some of these things which are considered valuable, and we will only learn, when it is too late, that our proposed amendment has been too broad and wide. If the gentlemen of this committee will turn to section 13 of article 6 of the present Constitution, they will find the provision under which the judges are drawing pay. It provides as follows: "The compensation of every judge of the Court of Appeals and of every justice of the Supreme Court, whose term of office shall be abridged pursuant to this provision, and who shall have served as such judge or justice ten years or more, shall be continued during the remainder of the term for which he was elected." Now, sir,

there is nothing here in this provision in regard to pensions. There is no suggestion here in regard to a gratuity. There is nothing here in the Constitution that can in any way be construed as bounty or gift; and I do not know whether it was the thought of the committee that the words "retired pay" apply to this provision of the existing Constitution or not, but if so, I think they are mistaken. I do not think that the words "retired pay" apply to the thing which exists by virtue of the present section of the Constitution. That is in no sense retired pay. It is compensation. It is a part of the salary which is paid to those judges, and they are entitled to it as much when they fulfill the provision or condition contained in the Constitution, as they are to the yearly salary which has already been paid to them. This provision of the Constitution has been before the highest court of this State on several occasions, and in the words of Judge Gray, in the 125th of New York, it is not classed as a gratuity or retired pay, but is considered as a permanent addition to the salary of the judge. Those are the words of the learned judge in commenting upon this provision. The theory which underlies this provision of the Constitution is this, that a man who will consent to act as a justice or judge of the Court of Appeals of this State from the time he is sixty until the time he is seventy years of age, that his services are more valuable to the State and the people than the services of a man between the age of thirty and forty, or forty and fifty, or fifty and sixty, and in that regard, I deem the provision a wise one. For, undoubtedly, with the ripe judgment and experience of a man during that period of his life, his services are, indeed, more valuable to the people on the judicial bench, and, sir, it is an inducement here that men, when they reach the age of sixty, and when the natural desire of life is to retire from active mental service, shall continue in the service of the State and give their valuable services to the State. For that reason they say to him: If you will continue as judge of the State during this period of your life, you shall draw, not ten, or five, or six fourteenths of your salary, but you shall draw the whole salary for the whole time for which you are elected; and when a judge has served those ten years he has earned the compensation which the Constitution says shall be paid him. It belongs to him, as a matter of right, under the contract which he has entered into with the State. It is money that he has fully and completely earned and cannot be withheld from him. And so, in some measure, in regard to judges and justices who have not as yet served that period of their life on the judicial bench. The question as to them is slightly different, but I do not think it is in principle. Now, sir, when the people of

this State in their Constitution said to these men: "We will compensate you in this matter," it was, in effect, a contract between them; at least, the State was bound to pay this compensation, provided the judge fulfilled the conditions, and the fulfillment of those conditions rests upon the voluntary act of the judge alone. As this is a Convention largely composed of lawyers, I need not say that death, sickness or insanity comes under altogether a different rule of law, and cannot be considered as affecting the condition herein involved. It is left simply to the judgment or wish of the judge himself, and, if he retires during that time, why, he then shall not become entitled to that compensation. And what shall we say to this attempt to deprive judges who are now upon the bench, and who have entered upon their labors under this provision of the Constitution? What shall we say of any body of men who should vote to change that compensation? To illustrate: If a client should come to you and say: "I will pay you ten dollars a day for trying my lawsuit, and give you a conditional fee of a thousand dollars if you win," and after you had partly performed the services, he should come to you and say: "I withdraw that conditional compensation, and you must be content with the pay for the day's service." It would not be valid; you would regard him as breaking his contract, and you would regard his act as unjust and immoral. So I look on this in the same light, as beyond the power of the Convention to interfere with this contract which these gentlemen have entered upon the fulfillment of. But it seems to me that if we enact this provision as it now stands, we will not touch that subject at all, but will leave the provision contained in section 13 of article 6 of the Constitution with its full force and effect; and it will be said that this Convention has come here and talked loudly and enthusiastically upon the subject of pensions, and has adopted a provision of the Constitution which does not touch the error or evil which they had under consideration. As a Convention, composed almost exclusively of lawyers, I think we should have more care for our representation, in regard to a matter of this kind, than to pass this act or adopt this proposition as it now stands. I am opposed to this proposition, and I would suggest here to the committee that if they desire to act directly upon the evil which is prominent before us, and which we have had under consideration, that it can be done, in my judgment, by the insertion of not more than three words in the present section of the Constitution. If the committee would insert in section 13 of article 6 of the Constitution the words "now in office," after the words "Court of Appeals," they would certainly meet this question as to all judges

hereafter elected. They might also insert the same words after the words "Supreme Court" and then no possible question could arise as to judges hereafter elected; and judges heretofore elected would continue under the law as it stood when they were elected. It would be a simple, direct and conclusive way to deal with this subject, and take out of it all this buncombe, which we have had so much of, in regard to pensions and the pensioning of civil lists. Now, sir, when I strike a blow I want to aim at the object I desire to hit, and it seems to me that in introducing and passing this provision, in regard to pensions, we are firing a shot into the air, away above the object we desire to reach.

Mr. C. B. McLaughlin — Mr. Chairman, I offer the following substitute. I offer as a substitute for the report of the committee on this subject the proposition introduced by myself, No. 179, referred to the Judiciary Committee.

The Chairman — The Chair would say to the gentleman from Essex (Mr. C. B. McLaughlin) that a substitute is not now in order until we act upon the amendment.

Mr. C. B. McLaughlin — I simply wanted to offer it and then follow it with a motion.

The Chairman — You are in order, if you offer it as an amendment, and then you can change it as a substitute.

Mr. McLaughlin — I simply offer it as a substitute, and I move that the committee now rise, report progress, and ask leave to sit again, and that this proposition be printed.

The Chairman — Do you offer it as an amendment?

Mr. C. B. McLaughlin — I offer it as an amendment.

The Chairman — You will please send it to the desk.

Mr. Holcomb — Will the gentleman please give way so that I can offer an amendment, so that it may be printed at the same time?

Mr. C. B. McLaughlin — I will give way to the gentleman.

The Chairman — The gentleman from Rensselaer (Mr. Roche) has the floor and offers the amendment, which the Secretary will read.

The Secretary read the amendment as follows:

Nor shall this section be deemed applicable to any judge of the Court of Appeals or justice of the Supreme Court elected prior to January 1, 1894, whose term of office has been or shall be abridged by reason of age, and who shall have served as such judge or justice ten years or more, but he shall be entitled to the compensation

attached to his office during the remainder of the term for which he was elected.

Mr. Maybee — Mr. Chairman, is debate on the main question now in order?

The Chairman — Debate is in order.

Mr. C. B. McLaughlin — Mr. Chairman, my motion was that the committee now rise, report progress and ask leave to sit again.

The Chairman — The Chair understood that the gentleman from Essex (Mr. C. B. McLaughlin) was going to make an amendment and send it to the desk and then make the motion afterwards. The gentleman from Sullivan (Mr. Maybee) has the floor, and the Chair will put the motion to rise and report progress, after he has finished. The Secretary, however, will first read the amendment.

Mr. Holcomb — Mr. Chairman, I have sent an amendment up.

The Chairman — The gentleman from Essex (Mr. C. B. McLaughlin) was ahead.

Mr. Holcomb — I was ahead of the amendment of the gentleman from Sullivan (Mr. Maybee).

The Chairman — An amendment by the gentleman from Sullivan (Mr. Maybee) is not in order.

Mr. C. B. McLaughlin — With the consent of the Convention, I will withdraw my motion to rise and report progress.

The Chairman — The Sescretary will read the amendment.

The Secretary read as follows:

Section 13 of article 6 is hereby amended as follows: "After the word 'age' strike out the words 'compensation of every judge of the Court of Appeals and of every justice of the Supreme Court whose term of office shall be abridged pursuant to this provision, and who shall have served as such judge or justice ten or more years, shall be continued during the remainder of the term for which he was elected.'"

Mr. Maybee — Mr. Chairman, as a member of the Committee on Legislative Powers and Duties, which unanimously reported the proposed amendment to this Convention, I desire to say a few words in its support. Called into existence by the people's fiat, we ought, so far as we can, to represent the people's will. I do not believe it is the will of the people that any system should be adopted, or, if already adopted, retained, the result of which is to give to any class of men large sums of the people's money for work which they do not perform. It is contrary to the spirit of our institutions to have

a class of civil beneficiaries who do not render any adequate service in return for the money they receive. Gentlemen talk about the overflowing coffers of the State, but it is a fact well known that every year the burdens of taxation are harder to be borne, and it becomes constantly a more difficult problem for a man of ordinary means, and in the ordinary walks of life, to make his income meet his expenses. It is idle to talk of the wealth of the people when factories are standing still, the hum of loom and spindle is hushed and industry is in a condition of paralysis. Public servants should economize the money of the people in every possible direction. They ought not to vote to give any set of men large sums of public money, when no public service is given in return therefor. Of course, it is right that the imperial State of New York should pay its judges adequate salaries. The State does that. I do not propose to join in any crusade against the justices of our Supreme Court, either as to their own characters or as to the character of the work which they perform. I believe them to be generally faithful, conscientious and industrious public servants. But I do not know why they should be a class apart, entitled to greater favor and consideration than their fellow-citizens. I cannot see why they should receive pensions any more than faithful public servants who have long and satisfactorily filled any other public office. They receive salaries greater than those given to the judges of the highest court in almost any other State of the Federal Union. Their compensation is larger than that received by United States Senators, members of the most distinguished legislative body in the civilized world. They receive a greater compensation, when the relative cost of living is considered, than is received by the judges of the United States Supreme Court, the most august judicial tribunal within the circuit of the terrestrial globe. They receive larger salaries than the Governors of most of the States, men who are at the head of mighty commonwealths. Most of these judges did not earn as much money before going upon the bench as they now receive from the State. The majority of them retire with a sufficient competence, and all of them ought to do so. This being true, where is the necessity or propriety of extending their salaries beyond their terms of office? I do not believe in it. I do not think the people want it; and for these reasons I shall support the pending proposed amendment and give it my vote.

Mr. Mulqueen — Mr. Chairman, I am opposed to this amendment. I go so far as saying I believe the Constitution, as it stands, should be left just as it is. I do not favor a proposition which would affect the judges in office and those who might be elected

before the 31st of December, 1894. The gentleman (Mr. Maybee) has just stated we are here to do the people's will. The people have passed upon the proposition whether this provision should be in the Constitution of not. The people had an opportunity to vote on it. They voted that the compensation of the judges should be continued after they reached the age of seventy. I agree with the gentleman in front (Mr. Spencer) that it is a good thing for the State, if it secures the services of judges from sixty to seventy years of age. The people of the State find no fault with the present constitutional provision. There is no demand for a change. In the city of New York, which pays a large share of the State's taxes, not one expression of opinion has been made that we should change this present system. Now, when we seek to engraft something upon the Constitution it should be, it seems to me, because of some present abuse. The gentleman from Troy (Mr. Roche) has said that on these questions the Legislature cannot be trusted. I want him to point out to me some abuse of the pension system. It is true the Legislature of the State of New York gave to the city of New York the right to pension its policemen and its firemen, and I want to say that the people of the city of New York are proud of that privilege. They do not begrudge the money that is paid in pensioning policemen or firemen. The gentleman has said that the duties are not extra hazardous; that the ordinary workman must encounter the same risks. Let me, for the gentleman's information, read to him an article that appeared in an evening paper published in the city of New York last evening as to our firemen.

HEROIC FIREMEN.

"New York's record of heroic deeds wrought by firemen is a long and shining one. Rarely, though, has there been an occasion when the honors of heroic fortitude and self-sacrifice in the face of imminent death have been distributed among so many that it is a matter of difficulty to bestow them. Such was the case in the conflagration that followed a mysterious explosion last evening in the five-story business building, No. 21 Walker street.

"While sixteen men of Patrol No. 1, of Murray street, were in the shattered building, covering up goods, a crash came. Half that number hurriedly emerged, announcing that their comrades had been buried beneath fallen interior masonry and timbers. Chief Bonner ordered them back to the work of rescue. Not one flinched. They re-entered the yawning jaws of destruction, while the inhabitants of neighboring structures and sidewalks fled from the nameless terrors and the apparently tottering walls.

"So brave and so skilfully did they work, that the eight men imprisoned under the debris were safely extricated, and all escaped with nothing worse than serious bruises.

"They were heroes, every one. Yet every one of those eight prisoners, no doubt, would have been as prompt to respond to the call of duty and of a forlorn hope, as their rescuers had been, had their positions been reversed.

"New York's firemen are all heroic. Was one ever known to flinch from doing his duty, even unto death? New York does well to trust and honor its firemen."

Now, I say, Mr. Chairman, we can readily understand that, if this constitutional provision was in the Constitution at the time of the passage of a law permitting the city of New York to pay a pension to its firemen, the city of New York, even though those sixteen men gave their lives in that fire, could not give a single dollar to the families of those brave and noble firemen. We of New York believe that we are citizens of no mean city. We believe that services well performed should be well paid for, and we believe that it is for the good of the service that men, who have served as firemen and policemen for a certain number of years, should be pensioned.

Now, Mr. Chairman, there is another class of public servants in our city, in regard to whom there is a great demand that there should be a change in the pension law. Commissioners of public education, men who give their time and service to the public without compensation, have said that it would benefit the system, if we could pension school teachers after they arrive at a certain age. They put the question in this way, and they say a man or woman who has given thirty years of public service to the schools cannot be turned out. They must be kept there to teach the young, and yet he or she may have passed the age of usefulness. Now, they say they are men, they will not turn out those public servants; they must be kept in the system, and the children must suffer therefor. They believe and have recommended to the Legislature that a pension law should be passed permitting them, in their discretion, to pension such public servants, such teachers, either male or female, who had served a sufficient number of years, and whose pensioning would be a benefit to the general service. I say we can trust the Legislature in this matter; we can leave the Constitution just as it is. There has been, there is no demand for this change. I say, sir, that if the Legislature, for any reason, for the popularity of a local member, should pass a pension law which

the people of a locality did not demand, then the public opinion of that locality would be aroused, and they would come to the next Legislature and have the obnoxious law repealed. The fact that the Legislature, up to the present time, has passed nothing but good laws in the line of pensions, should make us pause before we place a bar against any future legislation on this subject. Now, sir, it is the dream of a gentleman of this Convention that some day we will have an imperial city of New York, one that shall be known as the Greater New York. If this pension system of our city works well now and gives satisfaction to the people, still, under this amendment, we could not extend its provisions so as to include the officers of the outlying districts that might be taken into that Greater New York. You will see how restrictive this amendment is: "There shall be no appropriations of public money, or of moneys raised by taxation for the benefit of such funds to any greater extent than is now authorized by law." So that if we ever have a Greater New York, the benefits which we believe now exist from the pension system cannot be extended so as to cover those people. If new cities should be created in the State of New York and the people of those cities should believe it to be in the public interest to pension policemen or firemen or other worthy public servants, under this amendment they would not have the power. Believing, Mr. Chairman, that we can trust the Legislature, that the representatives in Senate and Assembly represent immediately the people, I am opposed to this amendment.

Mr. A. B. Steele — Mr. Chairman, I hail from the same village wherein resides that eminent jurist, member of the Court of Appeals, who, if the pension or if the moneys to be paid to them are cut off from those now enjoying judicial positions, would be more materially affected than any other gentleman who has been upon the bench. He is a neighbor of mine and I know his eminent qualifications, not only his qualifications as a member of the judiciary, but his ability and his qualities as a gentleman. Therefore, what I may have to say I do not want understood to be in any manner with any envious spirit or any desire that any gentleman, who is entitled to compensation, should be cut off. But, Mr. Chairman, and gentlemen, let us look this matter squarely in the face. The gentleman from New York (Mr. Mulqueen), who last spoke, says this amendment to the Constitution of 1880 was carried by the voice of the people. Yes, that is true. I, among others, took part in the matter and advocated the principle of paying judges who had served ten years upon the bench for the balance of their

term. But what did we represent to the people, gentlemen? We said that it applied, not to ten years of service, but ten years of that particular term. I heard it remarked and advocated by speakers from the stage addressing different electors, and when any man said, "I object to it, because a judge elected for fourteen years may, after serving one year, share the salary for the full term," the remark came back: "No, he must serve ten years of that particular term, and, in no event, can he be pensioned beyond four years;" and upon that representation, I believe, the people of this State carried the amendment. Now, gentlemen, should not that be considered in passing upon or in proposing an amendment? Let us go a little further. It has been said here that the sum to be paid would amount to about one million dollars, the amount that had been and would be paid, but that is not all. They put it upon the basis that $7,200 was the highest amount paid to any justice of the Supreme Court. If I am correctly informed, in the city of New York the judiciary receive $17,500, so that you have got to enhance the amount that has been stated. But let us go a little further and see whether we stand in any danger at the present time. I have taken pains to examine the certificates in the Secretary of State's office so that I am able to give, not only the names of the judges, but their ages, and the amount of compensation they will draw for doing no service whatever; that is the amount that they will draw after they cease to be members of the judiciary. I find that this year we paid the sum of $36,000. For 1895 it is increased to $48,000. For 1896 it is increased to $60,500. In 1897 it remains the same. In 1898 it will be $67,700. Then in 1899 it will be reduced again to $60,500. But in 1900 it will run up to $74,900. And, gentlemen, I stop there. I dare not go any further. (Cries of Go on! Go on!) I say I stop there. I dare not go any further, because I do not want the people to know what an enormous sum of money is being paid to the judiciary for no service whatever. Now, a little further, I have examined to see the ages of the members of the Court of Appeals, the average when elected. And, what do you suppose I find it to be? Over fifty-four years, between fifty-four and fifty-five. So that, assuming that half of the judges become seventy prior to the first day of July of the year in which their term would expire, the average age of the judge of the Court of Appeals, that is, the average judicial age, is sixteen years. And, as it stands at the present time, with the opportunity for re-election — and a renomination in ordinary years is equivalent to a re-election for fourteen years — so that a judge, if he gets that renomination, with the Constitution, as it stands at the present time,

on the average, cannot serve over two years, and still we would pay them the enormous sum of $12,000 for fourteen years. With a view, possibly, of remedying that apparent evil, and for the purpose of calling it directly to the attention of the Convention, I proposed an amendment (introductory No. 305), which would make the office of the judge of the Court of Appeals expire when he becomes seventy years of age and not before, regardless of his age when nominated or when elected. I believe that would be more beneficial than anything else that can be done. Almost every man who occupies the position of a judge of the Court of Appeals has been a judge of the Supreme Court, and it is on account of his merits there that he goes higher and is chosen to fill the position upon the Court of Appeals bench. Now, gentlemen, I went further and examined, in reference to the average age of the Supreme Court judges of this State, and I found it to be forty-nine. So that, in no event, could the average judge of the Supreme Court fill the position more than one term and a half. That startled me, at first. I supposed that on the average they could fill the office, most of them at least, two terms, but with the average of forty-nine that would be impossible. Out of the sixty-two judges who have been elected since the term was extended to fourteen years, only twenty-one of them could serve the entire second term. I do not know how it is through the State, but in my district, where there is one judge from each county, if a judge of the Supreme Court asks for a renomination, the lawyers do not oppose it. I do not know whether it is for personal reasons, or whether it is the thought of their clientage. At least it has been the practice, with, I think, one exception, in my judicial district, for a man to be renominated regardless of the question whether he could serve ten, five or three years. Now, gentlemen, for the reasons I have assigned, it seems to me that some action should be taken by this Constitutional Convention, so that the people's money would not be spent without consideration therefor.

Mr. Dickey — Mr. Chairman, I would be very glad to find myself in accord with the gentleman from Rensselaer (Mr. Roche) on any and all propositions that he introduces in this Convention, because I recognize his ability and his desire to do good service to the people of this State, but his amendment is so wide-sweeping in its provisions that I feel impelled to oppose it. I was at first inclined to support his general proposition, excepting, of course, and amending it so that justice should be done to the judges who have been retired, or are about to be retired, on arriving at the age of seventy, and retaining the pay that the people voted for them.

But the gentleman from Putnam (Mr. Osborn), in his speech the last time this matter was up in the Committee of the Whole, made such a strong and forcible argument upon the whole question that he turned my attention to the matter, and I have since been thinking of the subject. On examining this amendment I find that it is so widespread and reaches so far in its provisions, that if we had, in the office of Governor, a poor man, and he should be stricken down by the bullet of the assassin, which is not at all improbable, even the Legislature could not, nor could the people, through their representatives, vote his widow or children the balance of his pay for the time for which he had been elected. It is so wide-reaching in its provisions that, however meritorious, however deserving a case might be, and, even though the Legislature would be only too glad, with the applause of the entire community, to give a sum to the widow or children of one dying in the service, and after long and faithful service, that this is a prohibition to the full against it, so that not a dollar could be given to the widow or helpless children in such case. I, for one, do not believe that the people of the State of New York want any provision in the organic law that prevents the doing of justice in a case that calls for it. Therefore, I am against this amendment, and hope it will be voted down.

Mr. Hamlin — Mr. Chairman, I wish to say but a few words on this question, in the interest of downright honesty. The question that surprises me is that in this Convention of the great people of the State of New York, brought together here to amend the great charter of this imperial State, men can be found who will stand up and attempt, in any way, to destroy what is the good faith of this people to its judicial offices. Sir, I care not whether the people of this State are to pay $1,000,000 or $5,000,000. I appeal to the history of a people that has never repudiated an obligation, nor committed a breach of faith upon any statute by which compensation has been directed to be paid to public servants. Now, there is nothing in the past Constitution which speaks of pensions. It speaks of compensation; and, whether it is legal or whether it is moral, let this Convention not go to the people with the proposition established that we are ready to repudiate either a legal or a moral obligation. Why, sir, we represent 7,000,000 people. We are assembled in a house here that has cost those people upwards of $20,000,000, and we are here haggling over a question of compensation to judges, a question which has been placed in the great charter of this State by the vote of its people. And when gentlemen come in here and say that the people did not understand what

they said, I say it demeans the character of the people of the State of New York. Why, sir, up in the country where I live, if a private individual had said to his servant, " You shall work for me ten years under certain conditions and receive a certain amount of money," and then should repudiate his contract on any technicality, that individual would, himself, be repudiated by my constituency. I trust that this Convention will consider long before it repudiates, directly or indirectly, any obligation which has heretofore been placed in the fundamental law of this State.

Mr. McMillan — Mr. Chairman, I am in favor of the principle involved in this amendment, but, owing to some differences which have arisen as to the application of it, in reference to the judiciary, I now move that the committee rise, report progress and ask leave to sit again.

Mr. Burr — Before putting that motion I would ask leave to submit an amendment.

The Chairman — Two amendments are now before the committee and a further amendment would be out of order.

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

The committee thereupon rose and the President resumed the chair.

Mr. Vedder — Mr. President, the Committee of the Whole have had under consideration proposed constitutional amendment No. 371, have made some progress therein, but, not having gone through with the same, have directed me, their 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 on granting leave to sit again, and it was determined in the affirmative.

Mr. McMillan — I move that the amendment just reported from the Committee of the Whole be recommitted to the Committee on Legislative Powers and Duties, with instructions that they ask a conference committee with the Committee on the Judiciary.

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

The President — I assume, Mr. McMillan, that you couple with that, that it should retain its place on general orders?

Mr. McMillan — To retain its place on general orders.

Mr. C. B. McLaughlin — I move that the amendment, including the substitute that was offered for this proposed amendment when

it was under consideration in the Committee of the Whole, be printed.

Mr. Burr — I would ask permission to have this amendment of mine included.

The President — Does Mr. McLaughlin include Mr. Burr's proposed amendment.

Mr. C. B. McLaughlin — I do.

Mr. Holcomb — I would like to have my amendment included.

Mr. C. B. McLaughlin — I will include Mr. Holcomb's amendment.

The President put the question on the motion of Mr. C. B. McLaughlin, as amended, and it was determined in the affirmative.

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

The Secretary called general order No. 6, proposed constitutional amendment to amend section 7 of article 7 of the Constitution, entitled Salt Springs.

No. 7 was not moved.

The Secretary called general order No. 4.

The President — Mr. Hill has informed the Chair that he does not wish to move that to-day.

The Secretary called general order No. 6, Document No. 27.

Mr. A. H. Green — I move that the Convention go into the Committee of the Whole on that proposition.

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

The Convention resolved itself into Committee of the Whole, and Mr. Durfee took the chair.

The Chairman — The Convention is in Committee of the Whole on general order No. 5, Document No. 27, the report of the Special Committee on the Transfer of Land Titles. The Secretary will read.

The Secretary read the recommendations of the committee as follows:

The committee recommend that the following clauses be inserted in the Constitution:

All laws relating to the transfer of titles to, or interest in, land in this State, by conveyance, devise or descent, or the recording or

indexing of instruments providing for such transfers, shall hereafter be general laws, applicable to the entire State.

The Governor is directed, at the first session of the Legislature, after the adoption of this Constitution, to appoint, with the advice and consent of the Senate, five persons, residents of the State, who are counselors-at-law and have been admitted to practice for not less than ten years, who shall be known as the Board of Commissioners of Land Records of the State of New York, whose duty it shall be, among other things to be prescribed by the Legislature in connection therewith, to consider, and, from time to time, report to the Legislature such bills as, in their opinion, should be passed by the Legislature to reform, simplify and cheapen the transferring and dealing with the titles to and interest in land in this State.

Any vacancy in said board shall be filled in like manner as the original appointments.

Said commissioners shall serve without compensation, and shall be allowed, for their reasonable expenses and clerk hire, such sums as shall be audited and approved by the State Comptroller.

Mr. A. H. Green — It will be observed from the reading of this amendment that its object is to secure a scientific method of recording and indexing instruments relating to land and for lessening the number of liens. It was the unanimous report of the committee, with the single qualification on the part of one gentleman (Mr. Wellington) that he thought it was a proper subject for legislation, rather than constitutional action. The committee have so reported this amendment that they believe that no pecuniary job can, by any possibility, crawl into it. As will be perceived, it does not propose any system of indexing or recording. Neither the Torrens system, the Australian system, the French system or the Prussian system or any system. It simply provides for the appointment by the Governor of a commission or trained men to recommend to the Legislature a scientific method of bringing about the transfers of title.

The direction of modern reform is toward simple titles to land, its general distribution among the people, free holdings, and in opposition to entailments and permanent settlements. Not only is this deemed advantageous to the farming population, which, in every country, constitutes the great body of the people, but also to the State as insuring permanence of government through general possession of the soil. It was said long ago: "Small ownership is the best protection against socialism." The land question, in one form or another, is uppermost in England, not scarcely excepting, perhaps, the Irish problem, which is also a

land question, and one of the most important branches of the subject is recognized to be that of land transfer.

A few words as to the inception of this movement. In 1872 a special committee of the Association of the Bar of the City of New York recommended "that the number and duration of liens on real estate be materially reduced." No attempt was ever made to cause the recommendation to be carried into effect. Ten years after, in 1882, five members of the same association, who were appointed "to consider and report what, if any, changes should be made in the manner of transferring title to land in the city and State of New York," made an elaborate report to the association, recommending no less than eighteen amendments to the existing law. They also reported that, on account of the great number of instruments and liens recorded in the offices of the New York register and county clerk, searches against real estate practically could not be made in those offices, except by the aid of the private indexes of the official searches. While most of the recommendations were approved by the association, not one of them has matured into law, except that providing for short forms.

In 1882, the same year, the New York Chamber of Commerce adopted resolutions, requesting the Legislature "to appoint a commission to consider and suggest a method of transferring titles to land in this State." After great efforts on the part of those interested, an act was prepared for the appointment of a State Commission "to prepare and report to the Legislature a bill to facilitate and lessen the expense of the transfer of land and dealing therewith in certain cities of this State."

Owing to the opposition which may always be expected to such reforms, it was not until the year 1884 that an act for the appointment of commissioners was passed by the Legislature, and their appointment made by the Governor. After a lapse of six years, two very important bills resulting from its labors were passed by the Legislature. One for short forms, passed in 1890, modeled after the English act, and the other providing for the introduction of block indexing in the city of New York, which was passed in 1889, and perfected by amendment in 1890, nearly twenty years after the movement was initiated.

Both of these acts have been of incalculable benefit to the State. Without the relief afforded by the block indexing act, which was, in the first instance, made applicable only to the city of New York, it is probable that this Convention would have been confronted with the question of the repeal of the recording acts, so far as they affect that city, and with all the consequences, near and

remote, arising from such repeal. Both acts have had a fair trial and been found to work admirably. By an act passed last year the block system is being introduced into Kings county. In New York the act has also been extended to the tax and other city offices, and is in partial operation there.

Another difficulty of equal moment confronts us. The great and ever-growing accumulation of land records in the several land offices of the State, especially in the large cities, necessitates enormous labor in the examination of titles, accompanied by increased risk and cost, a difficulty so great that, unless some relief be provided at an early day, the question will again recur, not merely as to the expediency, but as to the necessity, of the repeal of the recording acts, upon which so vast a number of titles depend, and the closing of the doors of trust companies, savings banks, and of all those companies, the safety of those whose securities depend, under existing laws, upon the protection given to titles to land by a public record.

As I have said, the various methods of reform in the transfer of land, it is not worth while here to discuss. One is the reduction of liens on land; another the mode and legal effect of registration; another the adoption of a short statute of limitations, and one of the most important and far-reaching is the application to real estate, of the laws which govern personal estate, so far as the subject-matter will permit. These and other measures, relating to the reform, require the most mature deliberation by those whose ability and studies fit them for their consideration, as well as the approval of the public. The course of such reforms must necessarily, and should be, slow. No more important interests can engage the attention of the Convention than those relating to land in the cities and farming portions of this State.

In the city of New York alone, not less than $2,000,000,000 (two billion dollars) of real estate is held by more than 200,000 different owners. In Brooklyn and other cities, and in the agricultural districts, the land interest is also enormous.

While every agricultural land owner must be largely benefited by any improvement in the laws calculated to make more certain the title to his property, and to facilitate and cheapen its transfer, and thus enhance its value, the advantages to be derived from such reforms cannot fail to increase the marketable value of the land. To capitalize land, to turn its value into the channels of trade, to give it commercial value, especially in the country where land is held by free titles, in small allotments, by the aid of reforms which, it is well understood by those conversant with the subject,

can accomplish the purpose, would give the State of New York a pre-eminent commercial position.

In England the subject of reform in the transfer of land is very old, scarcely less than half a century, attention having been given there, for the most part, to the simplification of titles, from which difficulty we are comparatively free. In this country the reform is of recent growth, although, at the present time, many States are investigating the subject by the aid of commissions.

To the great importance of the subject to the State at large another reason is added why the Convention should act upon it, the great delay and difficulty which would accompany the attempt to procure the passage of a bill for the appointment of a commission, and of which, if passed, you cannot compel enforcement. The experience had in procuring the passage of the former commission would deter anyone from a like attempt now. Powerful influences have arisen against any change in the present laws, since the passage of the New York bill. Title companies have been formed, which, as every conveyancer knows, are absorbing pretty much all the business of searching in New York and Brooklyn, at an expense to the real estate owners of not far from $500,000 per annum. The capital stock of these companies is held, for the most part, by those whose interests are hostile to any reform, and, with their opposition, reform bills are not likely to be passed by the Legislature, unless supported by the authority and approval of a State commission appointed by direction of the Constitution.

The course of the reform bills, heretofore acted upon by the several Legislatures, shows what little time and thought the ordinary work of the Legislature permits to be bestowed upon the abstruse and technical subjects connected with land transfer reforms. Two bills were reported to the Legislature by the former land transfer commission. One, the majority bill, known as the lot bill; the other, the minority bill, known as the block bill. The Senate, in the first instance, passed the lot bill by a large majority, and, at the next session of the Legislature, the same Senate passed the other block bill almost unanimously, as did the Assembly, and it became a law. It is also important that the Convention should adopt the amendment to the Constitution looking to uniformity of legislation relative to recording and indexing in the State. There is now one legal method of indexing in New York and Brooklyn, and another for the rest of the State. In the city of Syracuse indexing for that city is according to the lines of old patents, without any law for it whatever, it is believed.

Year before last an act was passed for certain indexing to be done in the offices of the comptroller, register and county clerk in Brooklyn, under a commission. The bill was manipulated at Albany by the introduction of certain objectionable provisions. Although the act was mandatory, the city authorities refused to carry it out, and last year the former act was repealed and another substituted, with the sanction, if not the direct co-operation, of the city authorities, conferring upon the comptroller power to introduce into his office objectionable methods of indexing, subversive of the system as used in the other offices of the city. It also bestowed, by implication only, upon the county clerk the power to index future liens on the block plan, without any absolute direction for him to do so, and without any provision whatever as to the legal effect of such indexing as notice.

The Brooklyn authorities have, I am informed, recently, in attempting to copy the New York acts, very nearly got the whole system of recording and indexing in the county of Kings into confusion, and have been forced to ignore a part of the act by reason of its uncertainty and manifest errors.

What is taking place in New York and Kings counties in respect to the very important matters of recording and indexing is liable to occur elsewhere in the State, and in other cities, when block indexing comes into use in those cities, as it necessarily must in time, and should under a general law. An amendment to the Constitution is imperative in order to perfect measures to prevent such further legislation as has been attempted.

In view of the difficulties which have been encountered in the past, and the existing condition of things, it is believed that it would be futile to attempt to procure the appointment of a proper commission to supervise the interests of land in this State, without the direction, such as it is proposed to incorporate in the Constitution. This will avoid the necessity of any application to the Legislature, as the Governor will act directly on the authority conferred by the Constitution.

Reform in the method of transferring land is imperatively needed. Its necessity is increasing every year. In the city of New York, the old and still existing system is unwieldy and productive of delays and great expense. Nearly 4,000 volumes of records have already accumulated in the office of the register, and they are increasing at a rapid rate. The ratio of increase keeps pace with that of the population. As the number of inhabitants of that city has about doubled every seventeen years since 1820, and, as there seems no sign now of decrease, it is likely that soon the present

population of 1,800,000 will become 3,000,000, and the register's records, under the present system, reach 8,000 volumes ere this century shall end. The present system of searching titles, even now dependent upon the private indexes of employes in the register's office, would then become water-logged and break down by its own weight.

If searches cannot now be completed, without great delays and great expense, the delay and expense would, at that time, be greatly increased, so that titles would, as sometimes now happens, be taken without examination and with the risk of possible defects incurred by the purchaser, rather than to encounter the delay and expense of searching. As near as may be, land should be made as easily transferable as personal property.

With very slight difficulties incident to the nature of the estate, a man ought to be able to sell and part with or mortgage his lot, his farm or his house, as quickly and as cheaply as his corporate stocks or other personal estate. There is no insuperable obstacle to this. But now a man cannot carry through a sale or mortgage of land in the city of New York, even after the terms are agreed on, without an average delay of, perhaps, thirty days, sometimes much longer, and at an average expense of, say, $150, and often at a considerable larger sum.

This is a serious weight upon real estate. To remove the obstacle to its ready, easy, quick and inexpensive transfer would be to increase very largely the wealth of the city and of the entire State, and to make this now cumbrous form of property an element of commercial activity. It would also tend to distribute land amongst the people, to make a greater number of land owners, and thus add strength to our country and create for it zealous defenders.

No bill for the registration of titles in any form should be introduced and acted upon by the Legislature, except such as has been prepared and recommended for passage by a commission of competent men, appointed especially for that purpose, who are willing to study the subject thoroughly and give their time and attention to it, and who will inform themselves of all which has been written in relation to it. They should also take testimony and procure and compare the views of lawyers and others. No one person is likely voluntarily to take upon himself the responsibility and labor of preparing such a bill, nor should the work be committed to a single individual. It must be brought about gradually and by trained lawyers and conveyancers. To do otherwise would only lead to confusion.

Mr. Peck — Mr. Chairman, you have before you in this proposed amendment a very important and valuable proposition. Some of the action of this Convention has been criticised as un-American; that we were too far from the people. We have before us, in this proposed amendment, not only something in accordance with all the historical lines of America, but also of the State of New York. We have here also a proposition to put the thrifty man of moderate means on a par with every other citizen, without reference to the amount of his property. Every lawyer here knows that a man with well-selected corporate stock to the amount of $300 can go out into his own neighborhood and borrow at the cheapest rate the full value of that stock. You also know that the thrifty man whose first savings are put in real estate, if he has property of double that value, cannot go into the market and borrow one-half of its value. The reason for this largely resides in the fact of the difficulty, the expense and the trouble of searching land titles and executing land conveyances. This is all wrong. The thrifty man of moderate means should be put upon a par with every other citizen. The best property for the people of this State to own, in the interests of the State, is its own real estate, where men become taxpayers and where they are interested in all economic measures. I said that this was in the line of the history of this State. When the people of this State first assumed sovereignty in its own matters, one of the first efforts which they made at legislation was to carry on the work which had been begun in the old countries, to do away with the difficulties which stood in the way of the alienation of real estate. From that time until the Constitution of 1846 this matter was before the Legislature in isolated statutes on many different occasions, and many reforms were adopted in the law of the land. This thing was perfected to such an extent in the Constitution of 1846 that not a very great deal of legislation has since been required. But that very ability to convey real estate in this State, which has been conferred upon its citizens, has brought upon it a great difficulty. To use the language of Chancellor Kent, it is now so nearly a matter of commerce that the multitude of conveyances has been multiplied and the clerks' offices, the recording books of our registration offices, are crowded and the indexes in many cases are so full and so congested that the searching of real estate titles has become a matter of great difficulty, and has become a matter of great expense. It is often as expensive to search a three-hundred-dollar title as it is to search a three-thousand-dollar title, and the result is that the man of moderate means

cannot use his property, if it is invested in real estate, as a matter of business credit and facility.

Now, that is all wrong. This condition of things has grown out of the work of our fathers. What we should do, if we can, is to so arrange the transfer of titles to real estate that it shall approximate the ease of the transfer of personal property. It is one of the great safeguards of our country. It is often said that our public schools are responsible for the assimilation of the foreign population that comes to our shores, and that to them we look for the homogeneous population of this country. The public schools do work upon the youth who come here, and the children of those who came here in adult years. But I apprehend that the public school must divide the credit with our real estate law. The moment a man comes here from a country where he cannot own land, where the restraints upon alienation are so great that land is the one thing in all the world that he cannot own, the first thing that he does is to invest in land, the first savings that he makes are thus applied. He becomes one of our taxpayers; but when he undertakes to use land as a credit he finds himself at a disadvantage with his neighbor who has invested in personal property.

Now, Mr. Chairman, in view of that it seems to me that a great effort should be made by this Convention to do something which would put these two classes of property upon a par. Now, to show you how this thing is working, take it in my own county. Up to 1846, the assemblage of the last Constitutional Convention, there were sixty-four books of deeds and about the same number of mortgages. To-day there are four times that number; and in the last fifteen years we have more books of recorded deeds than in the fifty-five years preceding the Convention of 1846.

This is a magnificent record for this country. It is one of the grandest things in the history of this State, that land is being distributed to every person who desires it. But, if we leave it at the disadvantage which is growing, it will grow greater. It will be more difficult to manage this question ten years from now than it is to-day. It ought to be attended to to-day. Now is the time. This is the proper time to take up and manage this question.

Now, it may be said that by making general laws we are affecting counties that are not troubled in this way. Mr. Chairman and gentlemen, we are affecting, and ought to affect, every citizen of the State upon this question. Every citizen is liable to have to enter upon the examination of the records of other counties. A man from one county ought to be able to make a search in every county in the State, and it ought to be done at a glance. It can

be done at a glance just as well as the transfer of stocks can be, and the necessity for these great searches can be speedily eliminated. Now, it may be said that this is a matter for legislation. Gentlemen, is there anything in the history of this State which has brought so much lustre to it as those few lines in the Constitution of 1846, which requires that a commission be appointed to codify the law of the State? Our work done then has been copied and used in the vast majority of the States of this Union already, and it has crossed the ocean to the old country. I think that, while it is not comparable, in some regards, to the importance of the commission which was required to be formed under the Constitution of 1846, that it is a very great and important measure in the progress of reform, and that this Constitutional Convention, if it adopts a measure of this kind, will have taken a step forward. We will not merely have been remedying abuses, not merely have been correcting mistakes, not merely dealing with the people indirectly through their banks, through their railroads, through their legislators, through their towns and villages, but we will have come right down to the citizen, and we will help the men who are the bulk of our constituents, the thrifty men of moderate means. This is a question which lawyers understand better than any other class of the community; and those of us who are lawyers owe it to our constituents that this law of the State of New York shall be regulated in this respect, and let it be to the honor of the lawyers of the State that they point the way. (Applause.)

Mr. C. A. Fuller — Mr. Chairman, I regret that I could not hear the argument of Mr. Green, who introduced this proposition. I presume that it contains things worthy to be studied. For one, I do not propose to vote upon any constitutional amendment that I cannot at least study, and, to some extent, understand. To me it seems, Mr. Chairman, that this proposition is unnecessary; that it is creating another commission to go about the State and to incur expense. When the bill comes to be audited it will be found that the expense has not been inconsiderable. So far as my own knowledge and experience go, it seems to me that this is not necessary. I do not pretend to be acquainted with the condition of matters, in regard to the recording and searching, and the manner of keeping track of the real estate in the cities, but in the country communities I think the present system is quite perfect. Any person, lawyer or layman may go into any of our county clerk's offices, and he can very readily run down the title to any piece of land in the county. The present system of indexing is so perfect, and the references and cross-references are so full, that it takes but a short time to discover

the whole history of any piece of land in any of our rural counties. Therefore, it seems to me, so far as my own experience and knowledge go, that this proposition is unnecessary, and that it ought not to prevail.

Mr. Goeller — Mr. Chairman, I have carefully looked over and considered the subject before the Convention, and examined the paper of Mr. Green. I am satisfied that it is a subject of considerable merit, and deem it my duty not to allow this occasion to pass without pronouncing my advocacy of this much-needed reform. In New York city, where I come from, every lawyer's office is an abstract center, I may say, resulting from manufacturing and accumulating abstracts, often upon divisions only of the subject, covering shelves from the floor to the ceiling. It is like storing away old clothes. This bill is a proper one, as it abolishes an evil which is unnecessary, laborious and expensive. I can say, in behalf of myself and many attorneys, that we were quite dumbfounded and amazed at the marvelous reform created by reason of a measure lately enacted by the Legislature establishing the block system in the city of New York. Words cannot express the simplicity which we have attained in that short period of time in perfecting transfers of real estate. I do not desire to make a lengthy address upon the subject, although it is a subject that would justify days of discussion; but I do hope that the amendment offered will be unanimously adopted.

Mr. I. S. Johnson — Mr. Chairman, it is evident that the subject before this committee is an important one. It is also evident that in the remarks of Mr. Green much valuable information has been given, information which is new to most of the members of this Convention, and which they have had no opportunity to consider. It, therefore, seems to me to be important that this matter should be printed and before the Convention before we further consider it; and to the end that we may have the matter printed in the Record and before the members of this Convention before it is further discussed, so that we may understand the discussion, and so that we may take part in it, if we desire, I move that this committee do now rise, report progress, and ask leave to sit again.

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

Thereupon the committee rose, and the President resumed the chair.

Mr. Durfee — Mr. President, the Committee of the Whole have

had under consideration Document No. 27, being the report of the Special Committee on the Transfer of Land Titles; have made some progress in the same, but, not having gone through therewith, have instructed the chairman to report the fact to the Convention, and ask leave to sit again.

The President put the question on agreeing to the report of the Committee of the Whole and giving them leave to sit again upon the amendment, and it was determined in the affirmative.

The Secretary called general order No. 7, introduced by Mr. Holls, proposed amendment to section 4, article 2 of the Constitution, relating to enforcing the duty of voting.

General order No. 7 was not moved.

The Secretary called general order No. 8, introduced by Mr. Lauterbach, proposed amendment to article 9 of the Constitution, relative to suffrage.

General order No. 8 was not moved.

The President — The Convention will proceed with the regular routine of business. Are there any memorials to be presented?

Mr. McMillan — Mr. President, I ask unanimous consent to make an application to be excused from attendance to-morrow, Friday.

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

Mr. Bush — Mr. President, I ask leave of absence for to-morrow, because I have engagements in New York city that I must attend to.

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

Mr. Roderick — Mr. President, I ask leave to be excused from attendance to-morrow. I have engagements which will prevent my attendance.

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

Mr. Lyon — Mr. President, I ask to be excused from attendance to-morrow and Tuesday, as I have matters that require my attention.

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

Mr. Lauterbach — Mr. President, I ask to be excused from attendance to-morrow.

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

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

Mr. Becker — Mr. President, will the gentlemen withdraw his motion for a moment? I desire to ask to be excused from attendance to-morrow on account of business engagements.

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

The President announced the order of communications from State officers.

The Secretary stated that a communication (No. 18) had been received from the Superintendent of Public Works in response to the resolution (No. 135), offered by Mr. Hottenroth July 18, calling for an estimate from said department as to the probable cost of enlarging and improving the several canals of the State.

The President — Does the Convention desire the reading of this lengthy document from the Commissioner of Public Works, containing his estimates of the cost of enlarging the various canals of the State?

Mr. I. S. Johnson — Mr. President, I move that the communication be printed as a document and placed on file.

The President put the motion of Mr. Johnson, and it was determined in the affirmative.

DOCUMENT No. 34.

Communication from the Superintendent of Public Works in response to resolution of Mr. Hottenroth. Estimated cost of enlarging the canal system of the State.

OFFICE OF SUPERINTENDENT OF PUBLIC WORKS,
ALBANY, *July* 25, 1894.

Mr. Charles E. Fitch, Secretary Constitutional Convention:

SIR.— I have your communication of the 18th inst., inclosing a resolution adopted by the Convention, asking for certain estimates relative to the cost of enlarging and improving the several canals of our State, and replying thereto, would respectfully submit the following answers to the questions propounded:

First. Of the probable cost of deepening the canals to a depth of nine feet, with or without raising the banks, or raising or lower-

ing the reservoirs or conduits thereof; also the probable extent of land damages that might result therefrom.

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:

The Erie canal	$4,601,000
The Oswego canal	1,004,000
The Cayuga and Seneca canal	237,000
The Champlain canal	1,831,000
Total	$7,673,000

No proposition has as yet been suggested looking to the making of a depth of nine feet in the Black River canal, which would practically necessitate the building of a new canal, and would cost in the neighborhood of $4,000,000 to $5,000,000.

The foregoing estimates include land damages, engineering, inspection and contingencies, and the following analysis will show the various items of cost. The items of land damages do not include damages arising from percolation of water through the banks, which would be somewhat increased by the increased depth.

Erie Canal.

Excavation and embankment	$2,521,000
Raising locks	287,000
Lengthening balance of locks and new ones at Lockville	605,000
Raising waste-weirs and aqueducts	340,000
Changing feeders and feeder dams	200,000
Raising bridges	130,000
Land damages	100,000
	$4,183,000
Add for engineering, inspection and contingencies	418,000
Total	$4,601,000

Oswego Canal.

Excavation and embankment	$278,000
Lengthening balance of locks	360,000
Raising and repairing dams, aqueducts and waste-weirs,	160,000
Raising locks (one foot)	70,000
Raising bridges	15,000
Land damages	30,000
	$913,000
Add for engineering, inspection and contingencies	91,000
Total	$1,004,000

Cayuga and Seneca Canal.

Excavation and embankment	$165,000
Raising locks (one foot)	10,000
Raising aqueducts, dams and waste-weirs	10,000
Raising bridges and approaches	10,000
Land damages	20,000
	$215,000
Add for engineering, inspection and contingencies	22,000
Total	$237,000

Champlain Canal.

To complete Champlain to seven feet as contemplated by enlargement plan	$1,200,000
To make two feet additional depth:	
Excavation and embankment	325,000
Raising locks (one foot)	35,000
Raising waste-weirs, aqueducts and dams	45,000
Land damages	60,000
	$1,665,000
Add for engineering, inspection and contingencies	166,000
Total	$1,831,000

These estimates are based upon the theory that there would be one foot excavated from the bottom of the canal, and one foot of

embankment placed on top of the bank, and the excavation so made as to not trip or disturb existing slope or vertical walls.

In reply to question second, of the list, as to the probable cost of cleaning the canals so as to give full use for navigation, to the depth of seven feet. would say the following estimate is based on fairly good data, and is substantially correct:

Erie canal	$565,000
Champlain canal	1,200,000
Oswego canal	62,000
Cayuga and Seneca canal	40,000
Total	$1,867,000

Should it be thought desirable to deepen the Black River canal to a depth of seven feet, and make a canal with prism and locks to conform to the size of the Erie, it would be necessary to construct practically a new canal, an approximate cost of which would be about as follows:

One hundred and ten locks	$3,000,000
Bridges and abutments	200,000
Excavation, embankment and structures, other than locks and bridges	1,750,000
Total	$4,950,000

Exclusive of land damages and engineering.

Third.— Of the probable cost of lengthening all locks not already lengthened to a uniform length; there are in addition to the five locks at Lockport, the sixteen on the Cohoes ascent, the two at Albany, and the four side-cut locks at West Troy, nine locks on the Erie canal that may be lengthened, viz.: Three near Newark, four at Little Falls and two at the Upper Aqueduct. Thirty-five of the locks on this canal have already been lengthened at a cost of about $33,000 each, but the average cost of lengthening the nine mentioned would, owing to their peculiar location, be somewhat greater. At Newark it is proposed to change the alignment of the canal and substitute two lengthened double locks for the three now there, the estimated cost of which would be $300,000, to lengthen the two at the Upper Mohawk Aqueduct about $100,000, two of the four at Little Falls $80,000, and the remaining two at that place $125,000.

This, of course, is the estimated cost of completing the lengthening of one tier only, but should it be desirable to lengthen the other tier of all locks, except those at Lockport, the Cohoes ascent, Albany and the side cuts, there would have to be expended an additional sum of about $1,700,000. To lengthen those on the Cohoes ascent would cost $1,120,000, and those at Lockport, where three lengthened locks would take the place of the five existing locks, not far from $400,000.

To summarize the completion of lengthening the balance of locks to be lengthened, as per Seymour plan:

Three near Newark	$300,000
Two at Upper Aqueduct	100,000
Four at Little Falls	205,000
Total	$605,000

To lengthen one tier of remaining locks on the Oswego canal would cost, approximately, $360,000. There are already lengthened eleven locks, leaving nine to be lengthened on this canal.

To lengthen locks on the Cayuga and Seneca canal, none of which have been lengthened, would cost, approximately, $325,000.

To lengthen locks on the Champlain canal, nine of which have been lengthened, would cost, approximately, $830,000.

Summary:

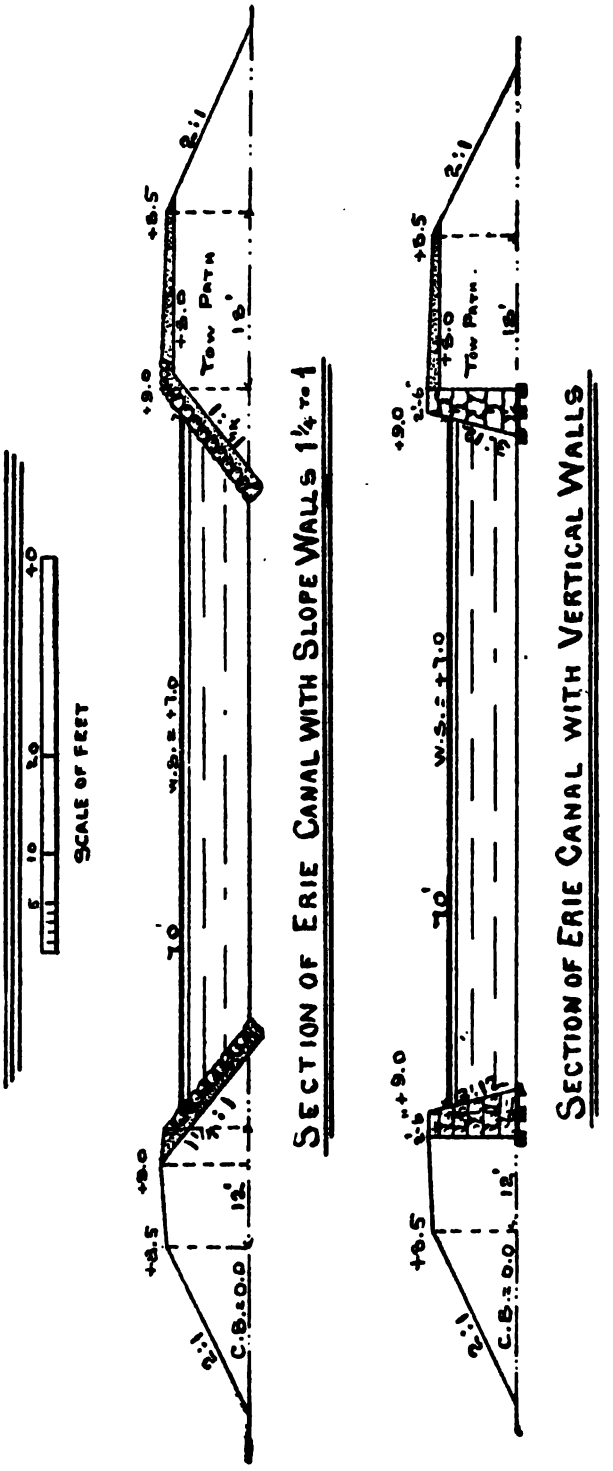
To complete one tier on Erie	$605,000
To complete one tier on Oswego	360,000
Cayuga and Seneca	325,000
Champlain	830,000
Total	$2,120,000
Or Erie and Oswego only	965,000

No lengthening on Black river contemplated.

In reply to the fourth question, the probable cost of building retaining walls wherever necessary for the most effective service, would respectfully submit, that, in the opinion of many of the navigators of the Erie and Oswego canals, in order to make them most effective for use of boats, especially those propelled by steam, suitable vertical should be substituted for all slope walls now existing on the foregoing-named canals. This substitution would cost, on an average, not far from $40,000, plus the cost of engineering

per mile, and as there are not at present more than 140 miles of vertical walls, vertical rock cuts, vertical docks, etc., including wide waters on the Erie and Oswego canals, there would have to be constructed about 250 miles of wall on each side of these canals, at a cost of about $10,000,000 for wall on one side of them only, or double that sum if built on both sides.

I submit herewith a plan showing proposed substitution of vertical for existing slope walls; but should the plan proposed ever be carried out, wise economical considerations would suggest making a somewhat wider and deeper canal, which can be built, according to an estimate made by ex-State Engineer Schenck, for about $25,000,000 to $28,000,000.


SCALE OF FEET
0
5
10
20
40
SECTION OF ERIE CANAL WITH SLOPE WALLS 1¼ TO 1
W.S. = +7.0
70'
+9.0
+8.0
+8.5
+5.0
2:1
1½:1
12'
18'
Tow Path
C.B. = 0.0
SECTION OF ERIE CANAL WITH VERTICAL WALLS

In answer to inquiry No. 5 of the resolution, asking for probable cost of constructing a suitable ship canal in place of and along the route of the present Erie canal, would respectfully submit, that no reliable data exist from which anything like a fair approximation may be had. A bill having for its purpose the making of a survey of the route and estimates of probable cost, etc., and carrying an appropriation of $100,000, failed to receive the approval of the last Congress; and a similar measure is now pending before the present, and it is hoped that the measure will become a law, so that the survey shall be made and the question of cost settled. Various approximate estimates have been given by several engineers, among which those given by ex-State Engineers Seymour, Sweet and Schenck are probably as reliable as any. Mr. Sweet estimates the cost of constructing a canal with a bottom width of 100 feet, a depth of eighteen feet, with locks 450 feet in length, having a width of sixty feet, at about $150,000,000 to $175,000,000.

Messrs. Seymour and Schenck have each estimated that it would cost, including land damages, and damages for diversion of water necessary for such canal, about $500,000,000 to construct a canal from Lake Erie to tide water in the Hudson, capable of bearing the largest ocean vessels; and Mr. Schenck has estimated the cost of constructing a barge canal, that could be navigated by barges 250 feet in length, twenty-five feet breadth of beam and ten feet draft, at between twenty-five and thirty millions of dollars.

An estimate made recently by this department shows that, to construct a canal suitable for the use of existing lake vessels, or such as will probably be built when the new twenty-one feet lake channels are completed, there would have to be expended the sum of $225,000,000.

It is very much to be regretted that so little data exists on this important subject, but, from an investigation, I am satisfied that the foregoing estimates are as nearly correct as any that can be made up from the material now available.

This covers all the questions propounded in the resolutions; and I am of the opinion that on the foregoing pages will be found in sufficient detail the information required as nearly approximate as can be made up from existing data.

Respectfully submitted,

EDWARD HANNAN,
Superintendent of Public Works.

The President announced the order of notices, motions and resolutions, and the Secretary called the districts.

Mr. Marks — Mr. President, if it is in order, I move that the Convention Record, in the second column of page 423, which reads that "Mr. Francis, fro the Committee on Preamble and Bill of Rights, to which was referred the overture introduced by Mr. Marks (introductory No. 15), entitled proposed constitutional amendment, to amend section 7 of article 1, referring to taking private property for public use, introduced by request, reported adversely thereto," be corrected by striking therefrom the words "introduced by request," and adding after the word "thereto" the following "by request of introducer," so that the said Record shall conform to the Convention Journal at page 387. Said Record should read that "Mr. Francis, from the Committee on Preamble and Bill of Rights, to which was referred the overture introduced by Mr. Marks (introductory No. 15), entitled proposed constitutional amendment, to amend section 7 of article 1, referring to taking private property for public use, reports adversely thereto by request of introducer."

The President — The Chair is of opinion that this is not in order. Any motion to correct the Journal would be in order, but the debates will take care of themselves.

Mr. Davies offered the following resolution:

R. 148.— Resolved, That amendment No. 363, proposed by Mr. Cornwell and now before the Committee on Railroads, be printed for the convenience of said committee.

The President put the question on the adoption of the resolution, and it was determined in the affirmative.

Mr. Becker offered the following resolution:

R. 149.— Resolved, That the Judiciary Committee inquire and report what are the existing provisions of law relating to the publication of the results of the work of the Convention.

Mr. Becker — Mr. President, I desire to state in explanation of my resolution that the Secretary of State was here this morning and desired information as to the status of the law upon this subject at the present time; as to how and when and where the amendments here adopted shall be published by him under the existing provisions of the law. I have, therefore, prepared this resolution.

The President put the question on the adoption of the resolution of Mr. Becker, and it was determined in the affirmative.

The President announced the order of the reports of standing committees, and the Secretary called the list of committees.

Mr. McDonough, from the Committee on Prisons and Peniten-

tiaries, moved that the committee be discharged from the further consideration of proposed amendment No. 58, which has been also referred to the Committee on Industrial Interests.

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

Mr. Maybee — Mr. President, the printed debates of the Convention are constantly in arrears. I desire to inquire of the Committee on Printing whether or not it has taken any action on the resolution I offered on July 20?

Mr. Hamlin — Mr. President, on Monday of this week, I think, the debates and everything else were placed upon the files of the members. Since that time there may possibly have been some dereliction. Monday morning, as I am informed, the proceedings, so far as the printers are responsible for them, will be put upon the files of the members.

Mr. McKinstry, from the Select Committee on Further Amendments, to which was referred the proposed constitutional amendment introduced by Mr. Dickey, introductory No. 366, entitled "Proposed constitutional amendment to section 6 of article 6 of the Constitution, so as to create an additional judicial district from territory in the Second and Third Judicial Districts," reported that the same had been found to relate to matters already under consideration in the Judiciary Committee, and had, therefore, been transmitted, without printing, directly to said committee for its information, under rule 73.

Mr. I. S. Johnson — Mr. President, with the consent of the gentleman who moved to adjourn, and in view of the fact that Mr. Holls says he will be able to move general order No. 7 this evening, and, as we have ascertained that we can consider a matter much better after it has been presented by the mover of the amendment, I move that this Convention now take a recess until eight o'clock this evening.

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

Mr. McMillan — Mr. President, I ask unanimous consent to make a motion. I move that the Secretary be directed to enter a note upon the Journal to the effect that the debates have not been placed upon the files of the delegates since July 20. The condition which the Convention imposed was that they should be put upon the files of the delegates upon the day following, and, that being a condition precedent to their right to compensation, I think some record of it should be kept. I, therefore, move that a note

be entered upon the Journal that no records of the debates are upon the files of the members after the 20th day of July.

Mr. Foote — Mr. President, I move to amend, that the Secretary on each day hereafter enter upon his Journal the date of the latest record of the proceedings and debates that are on file.

Mr. McMillan — Mr. President, I accept the amendment.

The President put the question on the resolution, as amended, and it was determined in the affirmative.

The Secretary read the announcement of committee meetings.

Mr. A. B. Steele asked leave of absence for to-morrow on account of business engagements.

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

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

Whereupon the Convention adjourned until Friday, July 27, at ten o'clock A. M.

Friday, July 27, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber, at the Capitol, in Albany, N. Y., on the 27th of July, 1894, at 10 o'clock in the morning.

President Choate called the Convention to order.

The Rev. R. D. Williams offered prayer.

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

The President — A communication from Senator Hill, enclosing a communication from the French ambassador, will be read by the Secretary.

The Secretary read the communication referred to as follows:

UNITED STATES SENATE,
WASHINGTON, D. C., *July 26*, 1894.

The Hon. Joseph H. Choate, President New York Constitutional Convention:

DEAR SIR.— The resolutions which were duly passed by the New York Constitutional Convention in regard to the death of the late President Carnot of France, were duly received by me and transmitted to Mr. Patenotre, ambassador of the French republic here.

I have received the enclosed letter from him acknowledging their receipt, which I have the honor to forward to you.

I remain very respectfully,

DAVID B. HILL.

AMBASSADE DE LA REPUBLIQUE FRANCAISE AUX ETAS UNIS,
WASHINGTON, D. C., *July* 24, 1894.

Hon. David B. Hill, United States Senator, Washington, D. C.:

I have the honor to acknowledge the receipt of your favor of the 21st inst., in which you send me certain resolutions passed by the Constitutional Convention of the State of New York upon the occasion of the death of the late President Carnot.

Will you kindly inform the members of that Convention that I shall not fail to transmit to Paris their beautifully engrossed resolutions, and assure them that my government will deeply appreciate the sentiments which were adopted at Albany, on motion of Hon. John Bigelow. Thanking you personally for your courteous intervention in this matter, believe me,

Very respectfully yours,

PATENOTRE.

Mr. Alvord — Mr. President, I move you, sir, that the communications both of the senior Senator of the State of New York in the United States Senate and the minister from France be spread upon our Journal and printed.

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

The President — The Chair has received a memorial from electors of New Rochelle, in large numbers, as to the manner of conducting elections in the towns and villages of our State containing over 5,000 inhabitants. It is referred to the Committee on County, Town and Village Government.

Mr. McKinstry — I have the honor to present a memorial from Fredonia Grange, the first Grange established in the United States, of the Order of Patrons of Husbandry, now comprising over 1,000,000 members. There are over 50,000 of them in New York State, nearly all of them taxpayers; and a more intelligent and patriotic body of citizens cannot be found anywhere. This memorial has reference to the enlargement or sale of the Erie canal. I ask to have it referred to the Committee on Finance.

The President — Unless objection is made this memorial, at

Mr. McKinstry's request, will be read by the Secretary and referred to the Committee on State Finance.

The Secretary read the memorial.

The President — Should not that also go to the Committee on Canals, Mr. McKinstry?

Mr. McKinstry — I think it should take that course.

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

Mr. Powell presented a memorial and petition of William H. Allen and others, citizens of Albany, relative to nominations by direct vote of the people.

The President — To what committee do you wish to have that referred?

Mr. Powell — I hardly know what committee to suggest. I do not think, myself, it is very material.

The President — It is referred to the Committee on Suffrage. There are no communications from State officers. Resolutions, notices and motions are in order. The Secretary will call the districts.

Mr. Floyd — Mr. President, I desire to ask what became of the communication from the Pennsylvania railroad which was handed down yesterday morning, and whether, in the course of the regular proceedings, it will appear anywhere in the records of the Convention, or be printed.

The President — It was referred to the Committee on Railroads. There was no order for its printing.

Mr. Cochran — Mr. President, I am in receipt of a letter from Mr. Jenks, of Kings, to the effect that he has been called home on account of illness in his family, and request that he be excused from attendance to-day.

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

Mr. C. H. Lewis — On account of business engagements I desire to be excused for Tuesday and Wednesday of next week.

The President put the question on excusing Mr. C. H. Lewis from attendance, and he was so excused.

Mr. Mulqueen — I ask to be excused next Thursday and Friday on account of engagements.

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

Mr. M. E. Lewis — I ask to be excused on Tuesday and Wednesday of next week on account of business engagements.

The President put the question on excusing Mr. M. E. Lewis from attendance, and he was so excused.

Mr. Burr — Mr. President, Mr. Faber, of Kings, requests me to ask that he be excused from attendance to-day.

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

Mr. Jesse Johnson — I ask to be excused on Tuesday and Wednesday of next week.

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

Mr. Titus — I ask to be excused on Tuesday, Wednesday and Thursday of next week.

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

Mr. Herzberg — I would like to be excused next Tuesday.

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

Mr. Morton offered the following resolution which was read by the Secretary:

R. 150.— Resolved, That the Committee on Rules report a rule providing for evening sessions of the Convention.

Mr. Alvord — I desire to say here and now that I am in favor of the general proposition, and I will not make a motion, but inasmuch as very many gentlemen of this Convention have already departed to buy their yokes of oxen, and neglect their duties here, they will not know the fact that we commence on Monday evening. I would, therefore, suggest to the committee when they shall have this in their charge, that on and after Tuesday next should be the time when they should commence evening sessions.

The President put the question on the adoption of the resolution, and it was determined in the affirmative.

The President — If any other gentleman has any other proposition or resolution to offer to go to the Committee on Rules, it may be offered now, because they can hold a session this morning.

Mr. Francis offered the following resolution, which was read by the Secretary:

R. 151.— Resolved, That it be referred to the Committee on Rules, to consider and report if in their judgment the same be

proper, to the Convention, to take the place of the present rule adopted July 17, 1894, the following rule: "No committee shall be compelled to make an adverse report before, in its judgment, the time has arrived to make such report, unless called upon so to do by a vote of the Convention, and no motion calling for such report shall be debatable except by the mover and one of the committee called upon to make the same, and the limit of debate shall not exceed five minutes to each speaker.

Mr. Bowers — Mr. President, I oppose that resolution.

Mr. Dickey — I am surprised, Mr. President, that the chairman of the Bill of Rights, so called, should offer such a proposed rule for consideration to this Convention. For the Committee on the Bill of Rights to propose a gag rule of that kind is against the best interests of this Convention and the doing of its work, and against the interests of the people. Such a proposed rule, Mr. President, would permit work to be done in the committee alone and end there. I do not think that this Convention wants any such rule at all, or wants the Committee on Rules to consider any such rule. Why, by a majority vote of nine against eight, they might keep in the committee any measure that was referred to them, and it could not be taken out of that committee and brought before the Convention except by a majority vote of the Convention, and then the debate on that question would be limited to five minutes on the side of the person proposing to have it reported from the committee. It is in the interest of gag law and not in favor of freedom of speech, and I hope that this motion will not prevail and that no such resolution will be passed.

Mr. Alvord — Mr. President, I desire to say ——

Mr. Bowers — I rise to a point of order. As this resolution is to be debated, it should lie over for a day.

Mr. Alvord — Oh, no; it relates to the present business before the House.

The President — The Chair is of the opinion that it relates to the business before the House, the business of this and every other day.

Mr. Alvord — Mr. President, I desire to answer the gentleman from Orange (Mr. Dickey) very briefly. The rule has always been in the past, in legislative bodies, that no committee could be compelled to report except by an actual vote of the body which had formed that committee. We are in this unfortunate position that if by any means any gentleman who has a proposition before our committee now, under the existing rule, shall see fit to ask us to

make a report upon it, we are bound by that rule to launch it forth upon the Convention. This is a matter which should not be left to one individual to demand. It never has been, in the past, the rule of any legislative body. It should be left to the good, common, sober sense of the Convention whether the committee shall be compelled to make that report. That is all I have to say in regard to this matter. It is simply in the view of progressing the business of this Convention that some time before the next one we shall have been through with our labors.

Mr. Bowers — Mr. President, if I understand the resolution correctly which is offered, it is not to refer the subject-matter to the Committee on Rules where it can be discussed, but it proceeds to provide that an adverse report cannot be compelled except upon a vote of the Convention, and that the speeches shall be limited to one or two men, to a five minutes period.

Mr. Alvord — Mr. President, will the gentleman permit me to interrupt him a moment.

Mr. Bowers — I always yield to whatever you say.

Mr. Alvord — I desire to say to the gentleman that this will leave it to the judgment of the Committee on Rules whether they will report the rule.

Mr. Bowers — Will the Secretary read the resolution?

The Secretary again read the resolution.

Mr. Moore — Mr. President, I rise for information. Will the President kindly state for information whether the main resolution is to be debated now, or whether it is simply a question of its going to the Committee on Rules?

The President — The Chair decided that, as this relates to the business of this and every other day, it is debatable now. The proposition is to refer it, as I understand, to the Committee on Rules to consider the propriety of such a rule.

Mr. Bowers — Well, let us hear the part which says so.

The Secretary again read the resolution.

Mr. Bowers — I do not think the Committee on Rules ought to be permitted to consider such a proposition, Mr. President. If the business of this Convention has been permitted to be carried on in such a fashion that the time has now arrived when its labors cannot be concluded without the adoption or even the submission to the Committee on Rules for adoption of a resolution to close debate on every question on which you can get a majority vote in the opposite direction, the minority may as well go home and consider

their work finished. I submit to this Convention that where a question is under debate in a committee, and there is a great difference of opinion, that we are right in saying that the committee should be compelled to make an adverse report, that the Convention itself may deal with the proposition. The committees are not infallible. The Judiciary Committee learned it to their cost a day or two ago, and I presume there are other committees where the majority may determine in their own fashion and may find that this body may determine it just the other way. Now, Mr. President, some of the most important matters that will be brought before this Constitutional Convention will be introduced by members who may turn out to be in the minority in their respective committees. Shall we forbid all discussion of those propositions, or rather, by the grace of some person connected with that committee which has it in charge, be permitted only to have a five minutes' debate in this House as to whether or not that committee should be compelled to report the proposition? Are we to assume that the only propositions that are to be submitted to the people are propositions emanating from the majority of the committee? Rather, Mr. President, I think we should assume that in accordance with the general character of the deliberations of this House up to the present moment, that each individual member is to have an opportunity, properly and respectfully and decently, and in order to advocate his views; and such, I maintain, has been what has been done so far. There has been no effort to delay or to use up time or to prevent the business of the Convention being carried on, and I do not believe there ever will be, and there is no necessity that, at this present moment, we should interfere with the quiet atmosphere of the Convention for the adoption of such an extraordinary proposition. I am told, Mr. President, that within a very short time the Committee on Preamble and Bill of Rights will report against the resolution concerning the amount of money that may be given in case of death, upon the verdict of a jury, and that the committee will report adversely. While my own views at the present moment are in accord with the views of the committee, it would be extraordinary if we should say that so momentous a question could not be discussed in this House at all. I do not think the time has yet arrived, and I hope it never will arrive, when the Convention will say that it is the duty of the Committee on Rules to consider such an extraordinary proposition, and I hope the resolution will be now defeated.

Mr. Blake — Mr. President, this resolution, in my judgment, means gag law, pure and simple; and I think, sir, the consideration

by this body of that resolution is a self-stultification, unparalleled in the history of deliberative bodies. I am surprised, Mr. President, that any gentleman should offer such a resolution here. What are we here for, sir? To formulate organic law. Will the gentleman say that we must narrow the discussion? I say, to the contrary, the door should be opened wide to discussion. It may be possible, sir, that there are a few gentlemen in this body who will trespass on the time and patience of this Convention unduly, and abuse its confidence and good will; but better bear that infliction, better bear that inconvenience a thousand times than to pass a resolution of this character. Let us open the doors wide. Let us sit here, morning, noon and night, if need be, and discuss important proposals that come before us for consideration; but let us not resort to gag law. I suppose the gentleman does not intend to place a gag in the mouths of gentlemen in this Convention, but that will be the result of it. What does it mean? That a committee shall not report, shall not be compelled to report until after a motion shall be made by one man, debated by him for five minutes and debated by somebody else for five minutes more, and thus to have the merits of the question discussed. If the Convention, in such a debate, should decide adversely, what then? Why, the committee, sir, will never report, or would report when they should please in their good judgment. Does it comport with our duty here that we decide the merits of important questions that go to fundamental law in ten minutes? I trust, Mr. President and gentlemen, that no man who respects himself, who appreciates his dignity and importance here, and the importance of measures that are to be discussed by this body, will vote for this resolution. I am willing to sit here morning, afternoon and night. Let us have discussion. I have my own views, sir, about the limits of discussion. I think a gentleman who may not discuss a question within the limits of half an hour had better not talk at all. I mean no reflection upon anybody. But, sir, let us open the doors to discussion. Let us, after full discussion, pass fairly, intelligently and understandingly upon the questions that come before us. Better that than to have gag law introduced here at this early stage of our proceedings. I trust, sir, that this Convention will not be placed at the mercy of the committees of this body. That is the meaning of it. We have had a sample of that already in more than one instance. We had a sample of it the other night, Mr. President, when you were helpless to extricate this Convention from the dilemma in which it found itself; and I trust we shall have it no more. Instead of retrograding, instead of receding from that position, we are advancing deeper and

deeper into the mire. Let us have no such rules. Let us have fair discussion in an American body, a Constitutional Convention, composed of gentlemen who have come here to make fundamental law for the State of New York.

Mr. Root — Mr. President, it seems to me that the entire difficulty under which we now labor, a difficulty which has confronted a number of gentlemen, all of whom are sincerely endeavoring to attain the same end, and that is the fair and effective conduct of the business of the Convention, arises from the construction which has been put on a rule adopted by us but a few days ago. Upon page 379 of the Journal we find that "The Committee on Rules, to which was referred the resolution introduced by Mr. Nichols, June 22, 1894, concerning adverse report of standing committees, reported in favor of the passage of the same, with one amendment, so as to read as follows:

"Resolved, That whenever a committee shall have acted adversely on any proposed amendment to the Constitution, such committee need not report such adverse determination, unless requested, in writing, by the member introducing such amendment, so to do."

It was supposed by the Committee on Rules that this would relieve committees from the supposed obligation of reporting upon all the different propositions which were sent to them, whether the introducers wished a report or not. It has been construed as giving the introducer of a resolution or a proposed amendment, the right to require a committee to report it, whether in the judgment of the committee there ought to be a separate report on it or not. Now, if that be the construction it is an unfortunate one, for it is in conflict with the established rules of parliamentary procedure as they have been stated, and, of course, correctly stated by the gentleman from Onondaga (Mr. Alvord). I move as an amendment to the resolution of the gentleman from Rensselaer (Mr. Francis) that this rule which we adopted on the 17th of July be repealed. That, sir, will leave committees subject to our general rules. It will be their duty to report, under all the circumstances in which committees of legislative bodies do report. It will be within the power of this Convention to require them to report, if they fail to report when they ought to; and upon the motion to require them to report there will be such opportunity, and the same opportunity to debate, that there would be if they reported adversely, or upon any other grave and important matter. We can then impose upon debate in all matters, if we choose, a limit of half an hour, as the gentleman from New York (Mr. Blake) has

suggested; or an hour, or any other time that we see fit. But we can proceed as to the Convention, as to the committees, as to the rights of the individual members in respect to the control over the committees by the Convention, in accordance with ordinary parliamentary usage.

Mr. Maybee — Mr. President, I suppose the object of this proposed rule is to so arrange matters that if a committee one week decides unanimously to report a proposed amendment favorably, and the next week, under pressure, reverses its action by a vote of eight to three and decides to report it adversely, that it need not stultify itself by making any report at all. (Laughter.) I am opposed to it, and I demand the ayes and noes on the main question.

Mr. Francis — I accept the substitute offered by the gentleman from New York (Mr. Root). The only object I had in bringing in this resolution was to secure an expression from this Convention with reference to the factor of time, bearing in mind that we have only twenty-seven more working days, as a limitation, to the 15th of September; bearing in mind that we must exercise proper economy in reference to all matters pertaining to debate, or we are precipitated into a course, into a policy that will lead us even into the winter months before it is possible to finish our labors. I was a member of the Convention in 1867 and 1868, and know something of the difficulties there, and I understand full well that finally we had to impose limitations upon debates of this sort. This resolution, as proposed, means no gag. It has no application to debate, on general orders, where propositions and amendments may be freely made and the debate go on; but it is designed to relieve us from the congestion that exists at the present time. The intimation that it is my purpose to violate the liberty of speech, that it is my object to make restrictions in that regard entirely opposed to the bill of rights, is an erroneous assumption. With this explanation, I am willing to accept the proposed amendment or substitute offered by the gentleman from New York (Mr. Root).

The President — The Chair will state that the question is on Mr. Root's resolution to repeal or revoke the resolution passed on the 17th of July, which appears on page 379 of the Journal.

Mr. Mulqueen — I rise to a question of information. I would like to ask if it requires unanimous consent for the mover to accept the substitute. If so, I object. I am of the opinion that it is now the property of the House.

The President — The Chair is of the opinion that it does not require unanimous consent.

The President recognized Mr. Barhite.

Mr. Veeder — Will the gentlemen allow me to interrupt him a moment. I came in late and I would like to have the question stated.

The President — Mr. Root moved that the resolution which was passed on the 17th of July, page 379 of the Journal, be revoked. That resolution was in these words: "Resolved, That whenever a committee shall have acted adversely on any proposed amendment to the Constitution, such committee need not report such adverse determination unless requested in writing by the member introducing such amendment so to do."

Mr. Barhite — Mr. President, I do not believe in crossing a bridge until that bridge is reached. I do not believe in trying to get rid of a difficulty until that difficulty appears; and, sir, I have not noticed during the past few days of this Convention, when various matters have been under discussion, that those matters were not of importance, that they were what might be called crank propositions, or that they were matters which should not be freely, fairly discussed in this Convention. The gentleman from Onondaga (Mr. Alvord) tells us that the rule has been in legislative bodies that committees should not be required to report unless they desired to do so. Now that, Mr. President, is just the reason why that rule should not be enforced in this body.

Mr. Alvord — I did not say so.

Mr. Barhite — The gentleman says he did not say so. I do not believe that the Convention should be called upon to pass upon that matter. While it has been true that there have been many propositions sent to committees which may not be of importance, which should not take up the time of this Convention, yet I feel that if any matter is passed upon in the committee and any gentleman reasonably desires to bring that matter before the whole Convention, he ought to have the liberty to do so. I do not believe in substituting the judgment of eleven men or the judgment of seventeen men, for the judgment of 170 men, and I certainly believe that this substitute which is offered by the gentleman from New York should not prevail. Until some difficulty appears such as suggested by the gentleman from Onondaga (Mr. Alvord) or by some other gentleman, I believe that this resolution should be voted down. I certainly hope that there is no committee in this body which is not willing to have its report and the reasons for such report discussed fairly, openly and freely upon the floor of this Convention.

Mr. McDonough — Mr. President, I desire to call the attention of the Chair to rule 56, which, I claim, covers this proposition, and under which this ought to go to the Committee on Rules. Therefore, I move that this resolution be referred to the Committee on Rules. Rule 56 provides that all proposed action touching the rules and order of business shall be referred, as, of course, to the Committee on Rules.

The President — The point of order is well taken by Mr. McDonough, and it is referred to the Committee on Rules.

Mr. C. B. McLaughlin — What was the point of order?

The President — The point of order was that rule 56 provides that proposed action touching the order of business should be referred to the Committee on Rules.

Mr. A. H. Green — I hope it will not be so referred.

The President — It has been so referred.

Mr. Tekulsky — Mr. President, does that rule interfere with this Convention taking action to prevent its going to the committee, if the majority so decides?

The President — I suppose this rule cannot be suspended by a majority vote.

Mr. Tekulsky — Then, Mr. President, any person may come here and offer any kind of resolutions or motion and there is no debate upon it, but it is sent immediately to the Committee on Rules. Is that the way the President decides?

The President — The Chair has ruled upon it.

Mr. Tekulsky — Then, Mr. President, if that is the decision, I move that we suspend rule 56.

The President — The Chair is of the opinion that that requires unanimous consent. Does any gentleman object?

Mr. Dean — I object.

The President — The Secretary will proceed with the call of the districts.

Mr. Platzek offered the following resolution:

R. 152.— Resolved, That, beginning on Tuesday of next week, this Convention shall hold sessions every Tuesday, Wednesday, Thursday and Friday evenings, commencing at eight P. M., until the labors of this body are completed.

The President — That is referred to the Committee on Rules under the rule.

Mr. C. B. McLaughlin offered the following resolution:

R. 153.— Resolved, That the Attorney-General of this State be requested to furnish forthwith to this Convention a statement of the number of causes actually litigated and tried before the Board of Claims during the last five years, by years, together with a statement of the time when each cause was first put at issue, or the claim filed in said court, and the time when it was actually tried and disposed of, and the name and post-office address of the attorney for each claimant.

The President — It is referred to the Judiciary Committee, under the rule.

Mr. Hamlin offered the following resolution:

R. 154.— Resolved, That there be printed, for the use of the delegates to this Convention, 500 additional copies of Document No. 15.

Mr. Hamlin — Mr. President, Document No. 15 is the one which contains the names of the members of the Convention, and the committees on which they have been appointed to serve. There has been an extraordinary demand for the document, and it is entirely exhausted.

Mr Dean — Mr. President, I raise the point of order that, under rule 51, all resolutions requiring the printing of an extra number of documents should be referred to the Committee on Printing as of course.

The President — Does Mr. Hamlin make this as a report from the Committee on Printing?

Mr. Hamlin — Simply as a resolution.

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

Mr. Chipp — Will an amendment to this motion be in order?

The President — It has gone to the Committee on Printing.

Mr. Dean — Mr. President, I desire, at this time, to give notice that on Wednesday next I shall call up my resolution in respect to the canals. I do this at the request of certain gentlemen who state that they desire to debate the question.

Mr. Vedder offered the following resolution:

R. 155.— Resolved, That the Committee on Rules be requested to report a rule limiting debate on reports of standing committees, except on contested election cases.

Mr. Vedder — Mr. President, I wish to explain my resolution so that there may be no mistake about it. It does not limit debate upon the merits of a proposition, or anything of that character. It

Mr. McDonough — Mr. President, I desire to call the attention of the Chair to rule 56, which, I claim, covers this proposition, and under which this ought to go to the Committee on Rules. Therefore, I move that this resolution be referred to the Committee on Rules. Rule 56 provides that all proposed action touching the rules and order of business shall be referred, as, of course, to the Committee on Rules.

The President — The point of order is well taken by Mr. McDonough, and it is referred to the Committee on Rules.

Mr. C. B. McLaughlin — What was the point of order?

The President — The point of order was that rule 56 provides that proposed action touching the order of business should be referred to the Committee on Rules.

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The President — It has been so referred.

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The President — I suppose this rule cannot be suspended by a majority vote.

Mr. Tekulsky — Then, Mr. President, any person may come here and offer any kind of resolutions or motion and there is no debate upon it, but it is sent immediately to the Committee on Rules. Is that the way the President decides?

The President — The Chair has ruled upon it.

Mr. Tekulsky — Then, Mr. President, if that is the decision, I move that we suspend rule 56.

The President — The Chair is of the opinion that that requires unanimous consent. Does any gentleman object?

Mr. Dean — I object.

The President — The Secretary will proceed with the call of the districts.

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Mr. Vedder offered the following resolution:

R. 155.— Resolved, That the Committee on Rules be requested to report a rule limiting debate on reports of standing committees, except on contested election cases.

Mr. Vedder — Mr. President, I wish to explain my resolution so that there may be no mistake about it. It does not limit debate upon the merits of a proposition, or anything of that character. It

simply limits debate upon a report of a committee. If a committee shall report a proposition adversely, for instance, and a motion is made to disagree with the report of the committee, it limits the debate upon that question.

Mr. Bowers — Mr. President, I make a point of order. What question is there before the House for debate?

The President — Will you please state your point of order?

Mr. Bowers — The motion goes to the Committee on Rules, as I understand it, before it can be acted on.

The President — The Chair is not of that opinion. The resolution reads: "Resolved, That the Committee on Rules be requested to report a rule," etc. I do not see how that could go to the Committee on Rules before being acted upon by the House.

Mr. Bowers — The other resolution that the President did rule upon was substantially of the same character, and I submit that the ruling then made, followed to its legitimate conclusion, forbids debate upon the question until the Committee on Rules shall have reported.

The President — The Chair rules that this motion is in order for debate. The former ruling was this: Mr. Root moved to repeal a standing rule or resolution of the House. The rules require that such a resolution shall go to the Committee on Rules. This is a motion requesting the Committee on Rules to consider something, and the question is whether the Convention will take that action.

Mr. Vedder — Mr. President, this has reference to only one single thought, and that is this: That there shall be a limit fixed by this Convention for debate on reports from committees only. We have had exhibitions in this Convention that ought to teach us that there should be some limit to discussion upon a report itself, whether it shall be adopted or not; and this resolution simply requests the Committee on Rules to report a rule, subject to our adoption, in regard to the time which shall be had on debates on reports, except on contested election cases. On contested election cases, I would not formulate a rule, but would let everyone, who desires to speak, be heard to the fullest extent until the subject is absolutely exhausted. But when a report is made adversely by a standing committee, for instance, that has heard discussion in reference thereto and has come to an unanimous conclusion upon it, we ought not to spend a whole day or two days in discussing the question of disagreeing with the report of that committee, when the main question is not touched at all.

Mr. Veeder — Mr. President, under rule 50, does not this resolution, it giving rise to debate, go over for a day?

The President — The Chair holds that this relates to the business of the day and of every day.

Mr. Marks — Mr. President, I move that this resolution be laid on the table, from which I hope it will never be taken.

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

The President announced the order of reports of committees, and the Secretary called the list of committees.

Mr. Francis, from the Committee on Preamble and Bill of Rights, to which was referred the amendment introduced by Mr. Tucker (introductory No. 263), entitled "Proposed constitutional amendment to amend the Constitution, by adding to the first article thereof a new section relating to the committal of arrested persons," reported adversely thereto.

The President — The question is on agreeing to this adverse report, and the Secretary will read the amendment which is so reported adversely.

(The reading of the amendment was deferred for the present, and the Secretary read the following report:)

Mr. Francis, from the Committee on Preamble and Bill of Rights, to which was referred the proposed constitutional amendment introduced by Mr. Tucker (introductory No. 192), entitled "Proposed constitutional amendment to amend article 1 of the Constitution, as to imprisonment for debt," reported adversely thereto.

The President — The Secretary will read the amendment which is thus reported adversely, and the question will be on agreeing to such adverse report.

The Secretary read the proposed amendment as follows:

Proposed Constitutional Amendment to Amend Article 1 of the Constitution, as to Imprisonment for Debt.

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:

Section —. No person shall be imprisoned for debt, nor for an unpaid fine imposed for contempt of court, except a person owing a debt not exceeding fifty dollars to a female for labor or services by her rendered.

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

Mr. Francis, from the Committee on Preamble and Bill of Rights, to which was referred the proposed constitutional amendment introduced by Mr. Tucker (introductory No. 190), entitled proposed constitutional amendment to amend articles 1 and 4 of the Constitution, abolishing capital punishment and the pardoning power in sentences for life, and directing the Legislature to substitute life imprisonment with retrial in the event of newly-discovered evidence, reported adversely thereto.

The President — The Secretary will read the amendment thus adversely reported, and the question will be on agreeing to such adverse report.

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:

Article 1 of the Constitution is hereby amended by inserting a new section.

Section —. Capital punishment is forever abolished in this State, and the Legislature shall substitute therefor the punishment of imprisonment for life. The pardoning and commuting power in cases of sentences for life is abolished, and the Legislature shall substitute therefor a judicial retrial of the convict on presentation of the grand jury in the event of newly-discovered evidence.

Also, amend the fifth section of article four, by inserting in the third line, after the words "all offenses," the words "not punishable for imprisonment for life," so that the same shall read as follows:

Section 5. The Governor shall have the power to grant reprieves, commutations and pardons after conviction for all offenses not punishable by imprisonment for life, except treason and cases of impeachment, etc.

Mr. Tucker called for the yeas and nays, and the call was supported.

Mr. Blake — Mr. President, does the vote upon this question affect my right to be heard upon a similar proposition in committee? I have a similar proposition pending before a committee, on which I shall desire to be heard.

The President — I do not see what the vote here will have to do with that.

Mr. Blake — Then, Mr. President, I desire to state that I am in

favor of the principle embodied in the report, but am opposed to some of the details therein, and I desire to be excused from voting upon that ground.

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

The Secretary called the roll, and the report was agreed to by the following vote:

Ayes — Messrs. Acker, Ackerly, Allaben, Alvord, Baker, Banks, Barnum, Bigelow, Bowers, Cady, Carter, Chipp, Jr., Church, Clark, G. W., Clark, H. A., Cochran, Cookinham, Crosby, Curran, Danforth, Davenport, Davis, Deady, Dickey, Doty, Durfee, Emmet, Fitzgerald, T. W., Floyd, Foote, Francis, Frank, Andrew, Frank, Augustus, Fraser, Fuller, C. A., Galinger, Gibney, Giegerich, Gilbert, Goeller, Green, A. H., Griswold, Hamlin, Hawley, Hedges, Herzberg, Hirschberg, Holls, Hotchkiss, Hottenroth, Johnson, J., Johnston, Kellogg, Lewis, C. H., Lincoln, Manley, Marks, Maybee, McCurdy, McDonough, McIntyre, McKinstry, McLaughlin, C. B., Mullen, Mulqueen, Nichols, Nicoll, O'Brien, Ohmeis, Osborn, Parker, Parkhurst, Peabody, Peck, Phipps, Platzek, Porter, Powell, Putnam, Redman, Root, Rowley, Sandford, Schumaker, Smith, Spencer, Springweiler, Sullivan, T. A., Tekulsky, Tibbetts, Truax, C. H., Truax, C. S., Turner, Van Denbergh, Vedder, Veeder, Vogt, Whitmyer, Wiggins, Williams, Woodward, President — 102.

Noes — Messrs. Barrow, Burr, Coleman, Davies, J. C., Dean, Farrell, Hecker, Holcomb, Johnson, I. Sam, Kerwin, Lewis, M. E., Mantanye, McArthur, McLaughlin, J. W., Meyenborg, Moore, Morton, Pool, Riggs, Speer, Storm, Titus, Tucker — 23.

Mr. Francis, from the Committee on Preamble and Bill of Rights, to which was referred the proposed constitutional amendment introduced by Mr. C. A. Fuller (introductory No. 104), entitled "Proposed constitutional amendment to amend article one of the Constitution, declaring that the State of New York is an inseparable part of the Federal Union," reported adversely thereto.

The President — The Secretary will read the amendment reported adversely, and the question will be on agreeing to such adverse report.

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:

Article 1 of the Constitution is hereby amended as follows:

Section 1. The State of New York is an inseparable part of the nation known as the United States of America.

The Constitution, laws and treaties of the United States are the supreme law of the land.

To the Federal Government every citizen of the State owes paramount allegiance, and there is no reserved right in the people to withdraw therefrom.

Section 2. The sections of article 1 as they now stand shall be renumbered to correspond with this addition.

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

Mr. C. A. Fuller — Mr. President, I hope the Convention will not agree with the report of the committee in this regard. I regard it as something more than mere sentiment; something that is exceedingly important. It is not an invention of my own. I claim for it no originality; if it were I would advocate it with less assurance. The time has been in this country when there were two sorts of political philosophy advocated; the John C. Calhoun doctrine, that this government was simply an aggregation of independent States, held together by a rope of sand, and the other doctrine, maintained by such statesmen as Hamilton and Webster, that we were and should continue a nation. The doctrine of John C. Calhoun run mad, developed itself, and came to a head. It involved this nation in fratricidal war. In 1861, the peace of this great commonwealth was disturbed by adherence to just such doctrine as that. If this declaration had been in the Constitution of South Carolina in 1861, as it now is, in substance, I think it is very likely that the great war for self-preservation that was forced upon us would have been nipped in the bud. I believe that if this doctrine had been in the Constitution of Virginia at that time, as it is now, Robert E. Lee would not have left the government that had educated him, that had made him a great military chieftain, and that he would not, under the heresy of State rights, have gone out and sought to murder the government to which he owed honest allegience.

Now, sir, since the close of the great rebellion, since those States who went out and attempted to destroy this nation have been permitted to come back, every one of them, with perhaps one or two exceptions, has incorporated this principle in its organic law. Alabama, one of the most bitter of the rebel States, has this declaration:

"The People of this State accept as final the established fact that from the Federal Union there can be no secession of any State."

The Constitution of California recites:

"The State of California is an inseparable part of the American Union, and the Constitution of the United States is the supreme law of the land."

The Constitution of Colorado says:

"The People of this State have the sole and exclusive right of governing themselves as a free, sovereign and independent State; and to alter and abolish their Constitution and form of government whenever they may deem it necessary to their safety and happiness, provided such change be not repugnant to the Constitution of the United States."

Florida, another of the thirteen that went out, says in her Constitution:

"The paramount allegiance of every citizen is due to the Federal government, and the people of this State have no power to dissolve its connection therewith."

The Constitution of Georgia says:

"Legislative acts in violation of this Constitution or the Constitution of the United States are void, and the judiciary shall so declare them."

Idaho in her Constitution says:

"The State of Idaho is an inseparable part of the American Union, and the Constitution of the United States is the supreme law of the land."

In Maryland the Constitution reads:

"The Constitution of the United States, and the laws made or which shall be made in pursuance thereof, and all treaties made or which shall be made under the authority of the United States, are and shall be the supreme law of the State, and the judges of this State and all the people of this State are and shall be bound thereby; anything in the Constitution or law of this State to the contrary notwithstanding."

In Mississippi they say:

"The right to withdraw from the Federal Union on account of any real or supposed grievance shall never be assumed by this State, nor shall any law be passed in derogation of the paramount allegiance of the citizens of this State to the government of the United States."

The Constitution of Missouri says:

"The People of this State have the inherent, sole and exclusive

right to regulate the internal government and police thereof, and to alter and abolish their Constitution and form of government whenever they may deem it necessary to their safety and happiness; provided, such change be not repugnant to the Constitution of the United States."

Montana says in her Constitution:

"The People of the State have the sole and exclusive right of governing themselves as a free, sovereign and independent State, and to alter and abolish their Constitution and form of government whenever they may deem it necessary to their safety and happiness, provided such change be not repugnant to the Constitution of the United States."

So, Mr. President, I might go on through the whole list. I will not take the time of the Convention to do that, but will read from the Constitutions of a few of the southern States who were in the rebellion.

North Carolina says:

"The People of this State have the inherent, sole and exclusive right of regulating the internal government and police thereof, and of altering and abolishing their Constitution and form of government whenever it may be necessary for their safety and happiness, but every such right should be exercised in pursuance of law, and consistently with the Constitution of the United States."

South Carolina, once a hotbed of rebellion says:

"Every citizen of this State owes paramount allegiance to the Constitution and government of the United States, and no law or ordinance of this State in contravention or subversion thereof can have any binding force."

The Constitution of Texas says:

"Texas is a free and independent State, subject only to the Constitution of the United States; and the maintenance of our free institutions and the perpetuity of the Union depend upon the preservation of the right of local self-government unimpaired to all the States."

Now, Mr. President, it has been but a few days since the press of the country has given us the declaration of the Governor of the State of Texas, who lately sat by the side of the President of this Convention, in addressing his Texas militiamen, stated that Texas would take care of herself; that Texas would show the United States, if it attempted to put United States troops into that State, that they were not needed and would not be supported. That is

the substance of what the Governor of the State of Texas lately said, after the President of the United States ordered United States troops to Chicago to quell riot, to prevent anarchy, and to prevent the destruction of property. And the Governor of the State of Illinois has recently lectured the President of the United States, because, when the laws of the United States were defied and property was placed in danger, the President sent United States troops there to preserve order; this Governor lectured the President of the United States for daring to interfere with the sovereignty of his State.

I do not like such kind of doctrine myself. While I am proud of my State, I want to see her now and forever acknowledge her submission to the great power of the general government. I have no patience whatever, at this time when this government has been through what it has, with people who are advocating the heresy of State rights. The United States government does not assume, it never has assumed, to interfere with the internal affairs of the individual States. It is not in its Constitution, it does not profess any such doctrine or desire, but what it does do is to guarantee to us all our freedom, to see that no State departs from the Republican form of government, to provide for us an army and a navy, and to provide for us a flag that waves over the whole land, the Stars and Stripes. (Applause.)

Mr. President, when I had the honor to appear before the Committee on Preamble and state my proposition, I was met at once with the profound declaration that this government was not a nation. I was surprised — I was nearly paralyzed — that any delegate to this Convention should stand up in a committee-room, or anywhere else, and declare any such doctrine as that. I thought I would revise my knowledge of the English language, and so referred to the Century Dictionary in the State Library. This is its definition of the word nation:

"First. And in a broad sense, a race of people; an aggregation of persons of the same ethnic family, and speaking the same language or cognate languages.

"Second. In a narrower sense, a political society composed of a sovereign or government, and subjects or citizens, and constituting a political unit; an organized community inhabiting a certain extent of territory within which its sovereignty is exercised.

"A nation may be defined as a body of population which its proper history has made one in itself, and, as such, distinct from all others.

"A nation is an organized community within a certain territory; or, in other words, there must be a place where its sole sovereignty is exercised."

That is the definition of ex-President Woolsey, of Yale College.

"Nation is nearly synonymous with 'people,' and in the United States it is applied to the whole body of the people coming under the jurisdiction of a federal government."

That is by no less an authority than Judge Cooley. Then, Mr. President, I have referred to the definitions in Worcester and Webster.

Now, Mr. President, if the United States of America is not a nation, what means its flag? What mean its foreign ministers? What mean its armies and its navies? I hope that this Convention, without regard to political questions, will sit down very squarely upon any such proposition.

I do not think, Mr. President, that the wording of this proposition is the best that could be devised. I think it might be improved upon, but I believe in the doctrine, the sentiment, the idea, that, although the State of New York is a considerable part of the American nation, its law, its Constitution, its very acts are subordinate to the right and the authority of the great government of which I am proud to be a member, and for which I have the honor to be here to assist in carrying it on by having it expressed in the organic law of the State.

In our present Constitution there is no reference to this grand government, except passingly, that there are United States Senators; there are one or two passing references to that fact; and I want to see in our preamble, in our declaration of rights, this great fundamental principle, which, I say, is not mere sentiment with me. It may stand me in good stead, when, bye and bye, the anarchists and the riff-raff of Europe come over here in greater numbers and resolve that they will take New York and Brooklyn and abscond with them. It may be very well to have this declaration in our fundamental law, so that nobody can, in any manner, question it.

Now, Mr. President, if I were to prepare this amendment over again, I would put it in some such language as this:

"The United States of America is a nation, of which the State of New York is an indissoluble part.

"The Constitution of the United States and the laws and treaties made in accordance therewith are the supreme law of the land; and to the national government every citizen of this State owes paramount allegiance."

Is there anyone here who objects to that sentiment? Do they desire to again bring up the heresy of State rights? Do they want the privilege, bye and bye, of setting up the State banner independent of the Stars and Stripes?

I hope, sir, that there may go into this document, which we shall present to the citizens of this State, a declaration, not to be figured out from judicial decisions, not to be ciphered out in any argumentative way, but one that shall appear in living letters that cannot be misunderstood by anyone. (Applause.)

Mr. Alvord — Mr. President, I am not about to deliver a Fourth-of-July oration. I have simply to say that, marching shoulder to shoulder, both the Democratic and the Republican soldiers of the State of New York have written upon the fields of battle, Vicksburg, Gettysburg, Appomattox, the doctrine that the belief that we always have and that we always will stand by the Union. The record so made is vastly superior to any record that can be placed within the limits of our Constitution. It is a record also for me and for those whom I represent that those who seceded from the Union have been brought to the school of repentance. We have only to look upon the deeds performed upon the battlefields to insure, beyond all possibility of doubt to the present and to the future, that we will stand by the Union of our fathers in the great United States of America. We need no other record. (Applause.)

Mr. Dean — Mr. President, I am willing to agree with all the patriotic sentiments that have been uttered here, but, in the interests of the economy of time, I move the previous question.

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

Mr. Cookinham called for the ayes and noes, and the call was supported.

The President — The question is on agreeing with the adverse report of the committee.

The Secretary proceeded to call the roll.

Mr. Ackerly — Mr. President, I ask to be excused from voting, and will state briefly my reasons therefor. I failed to get the attention of the Chair in order to make a motion that this matter be set down as a special order for next Wednesday evening, and, therefore, I now desire to say that I believe the principle of the amendment proposed ought to be adopted by this Convention, although differing in form from that presented. I shall vote against agreeing to the report of the committee, but I think it should have the

further consideration of the Convention, and I, therefore, withdraw my excuse, and vote no.

Mr. Bowers — Mr. President, I did not suppose that this matter would take the range it has taken. If we were to attempt to specify all the principles that should govern our acts, either as citizens of the United States or in any other aspect, we should be kept busy for some time to come, and, it seems to me, that the Committee on Preamble and Bill of Rights are entirely correct in saying that this is unnecessary. The people have not sent us here to announce in the Constitution propositions which were settled by the late war. I think that the adoption of any other course than that pursued by the Committee on Preamble and Bill of Rights would be unfortunate, and would lead to misapprehension as to the manner of performing our duties. I withdraw my request to be excused from voting, and vote aye.

Mr. Cassidy — Mr. President, I ask to be excused from voting, and will state my reasons. I subscribe to all that has been said by the gentleman from Chenango (Mr. Fuller). I believed, however, before hearing him that secession was dead. At least, if it is not dead, we cannot kill it by words. A Constitution merely seeks to apportion power. It does not seek to gather up and incorporate into itself all the latent principles of right and power. I withdraw my request to be excused from voting, and vote aye.

Mr. Cookinham — Mr. President, I ask leave to be excused from voting, and will briefly state my reasons. I have no reflection to make upon the Committee on Preamble, and, yet, I do not agree with them in this particular. I regret that the amendment was presented to the Convention. I regret still more that, having been presented to the Convention, it was reported adversely. I agree with the gentleman who has addressed the Convention that there is more in it than sentiment. It has been my privilege to be in the South very much of the time within the last three or four years, and I do not agree with the gentleman from Schuyler (Mr. Cassidy) that the spirit of rebellion in the South is entirely dead. It was my privilege to be in the city of New Orleans upon a great festal occasion. I heard bands in the street and martial music, but I heard not one single national air. I heard "Maryland, My Maryland," but I did not hear "The Star-Spangled Banner," "The Red, White and Blue," or "Marching Through Georgia." I tell you, gentlemen of the Convention, if we vote down this amendment, it having been presented here, it will be accepted as a declaration by the great State of New York that we have abandoned our principles and have adopted the principles of the sunny South. I with-

draw my request to be excused from voting, and vote no. (Applause.)

Mr. Dickey — Mr. President, I ask to be excused from voting, and will state my reasons. I am most heartily in favor of the amendment proposed by the gentleman (Mr. Fuller), who walks lame to-day from a bullet he received at the battle of Gettysburg. (Applause.) There is something more than sentiment in this proposition, and I hope that this Convention will not vote down the proposed amendment. What construction would be put upon such an adverse report? The explanation would not go with it that we think it does not belong there, and, I think it well, that it should go to the people so that they may be brought face to face with the proposition that this is a nation and vote that it is a nation, and not a petty State, with no allegiance to the general government. I withdraw my request to be excused from voting, and vote no.

Mr. T. W. Fitzgerald — Mr. President, I desire to be excused from voting, and will briefly state my reasons. I do not believe there is a single gentleman upon this floor who is not in favor of the principle contained in this amendment. But the question is whether or not it should be incorporated in the Constitution of this State. I agree with all that the gentlemen who have spoken against adopting the report of the committee have said, and with all the suggestions they made, but I do not think it proper to incorporate such a declaration in the Constitution of the State. I, therefore, desire to withdraw my request to be excused from voting, and vote in the affirmative.

Mr. Francis — Mr. President, I ask to be excused from voting, and will state my reasons briefly. The sentiment of the proposed amendment I heartily indorse. All of us indorsed the patriotic sentiment contained in it. We reported adversely, because it is deemed inappropriate matter for the purpose intended. In other words, to use a homely expression, we would not have a stump-speech, eloquent and patriotic though it be, injected into the belly of the Constitution. I withdraw my request to be excused from voting, and vote aye.

Mr. Gilbert — Mr. President, I ask to be excused from voting, and will state my reasons. Every gentleman upon the floor who has spoken in favor of the report of the committee, I think, without exception, has said this: "What the proposed amendment states is true." If I misrepresent anybody, I ask to be corrected. You all say that these propositions are true.

Now, I will add two others: First, they are fundamental; and, second, they are governmental. Mr. President, the preamble is

the proper place to put propositions that have come to be accepted as true, that are fundamental and governmental. There is in the preamble a provision, in reference to freedom of speech. Why do not the gentlemen get up here and say: "Why, everybody admits that. Strike it out of the preamble. It is a matter of private right, and no one denies it. Strike it out. It is in the nature of a stump-speech."

I tell you, Mr. President, the time may come, and how soon neither you nor I can predict, when the declaration which this Convention shall make upon this vital and fundamental proposition may rise like Banquo's ghost to make us trouble. I tell you that it is not safe for us, as an integral part of this nation, to report here to-day that we are opposed to these simple, fundamental, vital, governmental propositions; and I am glad that these old veterans, who know what the maintenance of this principle has cost, have risen here and indicated their sentiments upon the subject.

Mr. President, I am heart and soul, with every fibre of my being, opposed, now that this proposition is before us, to sustaining this report. I withdraw my request to be excused from voting, and only wish I could cast a hundred votes in the negative. (Applause.)

Mr. Hedges — Mr. President, I desire to be excused from voting, and will briefly state my reasons. I do not consider that this is mere surplusage to be injected into the Constitution; neither do I agree with what has been stated here that it is inappropriate. I deem it entirely appropriate that this great Empire State should incorporate into the body, not into the belly, but at the head of this Constitution this sentiment. I withdraw my request to be excused from voting, and vote no.

Mr. Holcomb — Mr. President, as a citizen of the State of New York and of the city of New York, both of which poured out their money and their blood like water in support of the Union during the time of the war between the States, and, believing very firmly, indeed, that what we say here will not be long remembered, but that what the State did during the war will be remembered during all time, and that it is not necessary here or anywhere else to declare upon paper that the State of New York is loyal to the Union of these United States, I desire to be recorded as voting aye. (Applause.)

Mr. I. S. Johnson — Mr. President, I desire to be excused from voting, and will briefly state my reasons. I believe that we may learn something from the South, and that we may learn that when they believe in a matter they say it every time and on every opportunity and they do not hesitate to put in their school books and in

every utterance which they make that they believe in the doctrine of State rights. I think we may follow their example, and whenever we have an opportunity we should put it in the greatest book we have, the book of the Constitution of the Empire State, of the United States, that we are unalterably opposed to the principle of State rights; and that under any and all circumstances we will recognize this country as a nation. Mr. President, I withdraw my request to be excused from voting, and vote no.

Mr. Maybee — Mr. President, I ask to be excused from voting, and will state my reasons. I regret that any attack has been made here on any political party or any section of the country. As a member of the Democratic party, devoted to its principles and anxious for its success, I believe that a provision of this kind is not only necessary, but desirable, to be incorporated into the Constitution of the Empire State. I believe that the Constitution of every State in the Federal Union ought to contain among its provisions a patriotic declaration of fidelity and allegiance to a common union and a common flag. (Applause.) The principle of the supremacy of the Union over the individual States was established during the war of the rebellion on a hundred battlefields. (Applause.) It was written upon the flag of the Republic for every citizen to read and ponder upon to all future generations, and, I believe, that the Constitution of the imperial State of New York, the greatest of American commonwealths, and one of the greatest commonwealths within the circuit of the civilized globe, should contain a patriotic declaration that every child may read, and, reading, feel through all his veins a thrill of patriotic pride that he, too, has a part in the glorious heritage of free institutions and equal laws. (Applause.) I withdraw my request to be excused from voting, and vote no.

Mr. McDonough — Mr. President, I ask to be excused from voting, and will state my reasons. It appears to me that we are so intent on the Constitution of the State of New York that we have overlooked the Constitution of the United States, and I will give my reasons for voting (aye) upon this section, by reading section 2 of article 6 of the Constitution of the United States.

"This Constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary, notwithstanding."

That is strong enough for me, gentlemen. I withdraw my request to be excused from voting, and vote aye.

Mr. Platzek — Mr. President, I desire to be excused from voting, and will state my reasons. The language of this proposed amendment, reported adversely, is unfortunate. It states that the great State of New York is and forever shall be an integral part of the Union, to all of which we agree. I thought, until I took my oath of office here, that I was an American citizen, and I believe I am, but I would like to know whether, if this adverse report is accepted, we will declare by that that we are not an integral part of the Union? I believe that this great imperial State is in the Union and will remain there, and that there is enough patriotism upon the part of the citizens to keep it there without putting it in words. I withdraw my request to be excused from voting, and vote aye.

Mr. Riggs — Mr. President, I ask to be excused from voting, and will state my reasons. It seems to me that the important question here is whether it is proper and timely to incorporate this provision into the Constitution of the State. We are all faithful to the Union. There can be no question about that. But adopt this amendment and the natural propensities of human nature will manifest themselves, and there will be given a new impulse to the doctrine of State rights. Therefore, I am opposed to its insertion in the Constitution. I am fully in accord with the principle sought to be attained, but I deem it untimely and misplaced. Therefore, I withdraw my request to be excused from voting, and vote to sustain the action of the committee. I vote aye.

Mr. Smith — Mr. President, I ask to be excused from voting, and will state my reasons. I think the bill of rights and the Constitution of this State should be regarded as a classic, and that it should contain fundamental truth; that it should be printed in every school book and read by every child; that every child should read, the moment he is able to read three syllables, that the State of New York is irrevocably committed to the Union of these States (applause), as I believe every State is. I believe it wholly unnecessary to argue this question, but the simple statement that this Union is indissoluble, as much so as in the order of nature, cannot hurt the Constitution of the State of New York. For these reasons I withdraw my request to be excused from voting, and vote no.

Mr. Speer — Mr. President, I believe in State rights. I do not believe that the United States are a nation, and I vote aye.

Mr. Storm — Mr. President, I ask to be excused from voting,

and will state my reasons. I should like to vote to sustain the report of the committee, but I cannot refrain from recording my sentiments in this matter. Therefore, I withdraw my request to be excused from voting, and vote no.

Mr. McIntyre — Mr. President, I desire to be excused from voting, and will state my reasons. If we knew just what preamble the committee was going to introduce, we could vote upon this question more intelligently. I think the sentiments are right, if properly clothed. There are sentiments here that I, for one, do not want to vote against, because they are sentiments that we all agree to, but we do not know what the preamble will be, and for these reasons I desire to withdraw my request to be excused from voting, and vote no.

Mr. T. A. Sullivan — Mr. President, I desire to be excused from voting, and will state my reasons. I desire to say, as one of those who have not had the inspiration or the experience of the men whose efforts were given to establish the principles contained in this proposition, that I would like to see them inscribed upon the Constitution, the pillar of our liberty, so that they will be cherished throughout the whole Union. I withdraw my request to be excused from voting, and vote no. (Applause.)

Mr. Tibbetts — Mr. President, I have been watching this vote and have noticed, first of all, that the Boys in Blue, those who marched and fought in 1861, and in the years following, and whose experience proved that this principle, which it has cost four years of war to establish, is something more than a sentiment; that every one of those boys has voted "no" upon this proposition. I notice, further, that among the older men of the Convention, those who remember those times, without regard to party, have voted no. I find the sentiment among the younger members of the Convention is to vote aye. And, I say, Mr. President, because of this condition of things that it is time something was incorporated in the fundamental law of the State, regarding this principle and this sentiment. I say, further, that, inasmuch as there has been proposed an educational qualification to this Convention, that every foreigner who comes to our shores should be able to read the Constitution of the State of New York before he is allowed to vote and before he enters upon the duties of a citizen; that he should know what this State is and what this nation is. I withdraw my request to be excused from voting, and vote no.

Mr. Peabody — Mr. President, in reply to certain statements which have been made upon this floor, as to how individuals have

voted, I desire to state that I had the honor to be a soldier, and that I voted aye.

Mr. Titus — Mr. President, I ask to be excused from voting, and will state my reasons. I feel that if I agree with the report of this committee, I would be false to the years that I gave in my early manhood to upholding the principles contained in this proposed amendment. Gentlemen of the Convention, it has been stated upon this floor to-day that there is no need of having this provision in the Constitution. I say, gentlemen, that there is such a need, and, if you will recall the expressions made in the last year in the West when the silver agitation was before the people, you will remember that the western people told you they would make a government of their own, if we did not give them free silver. That expression of public men, through the western country, has sounded the key-note for every State in this Union to give expression to their sentiments. Mr. McDonough has said that this principle is already in the Constitution of the United States. Very well; then let the State of New York, the Empire State, ratify it by putting it in her Constitution. I withdraw my request to be excused, and vote no.

Mr. Woodward — Mr. President, I wish to be excused from voting, and will state my reasons. I proposed, in overture No. 170, amendments similar to this. I thought I saw the necessity of it before the Civil War. While we were raising a company at the law office of myself and my partner, a lawyer in our town, who had praticed law for fifteen years and stood high in the profession, came to me and said: "Woodward, I understand you are raising men to go down South and butcher our southern brethren, and I want you to understand that you have got to march over my dead body and that of a good many others here in town before you can do that." I called him by name and said: "I am ready to shoulder my musket and march over your dead body at any time that you help to destroy this government; and, furthermore, I am ready to help hang you higher than Haman was hung, if you prove a traitor to the government." I think if there had been a clause in the Constitution of the State such as is embodied in this amendment, and, if he had read it, he would not have made such a proposition to me. There were others who took the same ground in the village whom we had to educate up to the standard. I withdraw my request to be excused from voting, and vote no. (Applause.)

The President — The President asks to be excused from voting, and will briefly state his reasons. It is here proposed to submit to the people of the State of New York, to vote yea or nay upon the question, whether they are in favor of the Federal Union. I regard

this as an unnecessary imputation upon that loyal and patriotic people. (Applause.) In view of her record during the last 115 years, New York does not need to put before the world any declaration of her loyalty. Without New York everybody knows that the independence of these States could never have been achieved. Without New York, the Federal Union, to which this declaration relates, never could have been created, and without New York, that so freely shed her blood and her treasure in support of the federal government when it was attacked, this Union would have been broken into hopeless fragments, never to be reunited. (Applause.) The people of the State of New York, upon this record, do not need, at this late day, to put forth any professions as to their loyalty to the Union, and I, therefore, withdraw my request to be excused from voting, and vote aye. (Applause.)

Mr. Griswold — Mr. President, I ask to be excused from voting, and my reasons are: I read from the Constitution of the United States " the powers not delegated to the United States by the Constitution nor prohibited by it to the States are reserved to the State, respectively, or to the people." As it seems to me, that, being a supreme law of this and every other State and of the general government, that this resolution is unnecessary, and that the time of this Convention might be better taken up in the performance of our legitimate duties than in political buncombe. I vote aye.

The report of the committee was adopted by the following vote:

Ayes — Messrs. Acker, Alvord, Banks, Bigelow, Blake, Bowers, Cassidy, Chipp, Jr., Clark, G. W., Cochran, Danforth, Davenport, Deady, Dean, Durfee, Farrell, Fitzgerald, T. W., Foote, Francis, Frank, Andrew, Frank, Augustus, Geigerich, Goeller, Green, A. H., Griswold, Hamlin, Hawley, Herzberg, Hirschberg, Holcomb, Holls, Hotchkiss, Hottenroth, Kerwin, Lewis, C. H., Marks, McDonough, McLaughlin, J. W., Meyenborg, Mullen, Mulqueen, O'Brien, Ohmeis, Osborn, Parker, Peabody, Peck, Platzek, Riggs, Root, Sandford, Schumaker, Speer, Spencer, Sullivan, W., Truax, C. H., Truax, C. S., Tucker, Van Denbergh, Vedder, Wiggins, President — 62.

Noes — Messrs. Ackerly, Allaben, Baker, Barnum, Barrow, Burr, Cady, Carter, Clark, H. A., Coleman, Cookinham, Crosby, Curran, Davies, Davis, Dickey, Doty, Floyd, Fraser, Fuller, C. A., Galinger, Gibney, Gilbert, Hecker, Hedges, Johnson, I. Sam, Johnson, J., Kellogg, Lewis, M. E., Lincoln, Manley, Mantanye, Maybee, McArthur, McIntyre, McKinstry, McLaughlin, C. B., Morton, Nichols, Parkhurst, Phipps, Pool, Powell, Putnam, Redman, Row-

ley, Smith, Springweiler, Storm, Sullivan, T. A., Tekulsky, Tibbetts, Titus, Vogt, Whitmyer, Woodward — 56.

Mr. Francis, from the Committee on Preamble and Bill of Rights, to which was referred the proposed constitutional amendment introduced by Mr. Tucker (introductory No. 263), entitled proposed constitutional amendment to amend the Constitution by adding to the first article thereof a new section, relating to the committal of arrested persons, reports adversely thereto.

The President — The Secretary will read the amendment, as reported adversely, and the question will be on agreeing with the report.

The Secretary read the amendment as follows:

"Proposed constitutional amendment to amend the Constitution by adding to the first article thereof a new section, relating to the committal of arrested persons.

"*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 adding thereto a new sections as follows:

"Section —. That no person may be incarcerated without a committal, and that justice to persons under arrest may be speedy, there shall be a justice always in attendance, day and night, at or near the jail, police headquarters, or other place of detention, in every city or incorporated village in this State, to examine persons arrested, to commit for trial or further examination, and to accept proper bail immediately, if tendered (unless the offense charged be non-bailable), or to discharge from arrest. The Legislature shall enforce this provision by penal legislation."

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

Mr. Francis, from the Committee on Preamble and Bill of Rights, to which was referred the proposed constitutional amendment introduced by Mr. Tucker (introductory No. 191), entitled proposed constitutional amendment to amend article 1 of the Constitution, as to damages for the loss of human life, reports adversely thereto, regarding it as more appropriately a subject for legislative treatment.

The President — The Secretary will read the amendment which is thus adversely reported.

Mr. Tekulsky — Mr. President, I desire to make this matter a special order for next Tuesday morning. My reasons for making

that motion are that there is a large number of delegates who wish to speak upon this question, and I think we have had a great deal of talk here to-day and there is a large number of absentees. Therefore, I would like to have it set down and made a special order for Tuesday evening next.

Mr. Veeder — I desire to move to disagree with the report of the committee, and I was about to ask that it be made a special order for such day as the Convention should desire.

The President — The question before the Convention is on agreeing with the report of this committee, and Mr. Tekulsky moves that that question be made a special order for next Tuesday evening. This requires a two-thirds vote.

The President put the question on making the motion a special order for Tuesday evening next, and it was determined in the affirmative.

Mr. Jesse Johnson — Mr. President, the Committee on Cities make a report and also a minority report as to proposed amendments Nos. 3, 22, 113, 127, 139, 265, 295, 312 and 355, referring to "home rule for cities," together with O. 369.— Entitled a "proposed constitutional amendment to provide home rule for cities."

The President — The report from the Committee on Cities and the minority report from that committee will be read by the Secretary.

Mr. Bowers — I move that that report be printed.

The President — It is printed.

Mr. Bowers — Then I move that the reading be dispensed with. We can read it between now and Tuesday.

Mr. Jesse Johnson — The reports are not printed in the form prescribed by our rules. I would ask that they be printed.

Mr. Bowers — Mr. President, while I never question your decisions, I have noticed several times this morning that I have been right, although I have not appealed.

Mr. Alvord — Mr. President, I rise to a point of order. My point of order is that no gentleman has the right upon the floor to address the Chair, except upon a motion, and, if he does not agree with the Chair, his only course is an appeal.

The President — The Chair was not so fortunate as to hear the remarks of Mr. Bowers. The question is that the reading of these reports be dispensed with, that they be printed and laid upon the tables of the members.

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

The President — Of course, those reports of the Committee on Cities go to the Committee of the Whole on general orders.

Mr. Hawley, from the Committee on Corporations, to which was referred proposed constitutional amendment No. 357 (introductory No. 348), introduced by Mr. Roche, asked to be discharged from the further consideration thereof, and recommended that the same be referred to the Committee on Cities and the Committee on Railroads.

The President put the question on so referring the proposed amendment, and it was determined in the affirmative.

Mr. Hawley, from the Committee on Corporations, to which was referred proposed constitutional amendment No. 321 (introductory No. 313), entitled proposed constitutional amendment to amend section 1 of article 8 of the Constitution, relative to the erecting and limiting of corporations, introduced by Mr. Tucker, asked to be discharged from further consideration thereof and requested that the same be referred to the Committee on Railroads.

The President put the question on so referring the proposed amendment, and it was determined in the affirmative.

Mr. Hawley, from the Committee on Corporations, to which was referred proposed constitutional amendment No. 372 (introductory No. 361), introduced by Mr. T. A. Sullivan, entitled proposed constitutional amendment to amend article 5 of the Constitution by adding a new section, in relation to State officers, providing for a new office to be known as the Superintendent of Corporations, asked to be discharged from the further consideration thereof, the same having been referred, on motion of Mr. Sullivan, to another and appropriate committee, and this request being made by his consent.

The President put the question on discharging the committee, and it was determined in the affirmative.

Mr. Holcomb — I understood the report of the Committee on Corporations just now, in which they ask to be discharged from the further consideration of Mr. Sullivan's proposition concerning the election of a superintendent of corporations, also involves the reference of the same proposition to another committee. What committee was that?

The President — Mr. Sullivan has already caused it to be referred,

by motion, to another committee. What committee was that, Mr. Sullivan?

Mr. T. A. Sullivan — The Committee on Governor and State Officers.

Mr. Gilbert, from the Committee on Industrial Interests, to which was referred the proposed constitutional amendment introduced by Mr. Church (introductory No. 365) entitled proposed constitutional amendment, to amend article 6 by adding new sections creating a Court of Compulsory Arbitration, reported the same for consideration, and asked that it be printed and referred back to the said committee.

The President put the question on the motion to print and recommit, and it was determined in the affirmative.

Mr. Marshall, from the Committee on Amendments and Revision of the Constitution, presented the following report:

To the Convention:

The Committee on Future Amendments and Revision of the Constitution has considered the various proposed constitutional amendments referred to it, namely, introductory Nos. 59, 94, 142, 144, 189, 204, 237, 256, 285, 289, and in place thereof reports the article hereto annexed.

The said proposed constitutional amendment being: O. 368.— Proposed constitutional amendment, to amend article 13 of the Constitution, relating to future amendments.

The President — This goes to the Committee of the Whole, and will be printed.

Mr. McKinstry, from the Select Committee on Constitutional Amendments, to which was referred the proposed constitutional amendment introduced by Mr. Smith (introductory No. 367), entitled proposed constitutional amendment, to revise and amend section 6 of article 1 of the Constitution, reported that the same has reference to a subject already under consideration by the Committee on Preamble and Bill of Rights, and has, therefore, been transmitted, without printing, directly to said committee for its information, in accordance with rule 73.

Mr. Smith — Mr. President, I move that the proposal just referred to, introduced by me, be printed and referred to the Committee on Bill of Rights.

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

The President — A communication from Mr. E. A. Brown asks that he may be excused on account of attending the committee, of which he is a member, for to-day.

The President put the question on excusing Mr. E. A. Brown from attendance, and he was so excused.

On motion of Mr. Kellogg, the Convention adjourned until Tuesday morning, July 31, at ten o'clock.

Tuesday, July 31, 1894, 10 A. M.

The Constitutional Convention of the State of New York met in the Assembly Chamber in the Capitol, at Albany, N. Y., on the 31st day of July, 1894, at ten o'clock in the morning.

President Choate called the Convention to order.

The Rev. DeWitt G. Rockefeller offered prayer.

Mr. O'Brien moved that the reading of the Journal of July 27, 1894, be dispensed with.

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

Mr. Barhite — Mr. President, Mr. Foote has been detained at home to-day by an important business engagement, and I ask that he may be excused for the day.

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

Mr. Vedder — Mr. President, I have a telegram from Mr. Church, dated at Wellsville, N. Y., saying that he is detained at home on business, and asking to be excused until Thursday morning.

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

Mr. Hedges — Mr. President, I have a letter from Colonel Dickey this morning, who writes me that he has an important engagement to-day, which will detain him from the Convention, and he asks to be excused.

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

Mr. Cochran — Mr. President, Mr. Towns is still absent on account of sickness, and I ask that his leave of absence be extended until Thursday.

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

The President stated that Mr. Osborn had asked leave of absence to-day and to-morrow on account of the death and burial of a near relative.

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

Mr. Bowers — Mr. President, I have a telegram from Mr. Burr, asking to be excused from attendance to-day on the ground that he missed his train.

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

The President — General orders will now be taken up, and the Secretary will call the numbers.

Mr. Vedder — Mr. President, may I be permitted to make a suggestion? I presume there are a number of favorable reports to be made from committees. I have one, and, I think, before we go into general orders, which may consume the whole day, that it might be well to have these favorable reports made, so that they could take their place on general orders and be printed.

The Secretary called the list of committees.

Mr. Vedder, from the Committee on Powers and Duties of the Legislature, to which was referred the proposed constitutional amendment introduced by Mr. Mereness (introductory No. 49), entitled proposed constitutional amendment, to amend article 3 of the Constitution, relating to public officers, reported in favor of the passage of the same, with some amendments.

Referred to the Committee of the Whole.

The President — General orders will now be taken up, and the Secretary will call the list.

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

General order No. 6 was not moved.

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

General order No. 4 was not moved.

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

General order No. 5 was not moved.

The Secretary called general order No. 7, introduced by

Mr. Holls, to amend section 4 of article 2 of the Constitution, relating to enforcing the duty of voting.

Mr. Holls — Mr. President, I move that the Convention go into Committee of the Whole upon that matter.

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

The Convention thereupon resolved itself into Committee of the Whole, and Mr. Alvord took the chair.

The Chairman — The Convention is now in Committee of the Whole upon this proposed constitutional amendment, to amend section 4 of article 2 of the Constitution, empowering the Legislature to enforce by law the duty of voting. The Secretary will read the same by sections.

The Secretary read the proposed amendment as follows:

"Proposed constitutional amendment to amend section 4 of article 2 of the Constitution, empowering the Legislature to enforce, by law, the duty of voting.

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

"Section 4. Laws shall be made for ascertaining by proper proofs the citizens who shall be entitled to the right of suffrage hereby established. The Legislature may make laws requiring citizens entitled to the right of suffrage hereby established to exercise such right."

Mr. Holls — I move to strike out this amendment for the purpose of bringing up the matter for debate.

Mr. Chairman, before entering upon a discussion of the merits of this amendment, I beg briefly to explain what is, of course, very evident to any member reading it, namely, that the new matter in it is merely a permissive clause, authorizing the Legislature to pass laws to enforce the duty of voting.

It is a question, to say the least, whether the Legislature has this power without a constitutional provision. In my opinion there can be but very little doubt that it has the power to simply impose a penalty for a neglect to vote. But that such a law would be impracticable and difficult of enforcement is also quite evident, and to pass an act which should be self-enforcing, so to speak, and which, with the permission of the committee, I will discuss presently, it is necessary that at least a declaratory provision proclaiming that the Constitution considers voting to be not merely a right

and a privilege, but also a duty of the citizen, enforcible under penalty, should be inserted in the fundamental law.

Hence, I claim, Mr. President, that the proposed amendment meets the first requirements, which, in my opinon, every proposed amendment here should meet, namely, that it shall not be mere surplusage, and that it is not covered by any present provision in the Constitution or the law.

In advocating the principle contained in this proposed amendment, the object of which is to engraft into the Constitution an idea, which is not to be found in that instrument to-day, I wish to begin with a frank disclaimer. Experience has shown that in a body like this, gathered for one peculiar and very high purpose, it is very natural that the mover of any new idea or any new remedy for unquestioned evils, regards his proposition as the most weighty subject and the proposition of the most far-reaching importance which can possibly come before the Convention. I do not say that in a belittling sense. On the contrary, it cannot be denied that strong and well-considered conviction and a serious enthusiasm for new progressive ideas are the best possible guarantee of thoughtful and wise action, infinitely more useful than a nice sense of proportion in deciding upon the relative importance of ideas.

But I freely admit that the proposition under consideration is not the most important one before the Convention. What I do claim is that it is a matter of very great and far-reaching importance; that it is right, and that it is expedient; and in support of this claim I shall make some observations, for which I ask the kind indulgence of this Convention.

The history yet to be written of political legislation in this country during the first century of our constitutional life will contain no chapter of greater interest than that devoted to a gradual development of legislation concerning the ballot. A comparison of the complicated and elaborate election machinery of our own days with the simple methods which were in vogue a century ago, show at a glance the great change which has taken place, and an examination of history will prove that this change has come, not suddenly, but step by step, and only in accordance with popular demand for remedies from evils which were considered both immediate and pressing. When polling districts were small and sparsely populated, every individual voter was certain to be known to someone among the gathering which from time immemorial has surrounded the polling place. As population increased, and the basis of suffrage was widened, the danger of repeating made registry laws necessary; in

fact, this very section which I am asking the Convention to amend, is the section which authorizes the Legislature to pass registry laws, although even to-day they are by no means universal, and may generally be avoided if a man is willing to "swear in" his vote on election day. On the other hand, the freedom of the individual from intimidation and undue influence has been protected, first, by the substitution of the ballot for *viva voce* voting, then by laws requiring the visible part of all ballots to be exactly alike, and finally by the much-discussed and famous Australian system.

The latter also constitutes an important safeguard against bribery, which crime has been threatened with penalties of increasing severity. All this, no doubt, evinces a growing sense of the sacredness of the ballot, and a determination to spare no effort to get pure elections. That it constitutes a decided advance in the moral sense of the people will be denied by no one conversant with the early history of the nation, and especially the history of party politics in the State of New York.

With this great moral awakening there has also come an important change in the way of thinking of political observers, of deep significance and of far-reaching consequences. The duty of voting has been more clearly recognized and emphasized than ever before. It has indeed never been denied by careful and accurate thinkers that voting partakes of the nature of a duty as well as a privilege. But almost the entire conception of the act of election by vote, with its attending phraseology, has heretofore been based upon, or derived from, the theory of privilege alone. A constitutional provision giving universal suffrage has always been spoken of as "conferring a franchise," and not as "imposing the duty." This is only natural. During the first half century of this Republic even the educated and cultured classes of almost all European countries were entirely excluded from active participation in the work of government, and voting was in fact a franchise granted most reluctantly by powers who claimed the absolute right of withholding it, and who had no greater wish than that it should be exercised as rarely as possible. Even in this country and England, before the granting of universal suffrage, the right to vote was pre-eminently a privilege which distinguished its possessor from other less favored men. So highly was this distinction esteemed that the corresponding duty was almost wholly lost sight of, and it is an interesting study to note how this view has gradually changed to the very opposite, now that, so far from being withheld from a single person deserving it, the right to vote has been granted to thousands in whose hands it may become a serious menace to our institutions.

Practical difficulty has, in this case, as in many others, compelled political science to revise its terms and doctrines, and the result is, as usual, greater exactness of definition and a wider application of sound principles to the facts and problems of the day. But before we can enter upon the discussion as to whether or not the duty of voting is one which can or ought to be enforced by law, a brief examination of the real nature of the vote, as an act, and its true object will be necessary. It is not a difficult question, and we do not need light upon it from any theoretical or visionary books. Not Plato, Sir Thomas More nor Rousseau, Aristotle, nor the deepest German philosopher can further elucidate what is clear enough for any citizen of fair intelligence to understand. The fundametal truth is that the object for which a man is invested with a right to vote is one entirely outside of himself, or as the Germans would express it, as purely objective — in other words, it is a trust.

It has been held, and it would surely seem the most logical view of anyone opposed to this amendment, that suffrage is a personal right and a personal privilege, and nothing more. Each man's vote, according to this theory, is his own weapon, a possession of his own, to be used or not as he pleases, for his own welfare, protection and defense, and not for the welfare of others. But a brief examination will show the falsity and absurdity of this view. If it be true, then every man, of course, ought to judge for himself what he shall do with his vote. But it is an axiom which has been enacted into law, with all the sanction of severe penalty, that a vote is not personal property, and as such an object of bargain and sale. Likewise, the laws punishing intimidation or preventing it by devices intended to secure secrecy, declare in effect that a vote is not a private matter, and as such to be used as a means of pleasing an employer, a creditor or a powerful neighbor. To this political ethics adds the rule that the ballot should not be made use of to gratify a whim or a sentiment, revenge or gratitude; and I claim that the conclusion follows absolutely and inevitably that the vote is a trust granted and imposed upon everyone entitled to it for the benefit of every person who is directly or indirectly interested in the result of election. No deeper or keener thinker upon subjects of political science than John Stuart Mill has appeared in this generation, and his words in his book on Representative Government are so exceedingly in point that I hope the Convention will bear with me for a moment if I read them. He says: "If the vote belongs to the voter for his own sake, on what ground can we blame him for selling it? For a person is not expected to consult exclusively the public benefit in the use he makes of his house or his three per cent stock, or any-

thing to which he really has a right." He ought to be able, if he pleased, to transfer or delegate his rights to another man. This, however, is a thing impossible under our laws. But in a private corporation, where the vote merely represents proprietary right in stock, there we recognize the right to sell, or have done so until lately, and whatever the legal prohibition against it now may be, there can be no doubt that the moral turpitude involved in selling a public vote upon a public question or for a public office is not so great as is the case of a transfer for value of a proxy to vote on stock.

Now, Mr. Chairman, the duty of voting has been recognized from time immemorial. The duty of a citizen to exercise such rights and such privileges as the State required from him is as old as civil government itself. I quote further from Mill: "No person can have a right (except in the legal sense) to power over others; every such power which he is allowed to possess is morally, in the fullest course of the term, a trust. The suffrage is indeed due to him, among other reasons, as a means of his own protection, but only against treatment from which he is equally bound, so far as depends on his vote, to protect every one of his fellow citizens. This vote is not a thing in which he has an option; it has no more to do with his personal wishes than the verdict of a juryman. It is strictly a matter of duty. He is bound to give it according to his best and most conscientious opinion of the public good. Whoever has any other idea of it is unfit to have the suffrage. Its effect on him is to perfect, not to elevate, his mind. Instead of opening his heart to an exalted patriotism and the obligation of public duty, it awakens and nourishes in him the disposition to use a public function for his own interest, pleasure or caprice, the same feeling and purposes on a humbler scale, which actuate a despot and an oppressor."

The conclusion follows irresistibly that the ballot is a trust, and it seems equally clear that when this trust has once been accepted, it is, therefore, the bounden duty of every trustee to administer it regularly, uninterruptedly and unflinchingly. Stress is laid upon the last word, for apart from *a priori* reasoning, it will be admitted as a matter of practical politics, that to abstain from voting at any election in this country on the part of a man of sufficient intelligence to form an opinion upon the issues involved, is in effect a furtive exercise of the elective franchise, in that it doubles the power of the vote of a man holding opposite views, and who does cast a ballot. It will hardly be denied that such a negative exercise of the highest prerogative of free men is detrimentaal to the best interests of the community. Important as it is to have an intelligent and educated

electorate, it is of equal moment that all the latent force of discernment and knowledge in the State or the nation be brought to bear upon the decision of vital political issues. To withhold a ballot, which if cast would represent an honest and intelligent judgment, is plainly to shirk duty, bring contempt upon the very idea of self-government, impose upon other qualified voters, and surrender to those least fitted to cast their suffrages. To quote Francis Lieber:

"The more extended the elective franchise is, the more it must likewise extend to those persons, to whom time is of little value, to people who make a feast day, perhaps a riotous day, of the election time. They whose votes are the least desirable are the surest to be at the poll; but the industrious mechanic, the laborious farmer, the man of study, the merchant and professional man, in short all those who form the sinew and substance of the State, feel it a sacrifice of time to go to the place of voting, where they are not infrequently delayed for a long time by the other class from depositing their vote, especially in populous places. They are, therefore, the more imperatively called upon to keep constantly before their minds how important it is that they should vote and not leave the election directed by those who have the smallest stake in society." (Political Ethics, Ed. Woolsey, Vol. 11, p. 231.)

Surely, a man who from indolence or disdain does not go to the polling place, knows little of the importance of the whole institution of the State, or must be animated by very little public spirit, or he deserves the mantle of lead which Dante apportions to cowards in his Inferno. The extent to which this duty is shirked is easily ascertained, at least approximately. In the year 1890, according to the federal census, this State had 1,769,649 males of voting age, twenty-one years and over. That, of course, included aliens, unnaturalized foreigners, and all other classes who are not allowed to vote. Of these, 1,063,789 were native white, 681,629 foreign, and 24,231 colored. Two years later, after this census was taken, was the presidential election of 1892, at which both parties used their best endeavors to get the fullest vote possible. The total vote in 1892 was 1,366,445, a falling off of 403,204 in a presidential year. The distinguished jurist and statesman of Brooklyn, Mr. Edward M. Shepard, whose admirable and thorough presentation of the arguments for compulsory voting have been freely drawn upon by me in this discussion, has investigated the facts upon one very practical and good plan, which I will follow, namely, taking several rural counties in the State, where the number of unnaturalized men of voting age is so small as to be safely ignored, but where the population is dense, the distance traveled by voters not great, and the

roads not difficult. Before considering these figures, I wish to say that whereas the vote in 1892 for president was 1,366,445, the vote in the very next year, 1893 — the vote by which the delegates to this Convention were elected — was 1,141,056; showing a falling off between the presidential vote of 1892 and the vote of Secretary of State last year of 225,389; and that is not taking into account any of the young men who reached the voting age during the year, or any of the foreigners who were naturalized. If we compare the vote cast for the distinguished President of the Convention, and the other delegates-at-large, there is a falling off of 230,637. In the city of New York, where it is easiest to vote, and where some of our fellow-citizens find it too easy to vote more than once, the falling off from 1892 to 1893 was 40,730.

Now, if you will give me your attention for a moment in reference to the rural counties where, as I say, the number of aliens not naturalized is the smallest, we find such results as these: Madison county in 1890 had 12,642 voters according to the census; 11,584 native white, 1,947 foreigners and 111 colored. The total vote of 1892 at the presidential election was 11,421, a falling off of the number of voters of 1,221, being about ten per cent, and the number of voters being considerable less than the number of native whites of voting age in that county.

Schoharie county had 9,172 voters in 1890, but cast only 8,197 votes in 1892, a falling off of ten per cent; and again the number of voters was very considerably less than the native white voters. It has always been claimed that the naturalized foreigners are sure to vote every time, and these figures show the number of abstainers among the native white population to be very great.

Tompkins county had 10,558 voters in 1890, but cast only 8,813 votes in 1892, a falling off of eighteen per cent.

Washington county had 13,753 voters in 1890, but cast only 11,410 votes two years later, a falling off of sixteen per cent.

In Onondaga county the falling off is twenty per cent, but there being a large city in that county, it may be supposed that the number of unnaturalized foreigners is greater there.

In this country the provisions of law which formerly required a person to vote have been gathered by no less an authority on practical politics than the late Governor and present Senator from this State, the Hon. David B. Hill. In three of his annual messages, in which he set forth the duty of voting and that of the Legislature to pass a law requiring the exercise of this right by citizens, he has collated the provisions of several colonial statutes on the subject. The Constitution of Georgia before the Revolution contained a provision

compelling everyone to vote, under penalty of two hundred pounds of tobacco. The statutes of the town of Southampton, in Long Island, had this provision: "It is ordered that whatsoever matters or orders shall be referred to the publick vote, every man that is then and there present and a member of the court shall give his vote and suffrage eyther against or for any such matters, and not in any case to be a neuter." The laws of Virginia, in 1737, have this provision: "Every freeholder actually resident in each county, shall appear and vote at such election, or shall forfeit two hundred pounds of tobacco to the informer, recoverable as before."

These laws were in force during the times before the Revolution, when political interest was presumably less than it afterwards became, but they were allowed to fall into oblivion in the stirring times of the American Revolution and ever since.

The new Constitution of Belgium, and the Constitution and laws of the oldest and freest republic of Europe, Switzerland, contain provisions of this kind, and they have been long in force, to the great advantage and benefit of those countries. Hence, in no sense, is the idea presented to this Convention novel or untried. It is presented, offered and urged upon this Convention as being in direct line with every step forward in the work of reform of the ballot, and not as, in any sense, new and original.

An intelligent discussion of so important a question would naturally require first of all a discussion of the subsidiary question whether is it practicable to frame a statute in case we should give the Legislature the power which this amendment seeks to confer, which should be at once enforcible and practical. I believe, sir, that an unenforcible statute is much greater evil than the absence of any statute upon the subject. I believe most assuredly in the wise words of Burke, that, "The science of constructing a commonwealth or renovating it, or reforming it, is, like every other experimental science, not to be taught *a priori*. Nor is it a sort of experience that can instruct us in that practical science; because the real effects of moral causes are not always immediate, but that which in the first instance is prejudicial, may be excellent in its remoter operation, and its excellence may arise even from the ill effects it produces in the beginning. The reverse also happens; and very plausible schemes, with very pleasing commencements, have often shameful and lamentable conclusions. In States there are often some obscure and almost latent causes, things which appear at first view of little moment, on which a very great part of its prosperity or adversity may most essentially depend. The science of government being so practical in itself and

intended for such practical purposes, a matter which requires experience, and even more experience than any person can gain in a whole life, however sagacious and deserving he may be, it is with infinite caution that any man ought to venture upon pulling down an edifice which has answered in any tolerable degree for ages the common purposes of society, or on building it up again without having models and patterns of approved utility before his eyes."

I am perfectly willing on behalf of the supporters of this idea to admit that if it can be shown to be impracticable to draw a statute under this amendment which could be enforced, in at least a great number of cases proportionately as any other statute — as the statute requiring the attendance of a juror, for instance — that this would be a fatal objection and should of necessity defeat the amendment. But, sir, I do not wish to take the time of this Convention unduly in discussing a possible statute. I wish only to outline in a very brief way what the Legislature might do, merely to show that we, who advocate this change, do so with a full knowledge of the difficulties in the way, and with the deep conviction that all those difficulties can ultimately be overcome.

There is one method of legislation on this subject which is so simple that I will state it at once. It has been tried with success, as I am informed, in Kansas City, and one or two other western cities, in municipal matters. It is this: A poll-tax is imposed upon every voter, and every man who casts his ballot receives a ticket in the nature of a receipt from the election inspectors, which afterwards relieves him from paying that poll-tax. This, as every gentleman present will see, is very easily enforced, but it has a defect which is to my mind fatal, in that it makes no allowance for the unavoidable absence on the part of a poor man, who, perhaps, can ill-afford the amount of the tax. In Switzerland the working of the law, which I had occasion to see by personal inspection two years ago, is also very simple and very easy. There the city clerk sends around the official ballots with a stub, and, when the ballot is voted, the stub is put into a box, and that box is afterwards taken to the city clerk's office, and those stubs which are not there are collected by the constable, together with a fine.

A statute, which to my mind would be easily enforcible and perfectly practicable, was introduced into the Legislature of 1891. It provided, practically, that this result should be reached; that the full vote should be gotten out, or that persons, who so despised their right of suffrage and their duty under this statute as not to exercise it, should be deprived of it. The statute provided that any man not voting at the presidential election of 1892, should thereafter not

have the right to vote unless he either had an excuse for his abstention, or paid the fine. I am laboring under the disadvantage of wishing to be very brief in the discussion of a statute, since we are here to adopt or reject a proposed constitutional amendment, but I will outline the chief provisions of this law which, in my opinion, would be both simple and practical.

The list of voters being kept from year to year, with a record of those who voted, anyone desiring to cast a ballot at the following election would be permitted to do so if he was recorded as having voted at the previous election. If he were not so recored, it would be incumbent upon him either to —

a. Challenge the record, the registry officers and poll clerks being liable civilly and criminally for inaccuracy or frand.

b. Pay the fine; or

c. Offer a satisfactory excuse for his neglect to vote previously.

It will be seen at a glance, that the third contingency is most difficult to meet. The statute should provide for the numerous cases where a man is excusable, legally as well as morally, for not exercising his franchise, and on the other hand, it is manifestly impracticable, as well as politically dangerous, to create a tribunal to judge of the sufficiency of the excuse, or to invest any existing court or board with such powers. In either case the machinery would be too cumbersome to work successfully, and the proceedings would be even more farcical than the present methods of evading or being excused from jury duty. Whatever mode is to be employed, it must be self-acting, with heavy penalties for all wilful falsehood or fraud. The chief end to be attained by the law regulating excuses is, not to annoy more than is absolutely necessary a man with a good excuse; but to make it, in every doubtful case, quite as convenient to vote as to abstain, with reliance on the sufficiency of the excuse next time. Valid excuses may be subdivided into two classes, first, where the abstention from voting is not the act of the individual, but results from operation of law, e. g., where the voter was not qualified, by reason of infancy, too short a residence or by failing in some other test provided by the Constitution. In such a case a simple statement, with a penalty for untruth, should be a sufficient preliminary to the reception of the ballot. The same might be the case when the voter was absent on public business, civil or military, or where he was actually present at the polling place, but prevented from voting by accident, violence or any other good reason.

Second. There are numerous justifiable excuses of private affairs — sickness, absence from home for a stated time previous to

and including election day, unavoidable detention, etc., etc. The principle to be observed here is that however justifiable the neglect to vote, it was a neglect of a duty owed to the public, and hence unpleasant consequences are a misfortune of the individual, calling for sympathy, but not for a public remedy. The statute should provide that in such cases, a verified statement of the excuse, giving details to be specified, should be filed with the polling clerks a stated time before election. The trouble involved in doing this and the annoyance caused by the necessity of giving details would be an obstacle to careless or vague affidavits, and the rival party committees might be counted upon to see that no political opponent obtained a vote by an illegal or false excuse — the latter offense being, of course, highly penal.

If a voter neglected to vote at the second election, and thus to purge himself of his first negligence, the fine should be cumulated, and where the neglect continues for say three or five years, a decree of a court of record to be granted on petition, and necessitating considerable formality, as well as legal assistance, should be required to reinfranchise the delinquent citizen. That, notwithstanding all these precautions, there would be numerous occasions when the law would be evaded, may be conceded, but this certainly does not affect the argument. It will scarcely be denied that the average vote of ninety-five per cent of the qualified voters may be obtained, and this result is worth striving for.

No greater penalty than disfranchisement seems desirable, although the collection of taxes upon personal property affords an opportunity to compel delinquent and wealthy citizens to bear a proportionately greater share of the public burdens. When disfranchisement has lost its deterrent power, the ballot itself, and with it, all free institutions, will be doomed.

Such is, in brief, an outline for possible legislation on the subject. It remains to examine the arguments for and against the proposed change. I claim that the first and most obvious beneficial effect of such a statute following this constitutional provision would be to bring out the entire educated vote of the community. As I said a moment ago, it is by no means the worst class of voters who stay at home, but even this class, however, possessing as it generally does, sufficient intelligence to appreciate the importance of free government, wants to vote sometimes, and the consciousness of not being able to do so would be unpleasant, so unpleasant as to induce the would-be-stay-at-home to submit to some exertion and annoyance. It is not necessary for me to enlarge upon the disgrace brought upon self-government, when the ignorant and worthless

voters — the men who regard a vote as property, and who will always so regard it — are in a majority and practically govern a free community, while their victims, the law-abiding and worthy citizens, are too cowardly or lazy even to dispute the field. The power and responsibility of official station are on the increase, even in this Republic, and hence the choice of officers is a duty of self-government which alone calls for all latent intelligence in the body politic. But another phase of modern political development which increases the importance of a full and intelligent vote should not be overlooked, and especially not in this Convention, to wit: The growing tendency to introduce into the politics of this country something akin to the Swiss referendum. Formerly, the popular vote was taken almost entirely upon Constitutions as a whole; now this is very exceptional, while hardly a year passes when the Legislatures of some of our States do not submit some questions of law or policy to the electors at large — either in the shape of a constitutional amendment or as a simple proposition. Very often this is done from sheer cowardice, and under the specious but erroneous plea that even the Legislature voting to submit the proposition doubts the wisdom of a change. "The people have a right to decide."

The evil effects of such an error are much more far-reaching than is generally supposed. The American legislator is not a delegate — he is a representative — and he has no right to shirk his duty, even at the risk of losing popularity by not standing up manfully against persistent clamor. The spectacle of representatives who utterly disapprove of prohibition — to take one of many examples — but who, nevertheless, seek to escape the necessity of recording their vote by referring the subject to a popular election, is a most demoralizing one for the use of the country, which needs no example more than that of political courage. Such a proceeding becomes dangerous as well as demoralizing, when a constituency to whom the question is referred, comprises practically only a moiety of the electoral body of the State. Without compulsory voting such an election, especially if held on a different day from the general State elections, becomes a mere farce. I have taken the trouble to investigate the facts with reference to this one question, because it is a very good example of what is true of others, and, without wearying you with figures, in no case has that policy been adopted in any American State by a majority of that State. The number of abstainers has always been more than large enough to have changed the result. I can say right here, that the figures which I gave a moment ago show that the number of abstainers in political elections of this State has every time been large enough to have changed the result. The last

gubernatorial election in this State, in 1891, shows a falling off of about 160,000 votes below the presidential election of 1888, and the plurality of the successful candidate was but 50,000. But what becomes of the moral value of such a plurality in the face of those figures? The mayoralty election in New York, in 1890, shows the astonishing, and, to my mind, shameful fact, that 35,000 citizens of that city who had registered did not vote on election day, and certainly 30,000 or 40,000 more did not take the trouble to register. I claim that the first beneficial effect of a compulsory voting law would be that it would bring out practically the entire vote, the *posse comitatus*, in the electoral sense, in the entire State. But, besides bringing out the intelligent and educated vote I respectfully submit that such a provision would tend to increase it, by the impetus which it would give to political education and to the attention and time which men would naturally give to politics. The citizen — not always the least intelligent — who during a campaign is uncertain as to whether or not he will vote at all, and who decides the question on the morning of election day, is not apt to inquire carefully into the issues to be decided or the character of the respective candidates. Consequently his interests in arguments *pro* and *con* is most languid, his political knowledge necessarily most defective, and the whole community suffers by his ignorance. But knowing that he must vote, the desire of doing so intelligently will be a powerful incentive, not only to seek political information, but also to take part in such necessary preliminaries as the primary elections and nominating conventions. Time and again the reformers on the platform and the press have been preaching about the duty of educated men to take part in the primaries. There is nothing, to my mind, which will so certainly bring about this consummation as the consciousness that the law requires every citizen to do his duty. The public business will then become, as it should be, his business, and the incalculable and far-reaching effects of a largely increased feeling and conviction of this kind on the part of the best citizens of the State needs only to be suggested to become apparent.

Another beneficial result of compulsory voting would consist in the reduction of expenses incidental to a political campaign. All recent laws for the improvement of elections have aimed at this result. The Australian ballot law relieves the individual of the charge for printing ballots, and the corrupt practices act tends, by the publicity which it enforces only too sparingly, to discourage large expenditures for questionable objects. But every gentleman within the sound of my voice, who has had any practical experience in politics at all, knows that by far the largest item of expense is

incurred in "getting out the vote." That is nothing more than a circumlocution for downright bribery in most cases, and it has never been stated more forcibly than by Governor Hill, in his message of 1889, from which I will read a short paragraph:

"Large sums of money are expended at each election, especially in the rural districts, for the ostensible and avowed purpose of getting the vote out. This alleged purpose in most cases is a mere pretense, however, and a transparent excuse for bribery and corruption. Money is disbursed under the thinly disguised claim that it is paid and exacted for teams, time of men, and other services in getting electors to the polls, when, in fact, its real design or effect is to influence the man whose teams or services are nominally employed, and thereby secure his vote and the votes of his neighbors who accompany or assist him. The political committees of each party report that all over the State many electors, for the purpose of exacting money, assume a disinclination to vote, and oftentimes assert that they will not vote unless they are paid for their time and expenses in getting to the polls; and both political parties are thus compelled to hire their own adherents to come out and vote their own ticket. This shows to what an alarming extent elections have become corrupt. Intense but honest partisanship is preferable to indifference in public affairs. Corruption and not partisanship is the great danger of the times."

In these facts, which I claim are not open to dispute, there is found abundant reason of itself, without a single additional argument, in favor of this reform. In all of the recent discussions of ballot reform it has been stated that the great end which was to be accomplished was the reduction of expense and the diminution of corruption. Nine-tenths of all present expenses would be saved and the necessity for all the brass bands and the uniformed boys' brigades, and everything of that sort that has to be gotten up for the purpose of "getting out the vote." I do not mean to disparage those things in a national election, but the necessity of them in a merely local election would be obviated, and all that would tend to diminish the expenditure in elections. Almost the only expense that would be left would be for the holding of meetings and the distribution of literature, and I claim that this would in its consequences involve another most excellent result. The type of the successful politician would change. At present the most successful manager and politician is the man who with the greatest skill and the least amount of money can get out the greatest vote; the man who knows every Tom, Dick and Harry, and knows by what appeals and at what expenditure of money or promises of patronage, he can

nominee. The fatal unsoundness of this objection is, however, most clearly seen when we remember the ethical rule to act in such a way that if everyone in a similar situation acted in the same way the world would be the gainer. Judged by this standard, the independent who remains away from the polls is guilty of passive treason, for if everyone followed his example the result would be Anarchy; there would be no government at all. But it is said, "Suppose a man votes a blank ballot and strikes out all the names, would not that be voting, under the law, and does it not show its impracticability?" I say, not at all. First, I wish to say that I consider it a purely fanciful objection. I cannot imagine an election in this State in which all the candidates for all of the offices were so bad that no conscientious man could vote for any of them. He might not be willing to vote for either of the leading candidates, but he might be able to vote for assemblyman or county treasurer. But, even supposing it was true that every name on every ballot was offensive to the conscientious voter, then, sir, I claim that the sight of such a ballot with every name scratched off has ten times the moral effect as showing a protest against unworthy nominees, than it would have if he did not cast the ballot. He pays the tribute of hypocrisy to virtue by going to the ballot-box anyway, and he sets no bad example to his neighbors. That this law will be denounced as being "tyrannous," and as "un-American," and "oppressive," must be expected. As a matter of fact, however, I may say this, that since this idea has been more recently exploited, since Governor Hill wrote his message, and such men as Edward M. Shepard, Henry R. Beekman, David Dudley Field, and others, have publicly and in the press advocated it, I have seen extracts from hundreds of newspapers of all political parties, and, while, of course, I cannot say that I have read them all carefully, I may give it as my best impression, which I am sure is conservative, that nine-tenths of them have been strongly in favor of this reform. But that some will be found to call it un-American is the most natural thing in the world to expect. The vague severity of such invective renders it peculiarly well adapted to the needs of all who are at a loss for sound or creditable arguments, but to whom a new idea causes pain. The experience of all recent electoral reforms, and, in fact, of all proposals which were intended to make for righteousness in politics, shows that none have escaped the imputation of being repugnant to American institutions and infringements of liberty. Such opposition is, in the present case, hardly worthy of serious attention. Immunity from punishment for the neglect of a high public duty is surely a sorry caricature of that American liberty which would have been lost but

for a devotion to duty, vindicated by the highest thought and sealed with the noblest blood of the nation. (Applause.)

It has been asserted that compulsory voting would inure to the benefit of "regular" nominations, and indirectly, therefore, in many cases of corrupt and dictatorial party "bosses." This, to my mind, is pure dogmatism. I can see that it might possibly have that effect, but I claim it would not be the case except where it was right and proper. I believe that in a Convention like this, where the questions which we agitate border closely upon the line between the theoretical and the practical, we can never emphasize the practical too much. No greater mistake can be made than to look upon an election as a very theoretical, ideal proceeding. To my mind it is simply a practical method of giving a government to this State and this country, and in doing so it is a fact that the conscientious citizen must vote for the best candidates, and he cannot safely ignore the nominations of the parties; and that it is his duty to decide between them, it seems to me, it is as clear as anything can be in political science.

And this leads me to what I consider the final and greatest argument and reason in favor of this proposed amendment, namely, that it tends toward inculcating by law the idea of duty towards the country and the State, and I believe there is no idea which needs such vindication more, especially at the present time. Look at the public unrest upon all sorts of questions — labor problems and analogous sources of discontent! Over and over again we hear vague talk about "rights," and the dangerous doctrine is openly advocated that the State owes everyone a living. We know what our government is to-day, but we do not know what it is going to be twenty or thirty years hence. At no time has the character of the political problem presented to the people been of so intricate and important a nature as at present, and at no time was it more necessary to emphasize the idea, not so much of right but of duty towards the commonwealth. The men who are not old enough to remember that grand and heroic struggle, which was called up here the other day in debate, are very apt to forget that this country, great and strong as it now is, could not exist and could not possibly go on for a year, if its hold upon the sense of duty and right of the individual citizen was relinquished in the slightest degree. Anything which we can do, anything which this Convention or the Legislatures, for which we shall provide before another Constitutional Convention is convened, can do, to impress upon its citizens that America has a right that every man shall do his duty, will be the best possible service to the public and the State. Sir, that was a

remarkable scene in this hall last Friday, on the report of the Committee on Preamble, and I for one listened with a great deal of pleasure to the burning eloquence of patriotism that fell from the lips of my distinguished friend, the Senator from Franklin (Mr. Gilbert), the gallant delegate from Chenango (Mr. Fuller), the brave general from Rockland (Mr. Hedges), his colleague (Colonel Dickey), the distinguished delegate from New York (Mr. Holcomb), and all the other gentlemen that spoke, and while I thought, notwithstanding all which I had heard, that the adverse report of the committee, under the circumstances, should not be interfered with, it seemed to me that the debate showed a noble, patriotic spirit, which bodes the highest good for the results of the deliberations of this body. As a discord, harsh though it be, is the best introduction for the deepest and grandest harmony, so I know that the little difference of opinion between us on Friday only forbodes the truest harmony on the part of this Convention with regard to everything that we shall submit to the people. I respectfully submit, in conclusion, that this amendment, which I commend to the favorable attention of this Convention, is in line with that very sentiment which was disclosed here the other day — the sentiment of duty and of devotion, not only to the State, but to the whole country, and in adopting this proposition I verily believe that we shall best perform all the duties which we have sworn here to perform, subserving only the highest and truest patriotism. (Applause.)

Mr. Dean — Mr. Chairman, I desire to offer an amendment to be added to this one.

The Chairman — The Secretary will read the amendment.

The Secretary read the amendment of Mr. Dean as follows:

"And that all such votes shall be cast for the full number of officers to be chosen at such election, and have the votes counted."

Mr. Smith — Mr. President —

The Chairman — Mr. Dean has the floor.

Mr. Dean — If this amendment is to go through, I do not see why it should be restricted to a justice of the peace, a State judge or a county treasurer, and I, therefore, move this amendment.

Mr. McClure — Mr. Chairman, I had, when this proposition was presented originally in the Convention, a notion that it was one of the suggestions intended to add to the humor of the Convention, and, as our distinguished President once said in the trial of a very important case recently, to "alleviate the horrors of the situation." The failure of the gentleman who has just spoken to

move this proposed amendment, particularly on Thursday last, when there was ample time — this Convention adjourning at twelve o'clock — leads me to conclude that he had decided that after having read his very able pamphlet to the committee on Friday he had done his duty.

I was not here on Friday last, but I judge from what the gentleman says that the fact that we are to consider, even for a little time, his proposed amendment, is due to what occurred on Friday, and that the general hurrah, which seems to have been indulged in upon this floor on Friday, extending itself in its course and effects, induced my friend in charge of this amendment to at least make these suggestions to this body. As a member of the committee to whom this matter was referred, and by which it was considered, I hasten, Mr. Chairman, to say that the report which brought this matter into this Convention was not a unanimous report, and that when this Convention disposes of this matter in the summary way, as I believe it will, in which it disposed of the unanimous report of the Judiciary Committee on the matter which was before us last week, relative to commissioners of jurors, that the Convention may know that they are not fighting against the unanimous report of a committee. Mr. Chairman, it seems to me that this is a proposition not at all practical and not at all necessary. I do not believe, sir, as a member of this Convention, in putting any theories before the people, no matter what distinguished names of literary men, men not at all practical in business or in public affairs, may be behind them; I do not believe in putting such theories into a Constitution which is to stand the test of the criticism and the votes of the people of this State. I have not discovered, sir, in my experience that there is any necessity for it, and I do not admit the right of the State to say to a man that it will administer the performance of his duty for him; that it will put his conscience into operation by means of a provision like this. I agree with the gentleman that the ballot is a trust confided to the citizens; but to him is confided the duty and the right of discriminating as to when he shall exercise it. There have been and there will be again, Mr. Chairman, conditions which may actuate the citizens in saying: "I will make it evident to party managers that they cannot nominate men here for office that I shall be compelled to support by reason of my party fealty, and I will emphasize my objection by remaining away from the polls and showing the party managers that the way to get out the intelligent vote, the vote most to be desired, is by the nomination of fit and proper candidates for office."

I have seen the day in the city of New York, and, I dare say, my friend has seen it in Yonkers — he has endeavored to speak for the city of New York, saying that there the the citizens sometimes find it convenient, not only to vote once, but to vote often — I dare say, he has seen the time when the tickets presented for —

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

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

Mr. Moore — My point of order is that the gentleman is talking upon the main question, while the question before us is on Mr. Dean's amendment.

The Chairman — The Chair decides that the point is not well taken, and the gentleman from New York will proceed.

Mr. McClure — As I was stating, we have both seen the day when the candidates presented were not such as suited our choice, and the most practical way of expressing our opposition was, not alone by staying at home, not alone by going off shooting on Long Island, but by saying publicly and privately that the reason for abstinence from voting was because the parties did not present candidates whom we thought were entitled to our suffrage. Suppose such a state of affairs might exist in the near future. Suppose the party boss of one party — we have only two at present in this State — should, on the one side, put upon the people and put to them for their suffrages as a candidate for the highest executive office in this State a man who would be distasteful by reason of his record, or by reason of the failure of a record, to the voters of his own party, and it might be said that money or some other influence controlled the nomination, and, suppose the boss of the other party should, possibly, not have a candidate of great merit — had passed over distinguished lawyers, genial gentlemen, and taken a mere hack — what better way to emphasize the independent citizen's view than by refusing to vote and by making a record in the statistics that so many thousand citizens regarded the action of the party managers on both sides as so improper, so lacking in principle and in the proper progressive view of things, that they would abstain from voting, and that the party that lost the most votes probably had the worst candidate presented to the people? Now, Mr. Chairman, my friend suggests that in such an event a citizen should exercise his conscientious duty by dropping in a blank ballot. That is the height of absurdity, in my opinion. It has been suggested to the committee, at least, that a blank ballot might be deposited, or that the voter might search through the ticket to find that, even though he could not

vote for the leading candidates of his party, he might, at the tail-end, find some nominee, a county treasurer, for instance, for whom he might deposit his ballot. I think, sir, that the great privilege to be allowed to vote has coupled with it the right to exercise that privilege or not. I cannot understand the argument that a trust executed, as my friend says it would be executed, by a citizen being forced to the polls to vote a ticket that he did not sanction, at the behest of party managers, is an intelligent exercise of the trust. If my friend's argument is carried to the logical conclusion, the trust is not executed by the mere accepting by the citizen of the ballot offered to him by his party managers and depositing it in the ballot-box, but he must go behind that and take part in the nominating of candidates, and, if his party, in opposition to his views and his arguments, insists upon precipitating upon the public a candidate that he cannot indorse, is he, after all, to go out and support that candidate by voice and argument, and by depositing his ballot at the polls? I think it would be reducing the exercise of the suffrage to a mere matter of machinery, and wooden men could exercise it as well and as profitably to the community as a citizen of intelligence of this day. My friend on the other side does not tell us what is to excuse a man, or how he is to be excused. You cannot adopt these theories, if they are not practical to be put into operation. I had the pleasure of listening intently to the gentleman in the committee. He was there asked what remedy he would propose. He said he would propose that the Legislature should pass an act providing that if a citizen fails to exercise the right and privilege of suffrage for five consecutive years, he shall, unless his failure is excused, be disfranchised forever. That was the gentleman's argument presented to the committee. Where is the practical operation of any act that may be proposed by the Legislature? If a man does not vote for five years, he is to be disfranchised. He may have ample excuse — sickness in his family, or of himself, or necessary absence from the place of voting on election day — a thousand and one things that called him away from home at that time. What is the provision to be? If he is not to be absolutely disfranchised, because he fails to vote for five years, then he is to be excused if his excuse is sufficient. Who is to consider that excuse? When a citizen of intelligence and standing in a community — such, for instance, as the gentleman who failed to vote at the last special congressional election in New York city, a gentleman who was considered by the President as of sufficient importance and standing in the community to be nominated for the high office of judge of the United States Supreme Court —

when he goes forward to proffer his excuse for his failure to vote at that special congressional election, who is to pass upon his excuse? His statement, under oath, would be passed upon by inspectors. Would any one man wish to give up his right to the franchise, or have it hang in the balance upon the decision of those inspectors? If the inspectors were to be the judges, as fixed by the legislative act, why, upon their decision his right to the franchise would hang. Is a citizen to parade before the public eye all the details of the sickness of his wife and children, or of himself, which kept him from the polls? Is he to parade the details of the public business, the performance of which was placed in his hands, and which prevented his going to the polls? Is he to parade that for the decision of three or four inspectors — men of not much calibre generally — and have them decide whether, in the future and for the rest of his life, he shall be disfranchised? Mr. Chairman, it seems to me that there is simply a theory here. We are not discussing a condition that requires this kind of action. We are not suffering by the failure of some of these gentlemen to vote, for whatever reason may actuate them, whether the feeling that conscientiously they cannot support the candidate of either party, or the disposition not to vote. We are able to overturn the parties in this State year after year by the vote of men who are interested at elections to see where a party does wrong, and promptly to see it. I think the very recent past illustrates that a Legislature entirely Democratic, with a Democratic executive, changed to a Legislature Republican, and a possibility, if I may put it mildly, of a Republican executive in the near future. (Applause.) I say the possibility of a Republican executive in the near future; I did not say the probability. (Laughter.)

The Chairman — If the Chair witnesses another demonstration like this, he will call the President to the chair. (Renewed laughter.)

Mr. McClure — I said, Mr. Chairman, the possibility; I did not say the probability, and I said the possibility because it is a feature of my character and disposition to make all men, so far as my influence goes, feel happy and comfortable; and, if a statement by me that there was a possibility in the near future of there being a Republican Governor of this State dispels from the hearts of any one or two or three gentlemen any gloom or doubt that might have possessed them, I should be glad to have drawn out that little ripple of applause for which the Chair has just admonished them. (Laughter.) I was seeking to demonstrate, sir, that we are not in a condition to need this radical, this extreme, this extraordinary,

this not practical provision which is suggested to be incorporated in our Constitution; and, if we were in a condition, the amendment suggested by my friend will not meet the case. Let us endeavor, those of us, if any of us there be, and I do not know that in this distinguished body anybody admits that he is very practical in politics, but all of those who do take even the slightest interest in political affairs, let us see to it that the candidates of our parties, respectively, are such as to induce the voter to come out and cast his ballot for either one, so that there shall not be any large number who will refrain from voting. Mr. President —

The Chairman — Now, I make the point that the President is not in the chair. (Laughter.) This laughter must cease.

Mr. McClure — Sometimes, Mr. Chairman —

The Chairman — Will the President please take the chair?

The President took the chair.

The President — The Convention will come to order.

Mr. Alvord — I have to report to the President of this Convention that owing to the limited powers on the part of the chairman of the Committee of the Whole, I cannot suppress disorder on the floor of the House.

The President — The Convention has heard the report of the chairman of the Committee of the Whole.

Mr. Holls — I move that the Committee of the Whole continue its labors, in the hope that the disorder, which has been suppressed, will not occur again.

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

The President — The motion is carried and Mr. Alvord will kindly take the chair again.

Mr. Alvord — Mr. President, I respectfully decline to be any longer the chairman of this committee.

The President — Mr. Root will be good enough to take the chair.

Mr. Smith — Does this Convention possess the power of coercion to compel a member to take the chair? I inquire simply for information.

The President — It may be time enough to answer that question when Mr. Smith may be tempted to disobey the Chair. (Laughter and applause.)

Mr. Root took the chair.

The Chairman — The Convention will reassemble in Committee of the Whole, and Mr. McClure, of New York, has the floor.

Mr. McClure — I am very sorry that the situation has been changed — very sorry that I, a member of the minority of the Convention, should have been the occasion of so much hilarity on the part of the majority, because I understood from the glance of my friend, the late chairman, that it was directed at the majority of this Convention. Now, sir, I have only one suggestion to make in closing the few remarks, disconnected, as they have been, that I have offered in opposition to this amendment, and offered, as I intended to suggest at the beginning of my remarks, largely and mainly to let it be understood that the unanimous action of the Committee on Suffrage was not behind this proposition, but that it was brought in here as one of the theories — I believe it to have been brought in and voted upon for that reason — that it would be a good thing to have exploited upon the floor of this Convention, so that the members of the Convention would get down to practical work at the earliest possible moment. Now, Mr. Chairman, if I were disposed to have action taken by this Convention that would be entirely destructive of the chances of the Constitution that we intend to propose to the public, I would favor theories just like this one proposed by this amendment. But I am not in favor of such action. I am here as a responsible member of this Convention, responsible to the constituency that sent me here and to the public of the State generally, to recommend by my action and by my vote to the public, only those things that, first, are necessary for the welfare of the people of the State, and, second, those things only that are safe; and afterwards those things that will not be largely drag-nets upon the Constitution itself in its more important elements so as to break it down and destroy it. I am opposed to putting into practical operation wild and vague theories. We have some matters before us deserving our best and most intelligent attention — things that cry out to us for relief — and my disposition is to take up those things promptly and intelligently and act upon them so that the people of the State will approve of our action, and send out nothing that we do not thoroughly approve of — not in a vague and indefinite way, but affirmatively. My friend has said in his argument that the number of abstainers from voting would, in a recent case, have changed the results. Where does he get the information from which to be able to say that the men who abtained from voting belonged to either political party, and that, if they had voted, the action which was taken would necessarily have been adverse? Might it not have been that the action

which was taken and the result which was attained would have been largely confirmed by the action of those who did not vote, if they had exercised the right of suffrage? Mr. Chairman, I do not propose to delay this Convention any longer. I hope this amendment and all similar amendments — mere vague theories, the result sometimes of the workings of men not practical in public affairs — I do not mean my friend, in that statement, because many such things have come in that have only been presented by request and have not been amendments behind which the delegate took his stand — but I hope these things will get out of the way as soon as possible, so that the great questions with which we ought to deal may promptly be taken up, about which the people are looking to us for speedy action. (Applause.)

Mr. Smith — Mr. Chairman, through the courtesy of the learned gentleman who champions this measure which I take this opportunity to acknowledge, I have been permitted to peruse his essay, printed a few years ago, entitled "Compulsory Voting." The essay deals with the subject substantially as he has presented it in his argument before us to-day, but more fully. I was particularly struck while reading the essay with its beauty of style and its felicity of statement. I doubt not that it will attract the attention of students, and make the name of the accomplished author remembered, when the struggles of this body are long since forgotten. I regret, however, that I cannot commend the wisdom of the essay, as well as its beauty of style.

Wisdom is the companion of knowledge. All knowledge consists in knowing the truth and the highest wisdom in making the best use of it. Wisdom, therefore, never champions the cause of error. The infirmity of the gentleman's argument and of his essay consists in his entire misconception of the meaning of a man's right to vote. He regards the right to vote as a trust, as a duty to the State. He even likens it to the duty of a juror sworn to try the issues of a case. He does not consider the voter to have any interest for himself in holding the right to vote. These are his words taken from the essay: "The object for which a man is invested with the right to vote is one entirely outside of himself, or as the Germans would express it, it is purely objective. It may be accepted as a principle of political ethics that the elective franchise is a solemn trust. The citizen's duty in casting his ballot does not differ in kind from that of the juryman sworn to decide the issues presented without fear or favor."

Now, I, for one, and with all due respect, am not able to indorse the gentleman's code of political ethics. I believe he has built his

argument upon a fallacy. He deals with a man's right to vote as a right not held primarily for himself, but in trust for others. This is a great mistake. By the laws of nature, man is endowed with the right of self-defense, in virtue of his right to live, and the right to defend himself implies the right to make that defense as complete as possible, and hence it implies the right to unite with the other members of the human family for the same purpose, all standing together on the platform of self-defense for greater security; and such joining and standing together has been from the beginning nothing less than the organization of society, the organization of the State, the establishment of civil government. It is, therefore, upon this great platform of self-defense that government is founded, to defend and protect the enjoyment of human rights. In these circumstances the ballot is the only means by which the individual can be admitted to participate in government. The right of a man to vote is a right, therefore, springing from the right to defend himself; it is a right held primarily for his own protection, and when intelligently used for protecting the enjoyment of his own rights, it will, incidently, at the same time, protect others. In no other sense can it be said that the right to vote is held for the benefit of others.

Now, Mr. Chairman, time has not allowed me to write out my address as this subject has presented itself to my mind. We are engaged in revising and formulating a Constitution for the people of the State. There is a number of subjects that will come before the Convention of a character similar to this. Those subjects make it important that we have a distinct and clear conception of human rights, of the true office of government, and of the meaning of the right of a citizen to participate in government by the ballot. For some considerable time past I have devoted much attention to the consideration of natural rights, and will, if gentlemen will permit me, read some extracts from an essay I have prepared upon the subject of natural rights.

First. "The first great natural right and the one from which all others are evolved, is the right to live. This right will not be denied by anyone. Whoever would deny it would cut the ground from under his own feet. The right to live means all that is implied by it, as much so as if all the implied things were written out in words at length. There is implied from the right to live, subject, of course, to forfeiture for the invasion of the rights of others, the right to all the things necessary to sustain life; the right to the air to breathe, the right to food, clothing and shelter, the right of self-defense; the right of opportunity to live in communion or association."

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

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

Mr. Dean — My point of order is that the gentleman is not confining himself to the subject before this committee.

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

Mr. Smith (continuing) — "The right to the possession and privacy of the person, and the right of development, implies the right of liberty of though and discussion, the right of individuality, and the right of self-government."

Now, let us consider the right of food.

Second. "When we look out on the face of nature, we see that food is not brought to humanity ready for use, like the air, without exertion. The choicest fruit ever found in the state of nature had to be plucked; the manna in the wilderness had to be gathered; the fishes in the sea and in the stream had to be caught; all these were very near humanity in a state of nature as food, and that plucking, gathering and catching was labor. Hence it will be observed that the right of food is conditioned upon the necessary labor to obtain it. But upon the condition being performed, the right of food becomes absolute, as completely so as the right to the air to breathe. Therefore, what is gained as the fruit of labor is given in virtue of the right to live, for if the fruit of labor could be snatched from the workman before he could apply it to his use, starvation would ensue and life would end. Hence the fruit of labor is property. The right of property begins in acquisition by labor. The right of property implies the right of use, of sale, of exchange and the right of contract generally. The conclusion is, therefore, reached that the great system we call commerce is founded on the right of property, acquired as the fruit of labor, given in virtue of the right to live."

Third. "The right of self-defense is a natural right. Without the right of self-defense life would be taken and brought to a close. Hence the right to defend one's self must be regarded as a natural right in virtue of the right to live. The right to defend one's self implies the right to make that defense as complete and perfect as possible, and hence it implies the right to associate or unite with other members of the community to the same end, and such association from the beginning has been nothing less than the organization of society, the organization of the State, the establishment of civil government. It is, therefore, upon this great natural right of self-defense that government is founded. To that end society, conscious

that there are and always will be persons who do not respect natural rights, and who will violently infringe them, as a matter of mere self-defense, builds prisons, appoints jailors and other public officers, and makes laws or rules to regulate the intercourse of the members of the human family as between themselves, to regulate in such a way as to protect and preserve the enjoyment of natural rights. It is obvious, therefore, that the true office of government is the protection of the enjoyment of natural rights."

Fourth. "The right of opportunity for association is a natural right in virtue of the right to live, for life could not exist very long or in a state of complete isolation. Hence the right of opportunity for association is a necessity and means the right to live in society, to have communication and intercourse for our personal and general welfare. Communication must have been conducted from the beginning by acts, words or other audible sounds and extended by the use of symbols. Public meetings were devised to facilitate communication, enabling a single individual to speak to tens, hundreds or thousands at the same time; and when letters were invented they were used as additional means of communication, and then came the printing press, books and newspapers as the most improved methods to facilitate the widest and most extended communication, enabling a single individual, by means of the newspaper or a book, to address not simply hundreds or thousands, but hundreds of thousands by a single effort. The "press" is, therefore, but another and superior means of extended communication, and its "liberty," the free and unrestricted enjoyment of that great natural right conferred by the Creator equally upon all humanity."

Fifth. "Thus it will be seen that all the rights we have of every kind from the smallest to the greatest, come to us from the right to live; that we do not, as is often imagined, get any of our rights from government. Government, practically considered, consists of individuals acting under the authority of organized society, and as the right to live was not derived from society nor from any member of it, nor from all the members of it, so no right, developed from the right to live, was so derived. Government, as already shown, is organized upon the right of self-defense — to defend and protect the enjoyment of natural rights — and never to create or attempt the creation of them. Indeed, government cannot confer what it does not possess. The only relation which government has to rights is by way of regulation for the purpose of protection. The nearest that government may approach the creation of a right, is incidentally by way of regulation, or, in other words, it may create artificial rights relating to matters of form or modes of procedure. For

example, it may make the laws or rules to govern the intercourse of the members of the human family as between themselves, and the forms and mode of procedure for the conduct of public business. The power to do this is styled the police power of the State. It is the power to protect and preserve; to establish order, peace and tranquility, and thereby to promote the happiness and general welfare of society."

Now, to proceed with this view of human rights, with this view of the true office of government, what is the meaning of a man's right to vote? It is to participate by ballot in the making of the laws and rules for the protection of human rights. It arises out of the natural right of self-defense. It is founded on the right of self-defense. What is government for except to defend natural rights? Take the Constitution of the United States. Look it over. It organizes a Congress, a judiciary department, an executive department, not to give any individual the position of President, judge of the Supreme Court, or Senator, but organizes the government for the protection of human rights; that is the object. What does the Constitution next say? That Congress may do certain things, enumerating them. You would not think they were many, to read the enumeration. What does the Constitution next say? That certain things shall not be done. No State shall make any laws to abridge the privileges or immunities of citizens; no person shall be deprived of life, liberty or property without due process of law, and so on. Those prohibitions are addressed to the communities that form the several States of the Union. They are in part like the Ten Commandments, which themselves are a Constitution. "Thou shalt not kill" implies the right to live. "Thou shalt not steal" implies the right of property. "Thou shalt not bear false witness against thy neighbor" implies that the neighbor has rights which might be injuriously affected by false testimony. These laws, brought down by Moses from Mount Sinai, treat the members of the human family as so many children, telling them what not to do. They are a part of government, however. Our Constitution of the United States, and I hope the Constitution of this State, when we complete it and it is ratified by the people, will tell the people of this State, and every public officer, and every judge, and every magistrate, and every individual, what he must not do, and I hope that when it is so organized it will tell the learned gentleman who has brought in this amendment for coercion, that compulsory voting is one of the things which shall not be done. There are things which are personal to the individual, things with which neither authority nor society has any right to deal. These comprehend

all of a person's life and conduct which affects only himself. I mean directly, and in the first instance. This marks the region of personal liberty. This struggle between liberty and authority dates back to the remotest ages of the world. Authority began its assertion of dominion over the individual away back in the infancy of time, and for ages it dominated the individual and subjected him to the conditions of slavery, of servitude, or the sacrifice of his life at its behest. It is within the story of modern history that we are told that the country from which our forefathers came had written in its institutions the same arbitrary spirit of dominion over the individual. For ages and ages, and until within a comparatively few years only, England proclaimed to the world, as her doctrine, that a person born under the English flag was a British subject, and that he could not release himself from his allegiance, and that no nation on the face of the earth had any power to aid him in extricating himself from such obligation. In virtue of that claim, when England became involved in those long wars with France, of which you all know, commencing in 1793 and continuing with slight intermission for more than twenty years, and when she found that her forces on land and sea were being thinned, she made our merchant vessels a convenient recruiting ground. The commanders of her warships, under pretense of searching for goods contraband of war, boarded our merchant ships in every part of the broad expanse of the ocean, and once aboard, they said: "Here is an Irishman, or Scotchman, or Englishman, or somebody"— he may not have been born in British possessions at all. "We claim him as a British subject"— the commanders of the warships being the sole judges, and they seized our sailors and forced them aboard their ships. We stood such outrages for many years. There was no way of ever finding out exactly how many persons had been thus seized; but, before we declared war, it was computed that the number of persons seized from our ships was sufficient to man the whole British navy, at that day. We declared war, and although that war did not result in a treaty extending the doctrine of human liberty, the result of its protest was such that the claim of search and seizure was never afterwards revived; and now there is a treaty, so that no man is any longer a slave to the country under whose flag he was born. He may now select as a home any part of the earth that he may choose. This has become the recognized law of the nations. It was a great step forward for liberty. We find, however, the effort for the restriction of natural rights is cropping up all over, in the demand for physical examinations, for compulsory vaccination, in the arrest of people on the streets without warrant. It is

everywhere rampant, this spirit of coercion; and nowhere any more so than in the proposition of the gentleman from Westchester. That is the way we stand to-day.

Reference has been made here to what Senator Hill said, while Governor, upon this subject. I have read over his message, and he made the proposition for compulsory voting as a suggestion and for consideration. I believe that the people of this State are indebted to Senator Hill for many most valuable reforms which he introduced while Governor of the State, and which are still growing, day by day, more and more in popular favor. He introduced the system of the execution of criminals by electricity. He introduced a great many valuable reforms which are still growing in popular favor, and some of these reforms, by virtue of their popular merit, will, in course of time, commend themselves to other States and other nations and become engrafted in their systems of government.

The suggestion made by Governor Hill in reference to compulsory voting was simply a suggestion and nothing more. I have read the essay of the learned gentleman from Westchester, and listened to his argument with very great pleasure. There is not a State in this Union where a system of compulsory voting has been introduced since the Declaration of Independence; not one. There is not a statute on record respecting compulsory voting upon general subjects anywhere. I think the learned gentleman who champions this measure does not claim that. All he does is to refer to what occurred respecting compulsory voting in 1600 in Virginia, or in some small community. He may be right, because we know that, under the English system, voting was allowed to but very few people, and they had the right by property qualification. He has referred to the system of compulsory voting which prevailed on a part of Long Island. I have looked into that, and found that it was an ordinance that citizens should vote, who had a right to vote, on matters that would be brought before the public. It may have been to build a road or a ditch. It certainly could not have been to elect public officers, because all the public officers were appointed by the crown. It may have been the building of a school-house — a very proper matter. If you want to make a man vote on such questions, I would not object. That is the extent to which compulsion has been used.

Now, what possible benefit would this system of compulsory voting be to this State? Government by the people must necessarily be conducted by party. That is the only way the individual can make his influence felt. That is the only way the individual can

exert his influence. If individuals were to act independently they would neither affect a principal nor accomplish any practical result, but would waste their energies on the vacant air. Party organization and party warfare are essential to political existence. But party organization is only a means to an end. The end is the protection of the enjoyment of personal rights. That is the end to be accomplished. That is the true office of government. That is why we are here, to make a Constitution to protect the enjoyment of natural rights and to facilitate the conduct of the public business. If we can make a Constitution which shall protect every individual in all the rights that his God has conferred upon him, and which come first in the form of life and then through the evolution of life, we shall preserve and protect liberty for every human being within the limits of this State. That is what we are here for. The right to vote being the right of a man to defend himself, he must be left to exercise that right of self-defense when he thinks his interests are in jeopardy. "I would have a man vote," the learned gentleman says, "because he has the right to vote." Would you make a man defend himself because he has a right to defend himself, and when he regarded himself as perfectly protected? Would you make a man perform a ceremony that would have no meaning whatever? Would you make a man vote a blank ballot? Would you compel a man to vote for a dishonest candidate? Would you compel a man to vote for a party whose principles he disapproved? Would you compel him to vote for Tammany Hall, for instance? The man might say, "Well, I can see that Tammany Hall gives a very excellent government in the city of New York; the city never had better streets; never had better, fresh and purer water; never was safer for life; never was safer to be out late at night; never had lower taxes; never a time when more millionaires selected New York as a residence." He might say: "I know all that; but there is a social evil that has not been reformed by Tammany Hall; therefore, I am against Tammany; I don't want to vote for Tammany." Well, then, vote for the Republican party. He might say: "There are numbered among the adherents of the Republican party some of the bravest, noblest, most generous men on the face of the earth, but the Republican party has some things I do not like; it is in favor of monopolies or bad legislation; at least, I think so; I do not want to vote for the Republican party." Well, vote for yourself. "Well, if I vote for myself, it amounts to nothing; it is just like voting a blank ballot." Well, then, vote the blank ballot. He may then say: "When I look

out on the face of nature, I see that nature abhors a vacuum, abhors an act that has no meaning in it."

Why don't you compel a man to do something that may be of service to him; compel him to exercise an hour before breakfast? That would be a good thing for his health, but don't compel him to perform an act, a mere ceremonial, without sense, without judgment. Do not compel him to defend himself when he is not in a position of jeopardy. Why, gentlemen, you see how idle it is. It is against the fundamental principles of natural right. It invades the domain of a man's own conduct. It involves a principle of coercion that would next make a man vote for a certain candidate. Great heavens, where would you stop! Strike coercion wherever it appears against the liberties of the people and do not let it get any control in this State or this country.

Mr. Bigelow — Mr. Chairman, I have the misfortune not to be able to concur with my colleagues of the committee in favor of this amendment, and, of course, I always regard it as a misfortune when I am obliged to differ with such gentlemen. In consequence of my having been a dissenter, I had intended to have made some remarks in reply to the argument of Mr. Holls. He has presented his side of the case, however, so completely and so adequately, and the adverse argument, I think, has also been presented so sufficiently that I think the Convention is now as well prepared to vote upon the subject as it will be after a longer debate, and in view of the shortness of time that is left to this Convention for its still more important work — in view of the few days that remain to us for deliberation upon these problems, and reluctant as I am ever to take any measure that is calculated to deprive any member of the opportunity of expressing himself upon any question, if it is necessary and profitable for the purpose of enlightening the Convention, I venture to take the liberty of moving the previous question on this amendment.

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

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

Mr. Holls — Mr. Chairman, my point of order is that the previous question is out of order in Committee of the Whole.

The Chairman — The point of order is well taken.

Mr. Bigelow — Mr. Chairman, I move that the committee rise and report against the amendment.

Mr. Goodelle — Mr. Chairman, I hope my distinguished friend from New York will withdraw that motion for the present. There are two or three gentlemen who desire to be heard briefly on this

proposition, and I think it is of sufficient importance not to be treated lightly, and I think that the committee that has reported it to this Convention has the right to ask that the motion be not pressed at this time.

Mr. Bigelow — Mr. Chairman, if the chairman of the committee wishes to be heard on the measure, I will withdraw it.

Mr. Goodelle — Mr. Chairman, I desire to say a few words after the debate has closed, but I desire to give way to Mr. Nicoll.

Mr. Bigelow — Mr. Chairman, I gave way for the gentleman, but if Mr. Nicoll wishes to make a speech on the subject, I suppose he can ask for leave himself. I don't think Mr. Nicoll is very anxious to make a speech on this subject. I think, as the chairman of the committee does not wish to say anything on the subject, we may as well go on with the vote.

The Chairman — The Chair is of the opinion that the gentleman from New York cannot keep control of his motion, for the purpose of allowing certain delegates to speak. The motion must either be withdrawn or pressed.

Mr. Bigelow — I press it.

Chairman Root — The Chair is of the opinion that the motion is debatable.

Mr. Nicoll — Mr. Chairman, while the honorable gentleman from New York has probably stated my position in one respect, and that is, that there is no amendment on which I am particularly desirous of engaging the attention of the Convention for any great length of time, yet under all the circumstances I feel it my duty to say a few words in reference to the position of the Suffrage Committee upon this particular measure. I am in favor of it because I believe it expresses a prudent and reasonable measure of reform, and not perhaps as a pressing measure of reform, but one that may properly find a place within the limits of the new Constitution. This amendment is addressed against three classes of citizens more or less numerous in the State. First, it is addressed against the Anglomaniacs, a class of citizens who are to be found upon the banks of the Hudson, who infest the shores of Long Island, who make a holiday out of election day, and prefer a game of ball to the polls. It is next addressed against that class of holier-than-thou citizens who are so much interested in their educational, academic and professional pursuits that they neglect their political duty. Thirdly, it is addressed against those hoary-handed tillers of the soil whom gentlemen from the rural districts inform me are reluctant to come to the polls until the close of the day after some strong convincing

arguments. (Laughter and applause.) Those I say are classes of citizens to whom this amendment is addressed. If it were mandatory on the part of the Legislature to presently pass laws compelling citizens to vote, I should not be in favor of it. I do not believe that the present condition of this State requires the immediate passage of laws compelling citizens to vote. I do not believe that the classes which I have enumerated are so numerous as to justify the immediate enactment of such a radical measure. In fact, recent events have shown that the people are reasonably alive to their political rights and political duties. Recent cyclones which have swept over the State have shown that the people are still able to change their rulers according as they may determine, and indeed in the city in which I live, many citizens belonging to one of the classes of citizens which I have enumerated, who have for years been in a political sleep, have recently awakened from their slumber, buckled on their armor, and are now engaged in counting their chickens before they are hatched (laughter and applause), and estimating the fruits of a victory before it is won. I say there is a general condition of activity on the part of these patriots who have for many years been in a condition of slumber. But that is not the question presented by this amendment to the Convention. The question here is whether or not the classes which I have indicated are not numerous enough to warrant our confiding to the Legislature the power to compel them to exercise the right of suffrage, if in the course of the next quarter of a century they become so numerous that such legislation becomes necessary, you will perceive that this amendment gives no mandate to the Legislature. It does not say that the Legislature shall make laws requiring citizens entitled to the right of suffrage hereby established to exercise the right, but that the Legislature may make such laws. I find no difficulty whatever in the objection that this is an invasion of the natural rights of citizens. There is no such thing as a natural, inalienable right to vote on the part of any man. Suffrage is not an inherent right belonging to the individual as one of the State. Suffrage is a privilege conferred, or if you choose to put it in some other words and in the language of this Constitution, it is a right established. A right established by who? A right established by the State; a privilege conferred; a right established by the State. What for? For the benefit of the individual, for his moral and political development? Not at all. It is established not for the benefit of the individual, but for the benefit of the State, and so the State confers its rights upon certain classes of citizens for the State's benefit, in order that the things which the State was constructed to maintain and preserve may always be main-

tained and preserved for the benefit of the whole people. If I am right in this view of the suffrage, that it is in fact a privilege conferred, a right established by the State for the benefit of the State and not for the benefit of the individual, it follows of course that the State may compel the individual upon whom it has conferred that right to exercise the right, when the safety of the State requires its exercise, and this is all that this amendment expresses. We are not making this Constitution for to-day. We are not necessarily engaged in reforming present evils. We are providing in a measure for the future. We are supposed to be looking ahead perhaps for the next quarter of a century, and it is our duty to take such note of existing things, to so mark the signs of the time, that we may prepare a Constitution broad enough and elastic enough to meet evils when they become of such magnitude as to threaten the existence of the State itself. For those reasons I favor the adoption of the amendment. (Applause.)

Mr. Blake—Only a few words, Mr. Chairman and gentlemen, upon this proposition. I am opposed to the amendment, sir, because, differing from the sentiments expressed by the last gentleman, I do believe that it is an invasion of the rights of the citizen. I believe the franchise is to be exercised or not according to the good will and pleasure of the citizen. There are many considerations that may arise to prevent its exercise, and over which the citizen if he would could have no control, and furthermore I hold that the principle of this amendment is antagonistic to the great principle that underlies popular government. The whole theory of a democracy, or a government by the people, is that it exists by virtue of the consent of the governed; that it rests for its consent upon that foundation; and that is the basis of popular government. Consent implies freedom of though and freedom of action. It implies that the mind must be free from every circumstance of compulsion. I shall not split hairs over the question whether it be a right, or gift, or privilege. It may be a gift; it may be a right; but whether it be a gift or a right, or partake of the character of both, it is the foundation of our Republic. I hold, sir, that you cannot deprive the citizen of his discretion and judgment. I say further that even though a man should come to the polls and on account of either the party or its candidates being distasteful to him, he should not care to vote for them, and should under compulsion vote a blank ballot, I cannot for the life of me see how that is an expression of his views. A blank ballot cannot be an expression. I say that that compulsion is repugnant to the spirit of our laws and institutions and contrary to the American idea of a free government. The suffrage is a privi-

lege then, I say to the last speaker. It may be the most distinguished honor that may be conferred upon a man, the highest distinction and honor, but it is a privilege and when it is once conferred upon me, it is my personal privilege; it is my personal right and property. Freely it was granted and freely it is to be exercised. It is the right of a free man and not that of a serf. You shall not compel me to exercise that privilege. You cannot compel my expressing my views. I recognize the evil, Mr. Chairman, although I think the evil is very much magnified and exaggerated by the people here in favor of this amendment. I think the people have rallied in large numbers on most occasions at the polls. When they do not they are opposed to the policy and candidates of their party. I recognize the evil that is sought to be remedied by this amendment. I believe that all good citizens feel that every man who is the recipient of this great privilege should perform his duty, and yet, sir, I doubt whether the people of this great commonwealth are ready, willingly, to approve a law that forces them to the polls like cattle to the slaughter. I tell you, sir, that they will resent it, as a restriction of the freedom they have heretofore enjoyed. They will resent is as a violation of the principles of popular government, and particularly as a violation of that sacred principle that a government by the people and for the people exists by the free untrammeled, voluntary assent of the people that are governed. It were well, sir, I will admit, for the permanence of free institutions, if we could carry the theory of the gentleman into practice. I believe that his amendment is founded upon praiseworthy and patriotic motives. I believe in a free and conscientious discharge of his duty at all times by every citizen in this broad land of ours. But, sir, his amendment is a Utopian dream. I believe we will have to rely upon the judgment and conscience and patriotism of the American people. These have always sufficed on every occasion. They have not failed us through the darkest storms and the direst great nation. I can recall times when the people of this great perils that have in all the world's annals threatened the life of a land stood for free speech, a free press and a free soil and free men, Let us to-day, regardless of party, stand for free suffrage. I tell you, sir, that this amendment is un-American, and if the Convention adopt this amendment, I venture the prediction that it will be buried under an avalanche of votes. I trust, sir, that this Convention, pursuing, as it has hitherto in the main pursued, the path of wisdom, will hesitate, Mr. Chairman, to make this mistake, which is both obvious and inexcusable. Therefore, for the reasons that I have stated, I am opposed to this amendment.

Mr. Goodelle — Mr. Chairman, I, perhaps, may be excused for saying a few words, inasmuch as this proposed amendment came from the committee of which I have the honor of being chairman, and I must dissent from the statements made by one member of that committee in his statements before this body, that, in the committee before which this matter was pending and reported to this Convention, this subject was treated and reported by the committee merely for the purpose of producing merriment in the Convention. If such was the understanding and the feeling of the gentleman from that committee who has made that expression about this amendment, I venture to assert that he expresses the opinion of no one of that committee except himself. This question was heard by the committee with care and deliberation. Addresses were made in the committee on both sides, and, after mature deliberation, it was the opinion of the committee, and I do not understand that I disclose any confidence that should not be disclosed, when I say that in the committee of sixteen, twelve voted in favor of this proposed amendment and only four opposed it. I do not wish it understood that this committee has reported this amendment to this Convention, nor that the gentlemen who voted for it in the committee, did not vote for it because they did not believe the principles which were involved. Your committee took about the position on this proposition that has been stated on this floor by the honorable gentleman from New York, the proposer of the amendment. In fact he has stated about all that can be said upon this question, and your committee believes, as I believe, that the question of suffrage is not a question of common or natural right, but that suffrage is conferred by the State and for the benefit of the State, and herein do I think is the radical defect in the argument of the gentleman from New York, who has made the principal address against this proposition. He has assumed, as the basis of his argument, that the question of suffrage was a natural right, one to be defended precisely as the right of self-defense. It seems to me that that is the radical defect in his argument, and if he is incorrect in that, his argument has nothing upon which it can stand. As I said before, your committee that reported this proposition believes, as I believe, that suffrage is not a right of the individual, but that it is conferred by the State. And by the State for what? For the welfare of the State and all its citizens. Upon that proposition we are supported by the adjudications of the courts of our State. Not only that, but the courts of other States base the claim of suffrage squarely upon that principle. Then if this is a right conferred by the State, or, as I prefer to call it, a duty, why is it, if, when it is conferred, that duty

shall not be exercised? If it is a trust, as it seems to me that it is, why should not that trust be exercised when the demands of the State require it, even if you call it a sacrifice to the individual? The idea has been put forth that it is abhorrent and contrary to the spirit of our institutions that men should be compelled to vote. This amendment makes no compulsion. But to answer that argument, why is it not abhorrent that people should give up their property, should give up their money, should give up their hard earnings, what for? For the benefit of the State, and, when the State demands it, it must be done. Why isn't it abhorrent that men should be called into battle and there sacrifice liberty and life? What for? To defend their country, that when the country needs and demands it, they must make the sacrifice, and if they must make the sacrifice there, how can we discriminate between those obligations and duties and this? If a man is asked to cast his vote for the good of his country, why should he not exercise it? It seems to be the consensus of opinion in the Convention that all men should vote. They say it is a duty that should be performed, but still this measure should not be passed. I have heard but one single objection that seems to me that should have any weight, and that is, if a man goes to the polls and cannot conscientiously vote for either candidate, what should be done? My answer to that is, that that is a matter for the Legislature and for the Legislature alone. If a man goes to the polls and says that he cannot conscientiously vote for either of the candidates, the Legislature should provide that that man may be excused. It seems to me that that answers that proposition. We are not compelling him, as my distinguished friend from New York says, to vote for a candidate he cannot conscientiously vote for. I have said, Mr. President, all I desire to say upon this proposition. Your committee considered it worthy of the serious consideration of this Convention, and, I believe, it is a step in the right direction, and instead of meeting with the opposition from the people that is predicted here, I believe that the consensus of opinion all over the State is that a proposition like this should pass, giving to the Legislature simply, when the exigency arises, when the demands of the State are pressing, to put a measure of this kind into practical operation.

Mr. Cochran — Mr. Chairman, it seems to me that this amendment would succeed in bringing to the polls all the electors, and on that all the speakers have agreed, but I have failed to hear any gentleman of this Convention show what good would result from bringing all the electors to the polls and compelling them to cast their votes. In fact, it has been intimated by almost every speaker that

the objection, if any, to this amendment is that it might compel an elector to vote for an unworthy candidate. I feel, therefore, that this amendment does not go to the root of the evil. We should go further, and I offer the following amendment, to be added after the proposed amendment.

The Secretary read Mr. Cochran's proposed amendment as follows:

"And also requiring them to exercise the right to vote at all primary elections."

Mr. Dean — Mr. Chairman, I have been requested to withdraw my proposed amendment on the theory that it was introduced as a joke. I do not so regard it. If the proposition, in the first instance, is well founded, I see no reason why the amendment should not prevail. However, I withdraw my proposed amendment. I now desire to move that the committee rise and report progress.

Mr. Abbott — Mr. Chairman, may I ask what effect that motion will have if adopted?

The Chairman — The Chair will state the effect of that motion, if adopted, will be that the question upon the proposed constitutional amendment and the proposed amendment thereto will come before the Convention for such action as it sees fit to take.

Mr. Holls — Mr. Chairman, I ask for information. If this motion is adopted, what becomes of the amendment offered by the gentleman from Kings (Mr. Cochran)?

The Chairman — If this motion is adopted, either the whole subject goes back to the Committee of the Whole at another session of the committee, under the action of the Convention granting the committee leave to sit again, or the amendment offered by the gentleman from Kings, together with the original proposed constitutional amendment, will be put to death by the action of the Convention refusing leave to sit again, and such further action as the Convention may see fit to take.

Mr. Abbott — Mr. Chairman, I move to amend the motion of the gentleman from Cattaraugus (Mr. Dean), that we ask leave to sit again.

Chairman Root — The Chair so understood the original motion.

Mr. Dean — As I understand it, that follows, as a matter of course.

The Chairman — The Chair understands that there is but one motion, and that is to rise and report progress, and that is equivalent to reporting progress and asking leave to sit again.

The Chairman put the question on Mr. Dean's motion that the committee rise and report progress and ask leave to sit again, and it was determined in the affirmative by a rising vote. Ayes, 60; noes, 30.

The President resumed the chair.

Chairman Root, from the Committee of the Whole, reported to the Convention the action of said committee on the proposed amendment under consideration.

The President — The question is on agreeing with the report of the Committee of the Whole and granting leave to sit again. Before the question is taken on that, the Chair wishes to call the attention of the Convention to an erroneous ruling made at the last time this particular form of question came up, which was made in deference to what was believed to be the established parliamentary practice, namely: That disagreeing with a report and asking leave to sit again killed the amendment. That seems to be so according to the established rules of parliamentary practice, and especially those in force in our Legislature; but in the adoption of the rules, the attention of the Chair was immediately afterwards called to rule 29, which has an express provision the other way: "If leave be refused, the effect is to bring up the subject immediately before the Convention," and the Chair will hold that if leave to sit again is refused, the subject-matter of this amendment, is before the Convention for action.

Mr. C. B. McLaughlin — Mr. President, with the explanation of the rule just made, I was about to make a motion to disagree with the report asking leave to sit again, but with the explanation I don't think it is necessary.

Mr. Veeder — Yes, it is.

Mr. McLaughlin — Then I make that motion to disagree with the report and refuse to sit again.

Mr. Holls — Mr. President, if the gentleman will permit me, I merely wish to say this, that I have a very great realizing sense of the value of the time of this Convention, that I am also very grateful to the Convention for the attention which it has already given to this proposed amendment, and I, under no circumstances, would wish to stand in the way of a vote upon this amendment, adverse though it may possibly be, although I hope not, merely for the purpose of debating it further myself, but I merely wish to say in justice to friends who have spoken to me, and it is only fair for me to state that there are gentlemen who wish to look into the question further and wish to be heard, and under those circumstances I hope

the Convention may find it practicable and consistent, even with its anxiety to go on with its work, to give the Committee of the Whole another sitting on the amendment.

Mr. Mereness — Mr. President, I move that further discussion of this matter be postponed until to-morrow evening at eight o'clock.

The President — Mr. Mereness's motion is out of order.

Mr. Mereness — I desire to move it as an independent motion.

The President — The Chair rules it to be out of order whether as an independent motion or an amendment. The report of the Committee of the Whole must be first disposed of. The question is on agreeing with the report of the Committee of the Whole.

Mr. Abbott — Mr. President, isn't the question on disagreeing?

The President — No; the question is on agreeing. Those who agree will vote aye, and those who disagree will vote no.

The report of the committee was agreed to by a rising vote. Ayes, 79; noes, 57.

Mr. Veeder — Mr. President, in view of the fact that some of the committees have to meet before the evening session, I desire to move that the Convention do now adjourn.

The President — The Chair will inform the Convention that a motion to adjourn will kill the evening session, which was voted to-night for a special order.

Mr. Holcomb — Mr. President, could I ask Judge Veeder to give way for a moment so that I may ask the privileges of the floor for the Hon. J. J. McKenna, of Queens county, a former member of Assembly, during his stay in Albany?

The President put the question on granting the privileges of the floor as requested by Mr. Holcomb, and it was determined in the affirmative.

Mr. McClure — Mr. President, I ask that the gentleman withdraw the motion to allow me to offer a resolution of considerable importance and which I present here by request.

The President — Does Mr. Veeder withdraw his motion to adjourn?

Mr. Veeder withdrew his motion to adjourn.

The Secretary read Mr. McClure's resolution as follows:

R. 156.— Whereas, The preservation of the forests and watersheds of this State is of the greatest importance to all our people and to every interest within the border of the State; therefore, be it

Resolved, That the President of the Convention appoint a special

committee of five members to consider and report what, if any, amendment to the Constitution should be adopted for the preservation of the State forests.

Mr. McClure — Mr. President, if I may be allowed to say in explanation —

The President — The Chair will say that it requires unanimous consent for the consideration of this resolution now.

Mr. McClure — I ask unanimous consent.

Mr. Dean — I object to its consideration.

The President — It will have to go over under the rules as it requires debate.

Mr. Moore — Mr. President, I desire to debate it.

The President — It goes over until to-morrow.

Mr. Hirschberg — Mr. President, I have received a telegram from Mr. Lester, of Saratoga, stating that he is ill, and asking that his excuse be presented to the Convention.

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

Mr. Veeder renewed his motion to take recess until eight o'clock in the evening, and the President put the question, and it was determined in the affirmative.

EVENING SESSION.

Tuesday Evening, July 31, 1894.

The Constitutional Convention of the State of New York met in the Capitol, Albany, N. Y., Tuesday evening, July 31st, at 8 o'clock.

President Choate called the Convention to order.

The President — The business in order is what was made a special order.

Mr. Francis, from the Committee on Preamble and Bill of Rights, to which was referred proposed constitutional amendment introduced by Mr. Tucker (introductory No. 191), entitled proposed constitutional amendment to amend article 1 of the Constitution as to damages as to the loss of human life, reported adversely thereto, regarding it as more properly a subject for legislative treatment.

Mr. Francis — Mr. President, the committee base their adverse report on the ground that the subject is one for legislative action, rather than matter to be engrafted in the Constitution of the State.

Mr. Veeder — Mr. President, will the gentleman give way for a moment? I know it is not intentional, but, if my friend, irrespective of the committee, would say a majority of the committee, the Convention would understand. For aught that appears, it is a unanimous report, which is not correct.

Mr. Francis — I will say, Mr. President, that that will appear further on in what I have to present. Mr. President, I repeat that the committee base their adverse report on the ground that the subject is one for legislative action, rather than matter to be engrafted into the Constitution of the State. There must be a line drawn somewhere as between subjects within the scope and proper authority of this Convention and those which are to be treated as suitable only for legislative consideration. Cases constantly appear of proposed constitutional amendments that seem to embrace legislative subjects. If the scores and scores of suggested amendments of this character were to be embodied in the fundamental law, the Constitution of the State would assume the proportions of a book large as our Session Laws volumes. If we are to undertake this sort of work, where shall we stop? What will be reserved for the Legislature to do? Once crossing the legitimate line of service to revise and amend the Constitution of the State, and entering into the realms of legislation, a deluge of measures, not to say vagaries, would naturally follow. And so this body would become a legislative organization in fact, instead of a Constitutional Convention, as contemplated, with old-time sanctities and careful limitations of action, as the fathers decreed, as honored usage has confirmed, and as sound political philosophy directs. The Constitution should be, as it stands to-day, the concise statement of principles, the presentation of a basis for action by the Legislature and other departments of the government. It cannot, with propriety or justice, be extended to exercise the well-defined functions of those departments. In the case before us it is proposed to make the Constitution an executive agency to annul a mandate of legislation. The subject has heretofore had treatment only by the Legislature. No one, it is believed, until this proposed amendment was presented to the Convention, and which was precipitated on the Committee on Preamble and Bill of Rights, entertained the thought that this Convention would be called upon to deal specifically with railroad management or corporate liabilities any more than it was its province to prescribe and direct the details of any line of corporate or other business transactions. Manifestly, here legislation is to be interposed as needed to enforce justice and insure the public safety. Shall this Convention diverge from the

sound constitutional policies of the past to enter into a new field of governmental forces, inviting antagonisms that should be avoided and encroaching upon the recognized legislative authority of the State undisputed in the past, in order, as someone has said, to "fix things for twenty years to come." I know the disposition of some minds in the heat of debate and under the pressure of uncontrolled passion, to misinterpret motives, with the view of fabricating an argument. I do not propose, for one, to be placed in a false position in this matter, nor to have unjust and untruthful aspersions cast upon my distinguished associates of our committee, on account of their action in the premises. It is true that the proposed amendment hastily received the approval in a tentative sense of a majority of our committee, as oftentimes propositions in such tentative manner are favorably accepted for future consideration. But at a subsequent meeting a vote for its reconsideration was carried; then, on application by letter of request, on the one side, and by oral expression on the part of two estimable colleagues of this Convention of the other side, a hearing was granted for both sides. At an executive session of the committee following there was a free interchange of views, resulting in a large preponderating vote to report the amendment adversely, on the ground that the matter was one for legislation, rather than for action by the Constitutional Convention. Again, any intimation by innuendo or direct charge that in this action on our part we have manifested a desire to serve corporate interests, especially those of railroad corporations, at the expense of official consistency and violative of the demands of justice, is an imputation, which we denounce as untrue, and a charge which I indignantly repel as flagitious. Any argument or conclusion based upon such false premises, I am sure, can have no weight with the candid and enlightened members of this Convention.

I do not discuss the question as to whether the limitation of damages should or should not be enlarged or annulled altogether, as the proposed amendment under consideration directs. We say this Convention, in our opinion, has nothing to do with that question, either *pro* or *con;* that it is clearly legislative matter unsuitable for consideration here, and, as such, we would dismiss it as foreign to our duties.

The dictates of sound judgment and the example of honored precedent point out that legislation should be confined to the body organized to attend to this service. It should not be injected into the Constitution. Nor should mere sentiment, patriotic and commendable in its proper expression, be crowded into the Constitution.

We are here to lay the ground work for legislative action, and not to make the fundamental law a mass of legislative enactments nor the vehicle of sentimental expressions.

Representatives in the Legislature, often chosen and fresh from the people, are elected to legislate. Delegates to a Constitutional Convention are chosen not oftener than once in twenty years to revise, and, as shall appear proper and necessary, amend the organic law of the State, its work to have the approval of the people before it can become operative. The two spheres of duty are widely separated; they can only collide through the ambition for encroachment or erroneous conclusions as to the distinctive provinces of each. Let us hope this Convention, charged with specific, dignified and responsible duties, may conscientiously confine its work to the discharge of those duties in a manner acceptable to the people and beneficial to the State, wandering not at all into forbidden paths that may lead to evil.

Mr. Tekulsky — Mr. President, in speaking upon the amendment proposed by my colleague, Mr. Tucker, of New York, and by myself at a later time, though without any knowledge of his action, it will be understood by you that by no possible construction can this be made to appear other than a measure for the common good. It is no sense other than it appears, a proposition in the interest of humanity. It undertakes to stand between the existence of the home and family and the almost absolute taking away of its supporter and head. It leaves, with an intelligent company of one's fellow-citizens, before a dispassionate bar, the verdict of the monetary loss to the family interested of a human life. Nothing is more arbitrary or absurd than the law, as it now stands. That leaves no discretion and no difference in productive value. The man in mid-life, rising in some high calling, until his abilities find a recognition and reward of the highest and most substantial character, cut off, say, in some accident, in the midst of his honors and usefulness, leaves his family and dependents precisely where the ignorant or depraved, with small abilities and few earning powers, would leave his. To say that the destruction of every man's life is recompensed by the payment to his survivors or dependents of a poor $5,000, is to put a low estimate upon human endeavor and ability, is to sell that which no earthly power can ever restore, at a price both paltry and mean. Too long has this low estimate and valuation been permitted to remain.

It is in the interest of the moneyed corporation, of a poor protective service, of human indifference and carelessness of the disregard of human rights, and it tells in advance to the

manslaughterer what the price for his misdeed or his risk of chance will be, if he happen to lose.

The setting of that uniform price for a human life sacrificed or taken away is against human endeavor, against the common rights of mankind, against the widow, against the home and against the orphaned child.

It has come to be a saying, with which we are all familiar, that it is cheaper for our common carriers to kill than to maim. Indeed, it is the gossip of the general public that our engineers and conductors, and pilots, and captains are instructed, in the face of accidents, to put on steam, and that safety lies with those who go the fastest, and, if there is to be a smash-up, let it be annihilation.

I cannot say that these instructions have ever been given, but no man will deny that they are thought to be the law of the road, even though it is unwritten law. It is horrible, it is appalling, that those who are intrusted with human life should have the right to think and absolutely know that it will be cheaper for the employer if the passenger be killed, than if he be hurt.

It is against public morals to put any man in such a place and with such a knowledge as that. The present situation can be no longer endured, the civilization of to-day will not allow it. Is it necessary to present arguments to the gentlemen of the Convention upon a matter like this? I have been told that years ago, when this limitation of $5,000 was set, one of our judges made the point that if a larger sum were allowed, it might be possible to wipe out a corporation or destroy a business by a single accident.

No argument was ever advanced, so much like the two-edged sword. If our corporations, having the control of human life, knew that a single accident would not only likely cut off their dividends for a long period, but would sweep them out of existence, with what care and caution would they proceed?

Gentlemen, they know to-day that the greatest accidents will imperil nothing, save, perhaps, a few thousand dollars, not affecting any income on their bonds, or causing them to pass a quarterly dividend. It causes the mind to reel, to reflect that a railroad or steamboat company can kill twenty men, cause twenty mercantile or business establishments to sink out of sight, cause twenty widows to mourn and face both want and poverty, a hundred children to weep and call in vain a father's name, and, yet, at the most and worst, it will cost the careless or wicked destroyer not over $100,000, and, likely through delays, and what is practically intimi-

dation, not half of that. Examples of this sort of possibility are of frequent occurrence.

At a railway bridge, just behind Bergen Hill, in our neighboring State of New Jersey, our own fellow-citizens are in an instant crushed and slaughtered. The only thing we hear is of investigations and new appliances, to take the place of methods obsolete years ago. There is no offer to repair the damage, as far as possible, or to recompense the sufferers. They must sue, and at what expense and what return?

A steam vessel goes down our harbor for a single day's sail, and well-nigh fifty men never come back; the jarring of the machinery throws out the walls of a badly-builded edifice, and mutilates and kills those employed therein.

Gentlemen, the time has come for you to say that at least real safeguards shall be thrown around human life, and that such safeguards shall be imbedded in our Constitution. The careful and accurate New York Sun of July 22, in commenting upon this amendment, says, in its editorial columns: "It is a good constitutional amendment." Then it goes on to say:

"In suits for wrongfully or negligently causing the death of a person, no more than $5,000 can be recovered in the courts of this State under the law, as it now exists. Repeated efforts have been made of late years to get the Legislature to enlarge this sum to $10,000, but they have always failed. Now it looks very much as though the people would abolish the limitation altogether.

"And it ought to be abolished. In many cases $5,000 is grossly inadequate compensation for the direct pecuniary injury done to a man's family by wrongfully causing his death. Juries should be allowed to make good the actual loss, in cases of death, just as they are allowed to make good the actual loss in cases of injury not resulting in death. Under the present statute, however, a railroad accident which kills five persons may be better for the company, in a pecuniary sense, than in a like disaster in which the five are only maimed. In the former case the corporation cannot lose more than $25,000; in the latter it may have to pay $100,000 or more.

"Under the common law of England and the American colonies there was no such a thing as civil suit for wrongfully causing the death of another. In 1846, however, through the influence of Lord Campbell, Parliament passed a statute permitting such actions to be maintained for the benefit of the wife, husband, parent or child of the person killed. It was entitled "An act for compensating the families of persons killed by accidents," and has always been

known as Lord Campbell's act. It contained no limitation as to the amount which might be recovered, but provided that the amount should be divided among the parties for whom the suit was prosecuted in such shares as the jury, by their verdict, should direct.

"New York quickly imitated the example of England, and in 1847 the Legislature enacted a law similar to Lord Campbell's act, which was the basis of all subsequent legislation in this State on the subject. In the first statute, however, there was no restriction as to the sum recoverable. That was introduced two years later by the the Legislature of 1849, which amended the law by inserting the $5,000 limitation, and this limitation has ever since been retained, although the statute itself has now been made a part of the Code of Civil Procedure.

"Laws framed on the general plan of Lord Campbell's act have been adopted in New Jersey, Pennsylvania, Massachusetts, Minnesota, Iowa, Indiana, North Carolina, Georgia, Alabama, Oregon and many other States. In Pennsylvania may be found a precedent for putting something, in regard to such laws, into the Constitution. The Constitution of that commonwealth expressly declares that no act of the General Assembly shall limit the amount to be recovered for injuries resulting in death or for injuries to persons and property."

Now, gentlemen, it is very strange that the committee come here this evening and advocate that this is a matter for the Legislature and not for this Constitutional Convention. I should like to know when the light of dawn struck that committee; that inside of a few hours, you might say, that same committee was led to report this same amendment, advocating that the amendment be embodied in the Constitution —

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

Mr. Tekulsky — Yes, sir.

Mr. Francis — Mr. President, I desire to say that the statement that the committee was ever, within a few hours or within one day, ready to make that amendment is not correct. On the other hand, it adopted it merely as a tentative act — something that is done in every committee of this Convention — for future consideration.

Mr. Tekulsky — I am extremely obliged to Mr. Francis for that information, but I was creditably informed by members of that same committee that they were ready to report this same amendment two weeks ago. I said within a few hours; two weeks is only a few hours. It is only the other day. Now, it is very strange that

they should ask that and that they changed their mind in such a short time; that some person who represented a corporation comes in there and in just about three minutes' talk, three minutes' conversation with the gentlemen, has persuaded them that it is a matter for the Legislature; and the same gentlemen, I am creditably informed, made the statement that for forty years the people of the State have gone to the Legislature, year after year, and offered an amendment similar to this, and it has been referred to a committee and there it has laid; some corporation representative would come before the committee and it never saw daylight afterwards, after the gentleman left that committee. What their persuasive powers are I do not understand, when one person can go before a committee and command them to do something that ten men did not wish them to do. Ten members of this Convention went before that committee and spoke repeatedly to the gentlemen in favor of this amendment, and only one man appeared before that committee against it, and the committee believed that one man against the ten. Mr. President, I wish to say that this is a matter for the Constitutional Convention. I claim that all things pertaining to the welfare of the people should be attended to here, especially where the Legislature has been appealed to year after year and has failed to do their duty by their constituents. We know what sort of men the Legislature of the State is quite often composed of. It is not composed of men of intelligence. It is not composed of men who have the welfare of the people at heart. It is composed of men who come to the Legislature for a purpose, just to make themselves heard, and they never pass anything that will benefit the people where a corporation is interested. I know that some of the gentlemen here in this room have been in the Legislature. Will they tell me of one case, within the last ten years, where the Legislature has passed a bill in the interest of the people, as against a corporation? You get something for a corporation before a committee; it is the hardest thing in the world for the people to even get a hearing. I claim that this amendment, Mr. President, should go into the Constitution, where it belongs. I am informed that some railroad companies or some of the steamboat companies are willing to accept that they raise the limit of $5,000. They say: "We will go to the next Legislature and do that." Oh, yes, we know what corporations will do. Who ever heard of a corporation having a heart and believing in what the people want. Now, when you have got it in your power and in your mght to put this amendment into the Constitution, I say do it and the people will be with you.

Mr. Maybee — Mr. President —

The President — Before Mr. Maybee proceeds, will he allow the Chair to state that it is necessary that there should be a meeting of the Committee on Rules to-night, and the Second Vice-President will take the chair.

Mr. Veeder — Will the gentleman give way for a moment? In examining the rules, Mr. President, I believe, under rule 32, in order to have this question affirmatively before the Convention, if the motion should prevail to reject the adverse report, that it is necessary, and the rules provide, for a report from the minority of the committee, and that was my intention the other day when I was shut out by the direction of this special order. I ask leave now, in the behalf of the minority of the committee, to make the following report so that the whole question, affirmative and negative, shall be before the Convention.

The President — The Chair is of the opinion that the report of the minority is out of order until the question before the House is passed on — that is, whether the Convention will agree to the adverse report of the committee.

Mr. Veeder — Mr. President, if you will pardon me. If we disagree with the adverse report, and no minority report then is before the Convention, there is no subject whatever for consideration. It does not go back to the committee. It has always been the custom, I believe, where a minority report is tolerated, that one should follow the other, and the Convention make the selection which report they will accept.

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

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

Mr. Dean — My point of order is that it is not proper to discuss a ruling of the Chair without first moving to disagree.

The President — The point of order is well taken.

Mr. Veeder — I did not understand the point of order as to which I understood the Chair to say was well taken. May I have it stated again?

The President — As the Chair understood, Mr. Veeder wishes to interrupt the debate on the question before the House, namely, whether the Convention will agree to the adverse report of the Committee on Preamble upon this amendment, by injecting a minority report or a statement of a minority report —

Mr. Veeder — I submit, if the Chair please, that "by presenting" would be a better term.

The President (continuing) — By presenting a minority report,

and, on Mr. Dean's raising the point, the Chair ruled that not to be in order. Mr. Maybee has the floor, and he may proceed.

Second Vice-President W. H. Steele took the chair.

Mr. Maybee — Mr. President, I listened to the remarks of the distinguished chairman of the Committee on Preamble and Bill of Rights with some surprise. It seems to me that it would have been in much better taste for that committee, speaking through its chairman, not to have sought to anticipate strictures upon its action, which had not then been made upon the floor of this Convention. It is true that there have gone out, through the newspapers of this State, in consequence of the sudden change of front upon the part of the committee, intimations that the committee has been dominated by corporate influences in taking the action that it has taken, in regard to this proposed amendment. But no intimation of the kind has, up to this time, been made upon the floor of the Convention. And it is always safer, and, it seems to me, more consistent with the rules of propriety, not to anticipate criticisms and strictures until they have been made.

Now Shakespeare says that there is a divinity that doth hedge a king, but I imagine there is no divinity that doth hedge the Committee on Preamble and Bill of Rights of this Convention. If the action of that committee, in making this sudden change of front, is susceptible of just and legitimate criticism, I suppose that such criticism may, fairly and reasonably, be made. I had the honor to appear before the committee upon the day on which it concluded to take its adverse action, and my understanding at that time was that the committee had practically agreed upon a report in favor of this proposed amendment. I was much surprised when I learned that evening that the committee had decided to reverse its action. What may have been the reason that prompted that sudden change of opinion, upon the part of the committee, I do not know, and it is not for me here to inquire. I do not propose, in this Convention or at any other time or place, to make any attack upon the integrity or good faith or the honorable motives of the committee or of any member of it. Neither do I propose to enter into any crusade against corporations. I do not intend to make any war upon the railroads. Corporations, and especially railroad corporations, in this day and age of the world serve great and useful purposes. They discharge legitimate public functions. They are useful servants of the general public, and, without the duties discharged by these corporations, it would be impossible, at this time in the world's history, to carry on the business and industry of the world at large. We could not get along without railroad corporations.

I am opposed now, and shall always be opposed, to any law that shall unjustly discriminate against them because they are railroad corporations.

But, in regard to this statute which is upon the statute books of the State of New York, and which limits the amount of recovery in case of death by negligence to the sum of $5,000, it seems to me that, in view of the fact that the Legislature has for years refused to do away with that limitation, in view of the fact that it is generally conceded that the limitation is an absurd one, an unreasonable one, an unjust one, that this Constitutional Convention ought to incorporate into the organic law of the State some provision restricting the Legislature from imposing this unreasonable and absurd limitation upon this class of actions.

The gentlemen say that it is a matter for the Legislature, and that it is not properly within the subjects to be considered by this Constitutional Convention. Now, I suppose that just exactly what a Constitution is for is to restrict the power of the Legislature in matters where they ought to be restricted. We have constitutional provisions restricting the power of the Legislature as to passing local acts; we have constitutional provisions restricting and limiting the power of the Legislature in various other particulars, and upon the same principle, reasoning from analogy, why is it not a proper thing for this Constitutional Convention to restrict the power of the Legislature in fixing a limitation of damages on account of the loss of human life?

Now, I understand the purpose of the statute to be to give compensatory damages to the widow or next of kin of a deceased person who is killed in consequence of the negligent act of an individual or corporation. There is no thought in the statute of punitive damages, of exemplary damages, of damages imposed as a punishment for the negligent act; but the entire idea sought to be carried out in the statute is to give adequate compensation to the relatives of the deceased when he loses his life because of the negligent act of the individual or corporation causing such loss of life. But the very fault, the very weakness of the present statutory enactment is that it does not give compensatory damages. It defeats, in a large proportion of cases, perhaps in the majority of cases, the obtaining of compensatory damages by the plaintiff. Take the case of a young man, say, thirty years of age, in the full enjoyment of health, in the full flush of manhood and possessed of all his physical powers, in the employment of a railroad corporation, whose life, in some great railroad accident, is suddenly snuffed out like a candle. He leaves a widow and four or five children, who

were dependent upon his daily labor for their support. Will any man say that $5,000 is adequate compensation to that widow and family of helpless children for the death of the father?

So that this statute defeats the very object for which it was enacted. It defeats the very purpose for which it was put upon the statute books. It defeats the obtaining, by the plaintiff in this class of cases, adequate compensatory damages in a large proportion, and, perhaps, in the majority of cases.

Or, take the case of a passenger, we will say, of the highest order of talent, of the highest order of earning power, who, by the work of his brain, or of his hand, which has been trained to some peculiar work — some peculiar scientific work — is enabled to earn a large income for himself and family; he intrusts his safety to a railroad corporation upon a journey, and, without any fault of his own, and, with gross negligence on the part of the corporation, he is killed in a railroad accident. The amount of damages which his widow can recover is limited to the sum of $5,000, an entirely inadequate compensation for the pecuniary loss. So that the ends of justice are not subserved by this legislative enactment. Compensatory damages, in a large proportion of cases, are not recoverable under its provisions.

Now, in the case of an employe working for a railroad company, killed in a railroad accident, and leaving a widow and a large family of little children, it seems to me that some provision of law ought to give courts and juries the right to award to that widow and those children adequate compensation. There is no more sorrowful, no harder, no more pitiful problem in our strange human life than that of a widow with a family of children left dependent and destitue under such circumstances. Called upon to battle with the world alone and unprotected, the family of children called upon at a tender age, perhaps, to go out into the cold, cruel world and battle for their daily bread, deprived of all the joys of childhood, compelled at an early age to toil and labor in order that starvation and want may be kept from the doors of the home, will any gentleman say that any law ought to be upon the statute books which will prevent people, under such circumstances, from recovering adequate compensatory damages for the loss of the life upon which they depended for their support? If this law were limited to the case of collateral relatives, where such relatives are plaintiffs, there might be some justice in it. But a law which prevents the widow, the helpless children of a man, who, without his own fault, is killed in a railroad accident from recovering damages that to some degree, at least, will adequately compensate them for the loss, ought to be

stricken from the statute book by the action of this Constitutional Convention. For these reasons, Mr. President, I hope the report of the committee will not be agreed to.

Mr. Nichols — Mr. President, I find upon a very cursory examination of the statutes that the common law, in respect to the liability of corporations and individuals for damages occasioned through negligence first found its expression in the statute known as the Lord Campbell statute, passed in England in 1846. It did not require many years for New York State to appreciate the justice, to a very large degree, of the provisions of the statute, and, in 1847, it found its way upon our statute books, only to be limited by the act of 1849, which rendered it impossible, in the case of death, to recover more than $5,000. It seems to me rather remarkable that in the mutations that time has wrought in everything else in our civilization and in our law that that statute should stand unchanged, notwithstanding the fact that the New York State of to-day represented in this Convention is not the New York State of 1847 or 1849. We live under different conditions. We live under different laws. We are subject to different requirements. Why, sir, when this statute found its way upon our statute books there were in the State of New York 3,000,000 of people; to-day that population is upwards of 6,000,000. When that statute was enacted there were 1,284 miles of railway in the State of New York. To-day there are 9,000 miles of railway in the State of New York. When that statute was enacted the total taxable property of the State of New York amounted to six hundred and sixty-eight millions of dollars; to-day it has swelled to the enormous volume of forty-three billions of dollars. The statute of 1849 was passed under those conditions. We have grown from the one condition to the other, and, yet the statute says to us that the purchasing power of human life must be governed as it was then, forty-five years ago. When the purchasing power of a man's day's work bore no more comparison to the purchasing power of a man's day's work of to-day than did the taxable property of 1849 with that of 1894. We submit all of our differences to juries. Upon the floor of this Convention repeatedly the wisdom of such procedure has been debated, and no voice has been raised against it; in this only instance we introduce into the jury-box an element which finds existence nowhere else in the wide realm of law. There sits the statute, a judge upon the value of the life that is taken away, and, no matter what the conditions, no matter what the surroundings, no matter what the physical or mental capacity of its demands, that is the controlling principle. I would eliminate from that jury-box

forever this effete statute. I would permit juries to alone decide as to the value of the life destroyed and to pass upon the question, irrespective of what our forefathers of fifty years ago said regarding it, and permit them, in view of present conditions, in view of the present earning power of every individual in the State, to say, without hindrance and without trammel, what the value of that life is.

Mr. Chairman, the question as to this subject being a matter of legislation seems to be the only ground upon which this adverse report is based. I believe we have ample justification, ample authority, ample precedents for inserting this very valuable proposition in the Constitution of the State. We are content with, and we approve of, constitutional legislation, with respect to private highways and the public highways of our State. With as little hesitation we legislate in our Constitution, respecting the change of county seats. So, also, with respect to the incorporation of villages, and so, too, with respect to many other subjects, it has been the policy of the State of New York to incorporate them into the Constitution of the State, and it does not seem to me that we can, with any propriety, say that we will hesitate when called upon to legislate constitutionally, with respect to the value of the lives of our citizens, dearer than all the rest, measureless in value, being more appropriately incorporated into that Constitution than questions of so little moment as the matter of a right of way or a private road. Mr. President, without detaining the Convention, I believe I have voiced the sentiment of the whole State substantially when I say that this limitation has outgrown its usefulness, and the time has come when we, as members of the Constitutional Convention, should put this question side by side with the great earnings of the brain and muscle of the citizens of the State, and when a railroad corporation or an individual causes, through negligence, the death of another, require the statute to make effectual a just and compensatory restoration to the family of the deceased of that of which it had been thus deprived.

Mr. Dickey — Mr. President and fellow-delegates, this is an important question — one that affects all your constituents, possibly your neighbors, your relatives and your friends, because accidents negligently causing the death of your constituents will take place after the adoption of this Constitution. So the eyes of the people are on you. The votes that you give here and record now will be scanned by the people. Therefore, in the interest of the masses of the common people, this question deserves, as it is receiving, your best consideration, and I have no doubt it will receive

your affirmative vote. In the last Constitutional Convention there was an able delegate from the city of Syracuse, one who took an active part in the Convention, of the name of Thomas G. Alvord. I have been much interested in reading the debates of that Convention and the part that Mr. Alvord took in them. When I went home on Friday night last I took up the debates of that Convention, and I found in the fifth volume that a member by the name of Comstock proposed an amendment to the bill of rights as follows: "Resolved, That the article on the preamble and bill of rights be recommitted to the Committee on Revision, with instructions to amend section 11, by inserting at the end thereof: 'They have also every other power, jurisdiction and right of a free, sovereign and independent State, except such as they have expressly delegated by the Federal Constitution to the United States.'"

And Mr. Comstock said:

"This proposition is intended to affirm the rights of the State as a sovereign State, subordinate only to that degree of sovereignty, or to those enumerated powers which have been delegated by the Constitution to the United States."

And then he went on to quote a statute of Massachusetts.

Mr. Alvord rose in his place and said:

"I propose to amend the amendment proposed by my colleague, Mr. Comstock, by adding at the end thereof: 'But the Constitution and laws of the United States shall be deemed paramount in all cases where any conflict of jurisdiction or laws shall arise.'"

And when on Friday morning last, Mr. Alvord reported from the Committee on Bill of Rights against the proposition of my comrade, when he proposed to put the word "paramount" in the Constitution and characterized the speech of my friend as a Fourth-of-July oration, having no place in the Constitution of the State of New York, I wondered whether our Mr. Alvord was the Thomas G. Alvord of the earlier Convention. I anticipate his answer, if it was the same person, that he was only about sixty years old then, and had not cut his wisdom teeth; that wise men change their opinions, but fools never do. But it set me to thinking that if Governor Alvord could rise in the Convention, and say that a proposition that nation, with a big N, had no place in the Constitution, and when I looked back and found that he himself, at an earlier time, was proposing just such a declaration in the Constitution, and in the same part of it, it set me thinking that when he reported adversely upon this proposition, and induced by argument his fellow-members to join in the report —

Mr. Veeder — I rise to a point of order. I submit that the gentleman is not discussing the subject under consideration to-night.

The President *pro tem.*— The Chair is very much of the same opinion, but was in hopes that the gentleman would soon arrive at the subject under consideration.

Mr. Veeder — I ask a ruling.

The President *pro tem.*— The point of order is well taken.

Mr. Dickey — Well, I have finished that part of my remarks, sir.

Mr. Veeder — If it is in order, sir, I desire to move that the remarks made by the gentleman personal to Governor Alvord be expunged from the Record.

Mr. Alvord — Mr. President, if the gentleman will permit me. I desire that they be spread upon the record.

The President *pro tem.*— The Chair decides that the point is not well taken at this time.

Mr. Dickey — I am quite willing, so far as I am concerned, that a vote shall be taken upon the gentleman's motion.

The President *pro tem.*— That motion may be made after the Journal is read, or it can be made after the gentleman who now has the floor has finished his remarks.

Mr. Veeder — Then I ask, Mr. President, to be recognized at the conclusion of his speech.

The President *pro tem.*— The gentleman will proceed.

Mr. Dickey — I gave way for the gentleman to make his motion at this time.

The President *pro tem.*— You will proceed.

Mr. Dickey — I was about to say when I was interrupted that when this same Committee on the Bill of Rights reported that this proposition on the subject of human life and the price to be paid for it by any corporation or individual who wrongfully and ruthlessly took it, had no place in the Constitution and was a subject of legislation, that this committee and this particular member of it might be mistaken. Therefore, I have given the matter some examination and some thought to see what is a subject properly to be put into the Constitution. It is a favorite plea with people who want to oppose a proposition of some other person to say it is unconstitutional and has no place in the Constitution and should be left for the Legislature, but when they themselves propose something I notice that there is no such criticism on their part;

anything that they propose seems to be all right, and anything the other fellow proposes all wrong; and they make the specious plea, and they induce good men to follow them in their plea, that it does not belong in the Constitution, but is a matter for legislation. It is all right to put in the Constitution that the salt lands shall never be sold or changed. It is all right to put in the Constitution a report, such as my friend, Mr. Veeder, who interrupted me, signed — such a provision as this, which is an example of many others, section 19, "the right to take fish in any international waters bordering on this State shall not be denied," etc. That is an important matter, proper enough to go into the Constitution! That is not a subject of legislation at all. Oh, no! But when it comes to the question of human life, the highest of all questions, why, it has no place in the Constitution! I might quote from the present Constitution and proposed Constitution that was last voted on by the people, and they voted down many similar propositions that might be subject to the same criticism, but I will refrain for expedition's sake. I have cited enough to show you that it makes a big difference whose ox is gored, whether it is a measure that some person wants passed or one to which is raised this hackneyed objection that it is a subject for the Legislature and not for the Constitution.

I oppose this report of the committee and favor this amendment for a variety of reasons. In the first place, $5,000, the highest sum that may be given for a life taken negligently is not at all adequate, and I need only cite the case of the members of this Convention sitting before me. There are at least one hundred and fifty men in this Convention who earn, in their ordinary business, more than $5,000 a year. I put it mildly. If a corporation should take the life of any of them, negligently and carelessly and wrongfully, his next of kin could recover only the sum of $5,000 at the utmost, and that $5,000 they would only get, in the case of most corporations, after going through three courts — the Circuit, General Term and the Court of Appeals — and after paying out a large amount of it by the way of legal expenses, so that they could not recover the $5,000 net in any case; and, if they did recover the sum of $5,000, at the highest rate of interest that could be got for it, five per cent, the afflicted family, the widow and five or six children, or a larger number, instead of an income of $5,000 a year that the husband and father was earning and paying into the family for their support and education, would receive a beggarly $250 to take its place. Now, anybody who will claim that that is fair, or right, or just, I want to hear from, and have him declare himself, so that he

may go upon record for that contention. We all know that it is not fair or right; that there is a big difference and that $5,000 does not express the value of the best life. In its workings in this matter of legislation, making a maximum sum of $5,000, the trouble is that the courts, in construing this amendment and this prohibition beyond $5,000 recoverable, so interpret and so argue and reason that the $5,000 is considered the most for the very best life, and they then reduce the amount for the inferior life, that is worth at least that sum, to a lesser sum. I had an illustration of it in a case of mine that I recently tried. A year ago an express train coming from New York in passing through Newburgh, because a switchman had misplaced a switch, rushed into the freight yard and into a freight train. The switchman had neglected to turn the switch back after the freight train had switched into the yard, and his neglect caused a collision between the fast express train and the freight train standing in the yard. A number of passengers were killed and a number injured. The negligence on the part of the company and its employe was clearly apparent; in fact, so clear was it that my friend, Mr. Hirschberg, the district attorney of Orange county, prosecuted the switchman. It was an exceptional case that anybody connected with a railroad corporation should be held to answer to the penal law. He successfully prosecuted him and he convicted the man of manslaughter, so the company had no defense whatever, and was entirely without excuse. It was a wilful and negligent accident. A client of mine, a good lady, lost her life in that accident, of the age of fifty-four years, leaving a husband and son. The next of kin put the matter in my hands for collection. I attempted to negotiate with the company. They would not give beyond $4,000. They said: "If you want more, you must take your remedy, bring your suit and we will fight you." In the interest of my clients, the next of kin, I offered to compromise for the sum of $4,500 — $500 more than they offered and $500 less than they were entitled to have thrown off. The case went to trial, and the jury promptly, as they do down our way, gave a verdict for the fair amount, as much as they could give; they gave me a verdict for $5,000. A motion was made before the learned presiding judge for a new trial on the ground that the verdict was excessive; that the life was not worth the $5,000 that the jury said it was. That appeal was taken by the railroad company, the New York Central and Hudson River Railroad Company, they being the lessees of the West Shore, and it was argued. The decision came down a short time ago, reducing the verdict from $5,000 to $2,500, that is, granting a new trial, unless I would consent to

reduce the verdict to that amount, arguing, undoubtedly, and the only argument that could be made, that, as the very best life was worth only $5,000, this particular life of this woman, who was a good wife and mother, industrious, and in the enjoyment of good health, and with the prospects of twenty years of life, at least, before her, was only worth $2,500. That is only one illustration of many that might be cited where injustice is done. I made a motion for reargument and the reargument was granted, because it was so unjust a decision, in view of the fact that the railroad company had offered me $4,000, and had paid everybody else who would take it, who was injured, or where death resulted, at least $4,000. Now, let me, by way of an additional illustration, cite another case. Another client of mine had a search warrant issued against her in the same judicial district. She was submitted to the indignity of being searched under the search warrant, on the claim that some diamonds were missing and she was supposed to have them concealed upon her person. Of course, they found nothing, because she was entirely innocent. She came to me, and I brought suit against the person who had sworn out the search warrant. The case was tried, and the jury promptly gave a verdict in her favor for $2,500 for the indignities to which she had been subjected. The case went to the same General Term, and a motion was made and the argument was made that $2,500 was too much, that it was entirely too large a sum for the indignity to which the plaintiff had been subjected, the search lasting not to exceed five or ten minutes. The General Term affirmed the finding of the jury and said the sum was not too much. Now, you see by those two illustrations that I have given you that the search of a woman for five or ten minutes, the indignity put upon her person, is held to be only compensated by a verdict of $2,500, and that the taking of human life is of no greater value and no larger verdict should be given. Now, the other day I was before the Committee on the Bill of Rights. I want to say at the outset that any intimation or suggestion that this Bill of Rights Committee or any member of it is influenced by any corrupt influences or undue influences of any kind is entirely unwarranted. I believe they are honorable, straight men in every respect, and are above any suspicion of that kind. I want to say that much, so that any remarks I may make may not be construed as favorable to any such claim or as indorsing any such suggestion, if it shall be made by anybody. I was before that committee and there came before them a young man representing the New York Central Railroad Company. He made no argument, except that he said the railroads did not want the amend-

ment. He said that the $5,000 has been the maximum amount for the last fifty years, and that it should be left just where it is and no change made. He then coolly and unblushingly said that he believed attempts had been made to change it and to increase the amount, but such amendment was never even reported by committee. Now, that gave me light, and I began to understand why places on railroad committees of the Legislature are so eagerly sought after. But, fellow-delegates, it is now out of a committee for the first time in fifty years, and now we have our opportunity. Let us send it to a referendum of the people, and see what they have to say about it for the first time they have had the opportunity since the enactment of the limitation of $5,000. Now, this matter has been agitated, as you have been told, by the newspapers throughout the State. The eyes of the people of the State are upon you. They have favored this proposition. The refulgent rays of the Sun have shone upon the subject. I picked up the World and I find it, too, speaks upon the subject. It says this: "Which will prevail? It is not yet certain that the Constitutional Convention will reject the proposition to prohibit any statutory limitation of the amount of damages to be given by a jury in case of the loss of human life. The committee reported against the prohibition, giving, as their reason for its rejection, the plea that the subject is one proper to leave to the Legislature. But the Convention is to vote on the acceptance of the report this evening, and there is some expectation that the majority may refuse to concur. The question is a very simple one. Outside the argument that it is inconsistent with a wise and just policy to put any arbitrary limitation on the amount of damages to be assessed for loss of life or personal injury in any case, the fact is plain that it is inconsistent to allow a jury to give such an amount as may seem adequate for the loss of an arm, and to be restricted as to the sum it shall assess for the loss of human life. The value of a man's life to his family varies according to circumstances. The corporations alone are interested in retaining the limitation and in defeating the proposed constitutional prohibition. The result of to-night's vote will afford a fair test of the control the railroad corporations have over the Convention. Reason, common sense and justice demand the rejection of the committee's adverse report. The railroad corporations alone demand its acceptance. Which will prevail?"

And I saw in yesterday's Sun — my favorite newspaper, by the way, which is, perhaps, bold to say in the presence of so many other newspaper representatives here, but I must say I think it is the newsiest and the best paper that one can read; I do not always

agree with its politics, I differ with it sometimes, though occasionally I find myself in accord even with its politics, when it roasts Grover Cleveland — and this is what the Sun says, and it is so much better than anything I can say that I ask the patience of the Convention while I read it:

THE VALUE OF LIFE IN LAWSUITS.

"The Constitutional Convention, as a whole, has shown much conservative good sense thus far in its proceedings. This is more than can be said of some of its committees. A few days ago the Committee on the Preamble unanimously agreed to recommend an amendment to the Constitution which would prohibit the Legislature from limiting the amount of damages recoverable in a suit for wrongfully or negligently causing the death of a human being. This was wise. Now the same committee, by a vote of eight to three, has resolved against the proposed amendment. This is unwise.

"We have already pointed out a number of reasons why the existing limitation of $5,000 should be abolished, and why the Legislature should be forbidden to restrict the amount of the recovery in death cases. There is no restriction in cases of injury not resulting in death; and, if juries can be trusted to award only reasonable damages to a man who has been maimed in a railway accident, they may be equally trusted to award only reasonable damages to the relatives of a man who has been killed. It is absurd to say, as the law now does, that, while $100,000 may be recovered in the first case, only $5,000 can be recovered in case of death.

"But, we are told that this is a proper subject for regulation by the Legislature, and has no proper place in the organic law of the State. We might assent to that view, if experience had not indicated that Legislatures manifest a remarkable unwillingness to enact statutes expressive of the popular will in this regard. They stick to a limitation, usually $5,000, until the people insist upon its abolition, and carry their will into effect by amending the Constitution. Thus it has come about that there are constitutional provisions, with reference to this matter, in several States already.

"In the Constitution of Arkansas, for example, we find this provision:

'No act of the General Assembly shall limit the amount to be recovered for injuries resulting in death, or for injuries to persons or property.'

"The Constitution of the Commonwealth of Pennsylvania says:

'No act of the General Assembly shall limit the amount to be recovered for injuries resulting in death, or for injuries to persons or property; and in case of death from such injuries, the right of action shall survive, and the General Assembly shall prescribe for whose benefit such actions shall be prosecuted.'

"In the Commonwealth of Kentucky, also, the Constitution contains this section:

'The General Assembly shall have no power to limit the amount to be recovered for injuries resulting in death, or for injuries to person or property.'

"A like prohibition is found in this provision of the Constitution of Wyoming:

'No law shall be enacted limiting the amount of damages to be recovered for causing the injury or death of any person. Any contract or agreement with any employe waiving any right to recover damages for causing the death or injury of any employe shall be void.'

"In Texas the Constitution permits exemplary damages, or damages by way of punishment, to be recovered in civil suits where death has been caused by wilful or gross negligence. This is the language of the Constitution on the subject:

'Every person, corporation or company that may commit a homicide, through wilful act or omission, or gross neglect, shall be responsible in exemplary damages to the surviving husband, wife, heirs of his or her body, or such of them as there may be, without regard to any criminal proceeding that may or may not be had in relation to the homicide.'

"In view of these quotations, it must be admitted, we think, that the need of some constitutional provision on the subject under discussion has been recognized in both old and new communities, in widely separated parts of the Union. This need grows out of the persistent disinclination of legislatures to do what the popular will demands. The opposition of the railroad companies to the removal of the limitation is powerful, and has always been successful with the Legislature of this State. There is little prospect that it will be abolished unless by means of an amendment to the Constitution."

In matters of salt legislation and canal legislation, I am inclined to follow my venerable friend from Onondaga, for whom I have the highest respect, but in other matters I beg leave to differ with him, as I ask the privilege and the right and I am going to take it to myself, to oppose him, when he opposes woman's suffrage and when he favors the restriction of $5,000 as the limit of recovery for death

caused by negligence of anyone, corporation or person, because I think he is too tender to corporations and too hard on the women. Mr. President and fellow-delegates, if you want your Constitution to carry, put this amendment in it. It will be the most popular thing that you can or will do during the session, and you will array on your side the great masses of the people. There is a great deal of discontent in these days against laws and lawmakers, and it is no wonder when laws that were passed for inter-State commerce are only effectual in putting labor leaders in jail. It is no wonder that there is discontent abroad. This measure, if passed, will help to allay that feeling, because people will say that there is at least one body in the State that is disposed to do something for them. Every railroad employe, every conductor, every engineer, every brakeman and every switchman will vote for this amendment without regard to their politics. It will be a popular measure with them, and it will be popular with everybody who rides upon railroad cars or on steamboats or in stage coaches. We want to give the people a chance to vote upon this question and to vote affirmatively upon it, and if you adopt this amendment it will help to carry your Constitution, even if some of the measures that you carry through here by a majority vote do not carry with the people. Besides, it will have a strong tendency to prevent accidents. Why, sir, the number of accidents in each year are greatly in excess of those of the year before, and it is time a stop was put to it. We need some regulation of this kind, and if these railroad companies and steamboat companies are held to the highest responsibility it will go very far towards preventing accidents in the future. Again, they will work men shorter hours and they will employ better men. We shall not hear the excuse offered in the case of an accident that the engineer, because of his long tour of duty, got asleep, and, therefore, did not see the danger signal because he was so worn out. This amendment, if approved by the people, will be effective in this direction. Therefore, I call upon all labor representatives in this Convention to support this measure, because it is in their interest and because it is in the interest of the whole plain, common people.

Mr. Veeder — Mr. President ——

The President — It will now be in order for you, Mr. Veeder, under the rule adopted on the 18th of July, to present a minority report.

Mr. Veeder — Mr. President, while absent from the chair an unfortunate occurrence occurred in this Convention, which I deem important to call the attention of the presiding officer to, namely,

that the remarks of a gentleman personal to an honorable man upon the floor of this Convention were improper and unparliamentary. I made the motion that so far as the remarks related to that gentleman they should be expunged from the Record. The Chair held that at that time the gentleman from Newburgh, or rather from Orange, having the floor, I had no right to make the motion then, but that it would be the proper time to make the motion when he had finished his remarks. Therefore, availing myself of that decision, I desire now to renew that motion.

The President — That seems to be a matter of privilege.

Mr. Veeder — I desire to renew my motion, that so far as the gentleman's remarks are personal they be expunged from the Record as unparlimentary and improper, and upon that I call for the ayes and noes.

The President — Will you please send that up to the Secretary?

Mr. Alvord — I trust that the motion will not prevail. I have no desire to curtail one single word which has been said by the gentleman from Orange, having reference to me personally. I can only regret that there are men yet in the community, who, though young in years, have grown so utterly mindless and senile that they cannot learn even to the latest day of their lives.

The President — The Secretary will read the motion presented by Mr. Veeder as a question of privilege. Have you sent it up in writing, Mr. Veeder?

Mr. Veeder — I have not. I ask the stenographer to read it from his minutes. Perhaps the quickest way is to state it again. I move to expunge from the Record the remarks of the gentleman from Orange, Mr. Dickey, so far as they are personal to the gentleman from Onondaga, on the ground that they are improper and unparliamentary.

The President — Gentlemen have heard the motion made by Mr. Veeder. Does Mr. Veeder press his call for the ayes and noes?

Mr. Veeder — No, sir.

The question was then put on the motion, but, the Chair being in doubt, a division was called, whereupon the motion was declared lost.

The President — Mr. Veeder now has the floor if he wishes to present a minority report.

Mr. Veeder — In behalf of the minority of the Committee on Preamble, I submit the following report:

The President — And it is received in conformity with the new rule adopted on the 18th of July, which reads as follows:

"That a minority report may be made at any time before the subject on which a report has been made by a standing or select committee has been finally disposed of by the Convention.

The question will remain upon agreeing to the adverse report of the majority of the committee.

Mr. Veeder — May I have the minority report read?

The President — Yes.

The Secretary read the minority report of the Committee on Preamble, as follows:

"The undersigned, a minority of the Committee on Preamble, recommend to the Convention the following proposed constitutional amendment: To amend article one of the Constitution as to damages for the loss of human life. Article one of the Constitution is hereby amended by inserting the following as a new section: No statutory limitation shall be placed upon the amount of damages recoverable or upon the right to recover in a civil action for the loss of human life or for injury to the person.

"GIDEON J. TUCKER,
"W. D. VEEDER,
"ANDREW H. GREEN."

Mr. Veeder — We, the minority of the committee, believe the limitation placed upon the recovery of damages for the loss of human life is insufficient. It does not follow that we are committed to a proposition to leave it entirely unlimited, if that should be the judgment of the Convention, but experience teaches us that the Legislature since 1849 have refused to increase the amount of damages to be recovered beyond the sum of $5,000. I am not prepared to say to-night that our report is exactly in the form that it should be to make it entirely effective. The question has been raised by good lawyers in the Convention whether or not, if the minority report should be adopted and accepted by the people as a part of the Constitution, it would take away the right of the Legislature to repeal the act allowing damages at all to be recovered in the case of death by accident. So that while we offer this minority report, I do not think that this evening we are prepared to discuss it in full, because I believe amendments are proper to it. Beyond that, of course, it is proper for us to consider the question whether we will agree or disagree with the adverse report on the proposition.

Mr. Forbes — As it is now half-past nine o'clock, and the members of the Convention seem to be somewhat agreed upon this amendment, and as amendments can be made before the usual hour of adjournment if we now go into Committee of the Whole, I move the previous question on disagreeing with the report of the committee.

The President — The previous question is called for. Shall the main question now be put upon the subject before the House, which is, agreeing to the adverse report of the Committee on Preamble? Those in favor will please say aye; those opposed, no.

Carried.

Mr. Mulqueen — I call for the ayes and noes on whether the main question shall be put.

The ayes and noes are called for, and gentlemen supporting the call for ayes and noes will rise and stand until counted.

Mr. Kerwin — Mr. President, we do not understand upon what question the ayes and noes are now to be called.

The President — It is on the previous question.

Mr. Maybee — I call for the ayes and noes upon agreeing to the report of the committee.

The President — That is the question before the House. Those in favor of the main question being now called will say aye; opposed, no.

Carried.

The President — Does Mr. Maybee renew his call for the ayes and noes on the previous question? The roll will be called. The question is: Shall we agree to the adverse report of the committee on this amendment? Those in favor of supporting Mr. Maybee's call for the ayes and noes will rise. It is supported. The Secretary will call the ayes and noes.

Mr. Francis — I want to know what the question is?

The President — The question is upon agreeing or disagreeing with the adverse report presented by your committee.

Mr. Francis — I vote aye.

Mr. Hawley — I desire to be excused from voting, and will state my reasons very briefly. The minority report which has been presented here shows that the amendment which has been adversely reported is not satisfactory to anybody, and it ought not to be satisfactory to the friends of this measure, because it is so loosely drawn that you can drive a coach and four through it anywhere, and it will

utterly fail to accomplish the purpose which was designated by this proposed amendment, and whether that was the reason or not which caused the Committee on Preamble to report it adversely, it is reason enough for anybody to vote to sustain an adverse report upon that proposition; for that reason I withdraw my excuse and vote aye.

Mr. Mereness — I desire to state very briefly my reason for my vote upon this matter. As I understand it, there was no right of action independent of the statute, and this amendment, which has been reported adversely from the committee, as I understand, simply prevents the Legislature from removing the limitation. It has occurred to me that if this amendment which has been proposed to the committee, and which is probably to come before the Convention further, should go before the people and should be adopted, and that then the Legislature should repeal the statute which gives the right of action, it seems to me that the whole matter would be in a very sorry predicament. I think that would involve the necessity of legislating in the Constitution, and I think that would be a very dangerous innovation, and for that reason I vote aye.

Mr. Platzek — I desired to be excused from voting for these reasons: I do not apprehend the difficulty that Mr. Mereness suggests, for the reason that there is a statutory action, and this amendment, if adopted, merely prohibits the Legislature from limiting the damages. His suggestion, that the Legislature might repeal the law, is not valuable in my judgment, for the reason that the Legislature can repeal the law now, so that it would not make any difference whether this amendment was adopted or not. As to the suggestion which has been thrown out here with respect to the sufficiency of the minority report introduced; why! in a little while from now, we will be in Committee of the Whole, and then we can get Mr. Hawley's objection to the amendment to the report arranged in such a way that you won't be able to drive through it with a pair of horses. I ask to withdraw my excuse, and vote no.

Mr. W. H. Steele — With the chorus of noes that I hear around me, it seems necessary that I should frankly express my reasons for the faith that is in me, and, therefore, I request to be excused from voting, and will state my reasons in a few words. The statute proposed to be abrogated and forever prohibited by this overture has been the law of the Empire State for forty-five years. I have heard it said repeatedly here to-night that the Legislature has been importuned year after year to abolish it. During the three years that I was in the Legislature I never heard of a popular demand

being made that it should be abolished. Had that claim been so loud and for so many years as these gentlemen say, I believe its thunder tones would have found their way up to my home on the lake and I should have heard more of it. I believe this should be a statutory provision, and confined to statutory enactment, and that when it was placed upon the statute books in 1849, it was intended solely as a tentative matter and as an experiment. And why? Because, sir, if it proved to be unfavorably received by the people of the Empire State, the next or any subsequent Legislature could either abolish it or increase the amount. I say now, candidly, that if I should be a member of the Legislature next winter I would be in favor of increasing the limitation from $5,000 to a larger sum. In doing that, however, I should take into consideration the fact that there are other corporations in the State of New York besides the great railroad and steamboat companies. We have in this State corporations with a capital varying from a few thousands up to millions of dollars. Now, the action here proposed affects the farmer, the mill owner, and every business using machinery, or where animals are employed; in fact, every class of employers just as seriously as it affects great railroad or steamboat or manufacturing corporations.

The farmer or the mill owner who uses machinery or animals by means of which human life may be taken because of an accident, in fact, any employer, and he very often a man who is not worth $5,000, the present limit of damages, may be mulcted so that his family may become paupers, while the family of the deceased may be placed in affluent circumstances by a judgment for damages. I believe that if this amendment is placed in the Constitution of the State it will stand there for the next twenty, and, perhaps, for the next thirty years. It is twenty-seven years since we had our last Constitutional Convention. It may be fifty years before we have another, and, whether or not that proves a general blessing to the people of the State, it must stand as the law of the State. I believe that we can depend upon the Legislature to determine what is for the best interests of the State. I have never been accused of any extreme tenderness, or even of any undue lenience or liberality towards our great corporations. If this overture was drawn immediately after some terrible destruction of life through gross negligence of a wealthy manufacturer or some of our great transportation coroporations, I could understand why these thunderbolts of eloquence should be launched against corporations, as if they were the only parties to respond in damages for loss of life under a jury's construction of what might be negligence or an unavoidable accident. As I said before, the people of the State of New York have other

corporations than railroads; they have hundreds of corporations besides; and this law extends equally to mulcting the individual employer or owner of the property causing the loss of life, even to the extent of every dollar he has, because he may have an ox, horse or mowing machine by which some man is killed, or in some other way some employe loses his life. Then an action is brought against the employer and he may be mulcted of the savings of a lifetime, and his family impoverished to enrich the survivors of the person who may have largely or wholly caused the fatality. More than all that —

The President — The gentleman's time has expired.

Mr. Steele — I think I have been talking beyond my time, Mr. President, and I am sorry I have intruded beyond the limit; but I will now withdraw my request to be excused, and vote aye.

The motion to agree to the report was then put, and lost. Ayes, 23; noes, 108.

Ayes — Messrs. Abbott, Acker, Alvord, Bigelow, Francis, Frank, Augustus, Galinger, Hamlin, Hawley, Holcomb, Mantanye, McMillan, Mereness, Parker, Parmenter, Peck, Pool, Root, Schumaker, Steele, W. H., Tibbetts, Van Denbergh, President — 23.

Noes — Messrs. Ackerly, Allaben, Arnold, Baker, Banks, Barhite, Barrow, Becker, Blake, Bowers, Brown, E. A., Brown, E. R., Burr, Cady, Campbell, Carter, Cassidy, Chipp, Jr., Clark, G. W., Clark, H. A., Cochran, Coleman, Cookinham, Cornwell, Countryman, Crosby, Curran, Danforth, Davenport, Davis, Deady, Dean, Deyo, Dickey, Doty, Durfee, Durnin, Emmet, Farrell, Floyd, Forbes, Frank, Andrew, Fraser, Fuller, C. A., Giegerich, Gilbert, Gilleran, Goeller, Green, A. H., Green, J. I., Griswold, Hecker, Hedges, Hill, Hirschberg, Holls, Hotchkiss, Hottenroth, Jenks, Johnson, I. Sam, Kellogg, Kerwin, Lincoln, Manley, Marks, Marshall, Maybee, McArthur, McDonough, McIntyre, McKinstry, McLaughlin, C. B., McLaughlin, J. W., Meyenborg, Moore, Morton, Mullen, Mulqueen, Nichols, Nicoll, O'Brien, Phipps, Platzek, Powell, Redman, Roche, Roderick, Rogers, Sandford, Speer, Springweiler, Storm, Sullivan, T. A., Sullivan, W., Tekulsky, Towns, Truax, C. H., Truax, C. S., Tucker, Turner, Veeder, Vogt, Wellington, Whitmyer, Wiggins, Williams, Woodward — 107.

The President — The effect of this vote is to throw the amendment, which was the subject of the report, upon general orders. In the meantime, the report of the minority, which presents an amendment differing in form from that covered by the report which has been acted upon, under rule 32, will be printed and placed upon the

desk of members, and may be moved at any time and by anybody in Committee of the Whole.

Mr. Veeder — I ask leave of the Convention to amend the minority report before it is printed, so that it shall read as follows:

"Article one of the Constitution is hereby amended by inserting the following as a new section:

" The right of action is hereby given for loss of life and for injury to the person, and no statutory limitation shall be placed upon the amount of damages recoverable or upon the right to recover by civil action for the loss of human life or for injury to the person."

The President — Is that form assented to by your associates on the minority of the committee?

Mr. Veeder — Yes, sir; I have just consulted them.

The President — Then it will take that form, and be so printed.

Mr. Mullen — Mr. President, I desire, if it is in order, to offer an amendment.

The President — I do not think that any amendment would now be in order. It is right for the minority of the committee to read their report.

Mr. Veeder — In view of the remarks I have made before —

The President — Gentlemen will understand that this may come up on general orders, and this minority report or any amendment can then be proposed.

The Committee on Rules, I believe, is authorized to report at any time, and they have an important report to make. Is the chairman of that committee present?

Mr. Root — Yes, sir.

The President — Mr. Root, from the Committee on Rules.

Mr. Root — The Committee on Rules present a report in conformity with the matter referred to them on Thursday last.

The Secretary read the report, as follows:

R. 157.—" Resolved, That hereafter the Convention hold evening sessions on Tuesday, Wednesday, Thursday and Friday of each week, at eight o'clock, for the consideration of general orders.

Mr. Veeder — I move to amend by adding: " And such other business as may come before the Convention." If we are out of general orders, then we can take up any other business.

Mr. Moore — I move to amend by striking out " Friday night,"

and inserting "Monday night." (Cries of "No, no.") Wait one moment. I have the floor, I believe.

The President — The Chair does not consider Mr. Moore's amendment in order until Mr. Veeder's amendment, referring to a wholly different subject-matter, is disposed of, and after that Mr. Moore's amendment would be in order.

Mr. C. H. Truax — I rise to a point of order, Mr. President, that we are here to-night under a special call, and under the rules, as I understand them, no other business can be taken up.

The President — The Chair is of the opinion that under the rule as it is printed, the Committee on Rules may sit during the session of the Convention, without special leave, and may report at any time on rules or order of business so referred to them, and, therefore, that this business is now in order.

Mr. Tekulsky — As I understood it, this meeting to-night was merely an adjourned meeting from this morning, and, while it was a special order for a certain thing, it did not state that we could not go into any other business.

The President — That is exactly so.

Mr. Tekulsky — As I understood, it was clearly an adjourned meeting from this morning.

The President — It was an adjourned meeting from this morning. But the Committee on Rules may report at any time. Now, the question is on Mr. Veeder's amendment, to add to the report of the Committee on Rules the words, "and such other business as may come before the Convention."

Mr. Root — Mr. Veeder offers that, so that general orders will have the preference, but if we get through with general orders or any other order, we can then go on with any other business. With that change I think it is a very proper amendment to the rule. He changes the words "such other business" to "such further business."

The President — Those in favor of adopting Mr. Veeder's amendment, to add the words "or such further business as may come before the Convention," will please say aye; contrary, no.

Carried.

Mr. Moore's amendment is now in order.

Mr. Moore — I made the motion to substitute Monday night for Friday night, because Monday night sessions are in consonance with legislative usage, and also, because on Fridays, to give the members who have to go home and stay over Sunday a session longer than

that keeps them here. It seems to me that we can a great deal better get here on Monday and have a session on Monday evening, than we can stay here after Friday noon, and so be incommoded by a session on Friday night. I, therefore, make that motion.

Mr. Hotchkiss — I move that the rule as reported be amended by striking out Friday night. I feel that I am as willing as anyone to devote all the time that may be necessary for the consideration of the business that may come before this Convention, but it seems to me that it is going too far now to bind us at this comparatively early stage in the night sessions to meet here upon three or four nights in the week. Let us first try Tuesday, Wednesday and Thursday nights, and then if we find that we are running behind in the business before us, it will be very easy to add the fourth night, and to meet here upon Friday night. But the inconvenience which the retention of so many members in Albany upon Friday night will be, can scarcely be imagined by those who do not live at, or whose business does not call them to, remote points. It seems to me, therefore, that we might better try this experiment in its modified form before committing us to four nights in the week.

The President — Does Mr. Hotchkiss make his as an amendment to Mr. Moore's amendment? Mr. Moore proposed to substitute Monday for Friday, and your motion is to amend his amendment by omitting Friday.

Mr. Hotchkiss — My amendment was not to amend Mr. Moore's substitute. It was an independent motion to amend the rule as reported, by striking out Friday, and leaving the designated evenings, Tuesday, Wednesday and Thursday.

The President — Then the question will first be on Mr. Moore's amendment to substitute in the report made by the Committee on Rules Monday night for Friday night.

Mr. Hotchkiss — A point of order, Mr. President. If I am not mistaken, the question should be first upon the second amendment.

The President — Not unless yours is an amendment to the amendment. Yours is not in order until Mr. Moore's amendment is disposed of.

Mr. Cookinham — I hope the motion of Mr. Moore will prevail. This Convention will do just as much work if they come together on Monday evening, and Tuesday and Tuesday evening, and Wednesday and Wednesday evening, and Thursday and Thursday evening, as if they sat on Friday evening, and not on Monday evening. It is the experience of every person upon this floor who

has served in the Legislature, that we have an excellent session of the Legislature on Monday evenings. The members will return and we can do business. It is also the experience of every person that on Fridays we have a very poor session of the Legislature. That is also true in this Convention. Now, if this rule is so amended as to hold a meeting on Monday evening, and then every evening in the week except Friday, we that have business that commands our attention on Friday and Saturday, can transact that business, but there are members upon this floor that require nearly the whole day to go home, and if you hold a session on Friday evening they cannot leave until Saturday morning, and they will reach home in the afternoon or evening of Saturday, and then they are obliged to travel all day Monday to get back here again. What is the use of the Convention adjourning over Sunday if it takes them all day to go home Saturday and all day to come back on Monday. I hope the amendment offered by Mr. Moore, which is the sensible, the reasonable way, to dispose of this matter, will be adopted, and that we may meet on Monday evening and stay here until Friday afternoon.

Mr. Cassidy — I would be in favor of the amendment if it were not for the fact that the delegates living in the western part of the State cannot reach Albany by leaving home Monday morning in time to attend a session, and it seems to me important that all delegates should be present at all of our sessions. The Monday evening session in the Legislature is an unimportant one. No business of any importance is transacted there Monday evenings, and consequently it is a matter of little moment whether all the members of the Legislature are in attendance or not. But by reason of the rule just adopted by the vote of this Convention, it is of great necessity that every member of this Convention should be present, not only at the day sessions, but at the evening sessions, unless he wishes to have his desires out-voted or does not wish to be recorded. It seems to me that three nights in the week at present are sufficient to devote to the discussion of abstruse questions which have died a natural death in the committee, and are discussed here only for the benefit of those who are interested in them, and I would move to amend Mr. Moore's amendment, if there is no other question before us, and I think there is none, that the evening sessions be on Tuesday, Wednesday and Thursday evenings.

The President — Mr. Cassidy moves to amend Mr. Moore's amendment by striking out that portion to substitute Monday for Friday. The effect will be to have the sessions on Tuesday, Wednesday and Thursday evenings.

Mr. Forbes — As it is now half-past nine o'clock, and the members of the Convention seem to be somewhat agreed upon this amendment, and as amendments can be made before the usual hour of adjournment if we now go into Committee of the Whole, I move the previous question on disagreeing with the report of the committee.

The President — The previous question is called for. Shall the main question now be put upon the subject before the House, which is, agreeing to the adverse report of the Committee on Preamble? Those in favor will please say aye; those opposed, no.

Carried.

Mr. Mulqueen — I call for the ayes and noes on whether the main question shall be put.

The ayes and noes are called for, and gentlemen supporting the call for ayes and noes will rise and stand until counted.

Mr. Kerwin — Mr. President, we do not understand upon what question the ayes and noes are now to be called.

The President — It is on the previous question.

Mr. Maybee — I call for the ayes and noes upon agreeing to the report of the committee.

The President — That is the question before the House. Those in favor of the main question being now called will say aye; opposed, no.

Carried.

The President — Does Mr. Maybee renew his call for the ayes and noes on the previous question? The roll will be called. The question is: Shall we agree to the adverse report of the committee on this amendment? Those in favor of supporting Mr. Maybee's call for the ayes and noes will rise. It is supported. The Secretary will call the ayes and noes.

Mr. Francis — I want to know what the question is?

The President — The question is upon agreeing or disagreeing with the adverse report presented by your committee.

Mr. Francis — I vote aye.

Mr. Hawley — I desire to be excused from voting, and will state my reasons very briefly. The minority report which has been presented here shows that the amendment which has been adversely reported is not satisfactory to anybody, and it ought not to be satisfactory to the friends of this measure, because it is so loosely drawn that you can drive a coach and four through it anywhere, and it will

utterly fail to accomplish the purpose which was designated by this proposed amendment, and whether that was the reason or not which caused the Committee on Preamble to report it adversely, it is reason enough for anybody to vote to sustain an adverse report upon that proposition; for that reason I withdraw my excuse and vote aye.

Mr. Mereness — I desire to state very briefly my reason for my vote upon this matter. As I understand it, there was no right of action independent of the statute, and this amendment, which has been reported adversely from the committee, as I understand, simply prevents the Legislature from removing the limitation. It has occurred to me that if this amendment which has been proposed to the committee, and which is probably to come before the Convention further, should go before the people and should be adopted, and that then the Legislature should repeal the statute which gives the right of action, it seems to me that the whole matter would be in a very sorry predicament. I think that would involve the necessity of legislating in the Constitution, and I think that would be a very dangerous innovation, and for that reason I vote aye.

Mr. Platzek — I desired to be excused from voting for these reasons: I do not apprehend the difficulty that Mr. Mereness suggests, for the reason that there is a statutory action, and this amendment, if adopted, merely prohibits the Legislature from limiting the damages. His suggestion, that the Legislature might repeal the law, is not valuable in my judgment, for the reason that the Legislature can repeal the law now, so that it would not make any difference whether this amendment was adopted or not. As to the suggestion which has been thrown out here with respect to the sufficiency of the minority report introduced; why! in a little while from now, we will be in Committee of the Whole, and then we can get Mr. Hawley's objection to the amendment to the report arranged in such a way that you won't be able to drive through it with a pair of horses. I ask to withdraw my excuse, and vote no.

Mr. W. H. Steele — With the chorus of noes that I hear around me, it seems necessary that I should frankly express my reasons for the faith that is in me, and, therefore, I request to be excused from voting, and will state my reasons in a few words. The statute proposed to be abrogated and forever prohibited by this overture has been the law of the Empire State for forty-five years. I have heard it said repeatedly here to-night that the Legislature has been importuned year after year to abolish it. During the three years that I was in the Legislature I never heard of a popular demand

suggestions made as to the short period of time that remains to perform the work. There are important questions to be dealt with, which must be disposed of by this Convention, and, with something like twenty-seven days of working time left, there are two remedies, and only two, by means of which this Convention can complete its work by the 15th of September. The one remedy will be to prevent reasonable debate, and the other remedy is to sit an additional period, and stay here longer, and give more attention to our work. For my own part, I prefer the second remedy, and when the time arrives that we shall sit here from ten o'clock Monday morning until twelve o'clock Saturday night in order to debate these questions properly, I shall advocate it. That time has not yet arrived, but the time has arrived when the reports of the committees which are of moment in the work of this Convention are coming before us, they must be debated, and they can only be properly debated by staying here and working four days in the week. I, therefore, hope that the report, which fixes Tuesday, Wednesday, Thursday and Friday nights, will be adopted, and that if any change is made, it will be by adding Monday night, and we will thus leave no possible excuse for lack of time precluding the privilege of full debate.

Mr. Cochran — It seems to me, Mr. President, that the proposal to sit Friday night is at this time entirely unnecessary. I agree thoroughly with all that has been said about completing this work by the 15th of September, and I believe we can do it if we will pay more attention to limiting our remarks on the several propositions that will come before us. The business of this Convention up to this time has certainly not warranted four evening sessions a week, for it is a fact that on most every day we have adjourned, having called the calendar of general orders, and without having any work on that calendar to be done by this Convention. We have held only two evening sessions, and those have been on special orders and on questions of disagreeing with committees' reports. No general orders have as yet been considered at any evening session. I agree further with what the chairman of the Committee on Rules has said, that the committees are now completing their work, and for that reason I say it is entirely unnecessary that we should provide for more than three evening sessions a week. If the committees are finishing their work, then we can have one morning session, one afternoon session, and one evening session each day, which will be nine sessions in three days, and if we cannot complete the work in those sessions, we can then provide for a session on Friday evening; but I do not think that at this time we should bind ourselves down to a session which it would seem is entirely unnecessary.

Mr. Dean — I was in hopes that it would not be necessary to make a motion to shut off debate, but there seems to be a disposition here to talk all night, and I therefore move the previous question.

Carried.

The President — The question is on Mr. Cassidy's amendment to Mr. Moore's amendment. Gentlemen will understand how the question now stands. The committee reported in favor of holding evening sessions on Tuesday, Wednesday, Thursday and Friday nights. Mr. Moore moved to amend by striking out Friday night. Mr. Cassidy then moved to amend Mr. Moore's amendment by Committee on Rules by striking out Friday. Those in favor of that amendment will say aye; those opposed, no.

Carried.

The President — The question now recurs on Mr. Moore's amendment. Mr. Moore moves to amend the proposition of the Committee on Rules by striking out Friday. Those in favor of that amendment will say aye; those opposed, no.

Carried.

The President — The question is now on the adoption of the rule as it stands amended, unless Mr. Hotchkiss wishes to insist upon his motion.

Mr. Hotchkiss — No, sir; Mr. Cassidy's amendment covered it.

The President — The question will then be upon the substitute offered by Mr. Kerwin, which the Secretary will read.

The Secretary then read the substitute offered by Mr. Kerwin.

Mr. Kerwin — I ask unanimous consent, in view of the fact that delegates have got time to go home, to withdraw that.

The President — It is not open to debate. Those in favor of the substitute of Mr. Kerwin will say aye; opposed, no.

Lost.

Mr. Veeder — I want to ask how the proposition stands now.

The President — The proposition now is on the final vote to be taken on the proposed rule, namely, that the Convention hold evening sessions hereafter at eight o'clock on Tuesday, Wednesday and Thursday evenings. Those in favor of the resolution as it now stands amended will say aye; opposed, no.

Carried.

Mr. Cochran — I move you, sir, that the rule as to evening sessions shall not take effect until next week.

(Cries of "No, no.")

The President — That cannot be done without a reconsideration of what has just been passed.

Mr. Cochran — Very well, sir; I will withdraw it.

Mr. Cassidy — By request of a number of the majority, I desire to offer a motion to reconsider the vote which was had on Friday last upon the report made by the Committee on Bill of Rights disagreeing to the amendment, or reporting adversely the amendment offered by Mr. Fuller, and that the motion to reconsider lay on the table until after the report of the Committee on Preamble.

Mr. Deady — I move that we do now adjourn.

The President — I think it requires unanimous consent, motions not being in order at this time.

A Member — I object. I rise to a point of order that a motion to reconsider must be made upon the day that the vote is taken, and this is the next day. That is the only time that the motion can be made.

The President — I think the point of order is well taken, as he has a right to make the motion on the second day. If he were shut off from that because of that being devoted to general orders or special orders, that right would be nullified.

The President — Does Mr. Deady withdraw his motion to adjourn?

Mr. Deady — No, sir.

The President — Those in favor of adjourning will say aye; opposed, no.

Lost.

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

Mr. Alvord — I rise to a point of order that this is a special meeting for a special purpose, and, without unanimous consent, no one can interfere with any further motions.

The President — The Chair is of the opinion that the point of order is not well taken. The question is on laying upon the table Mr. Cassidy's motion to reconsider the vote of Friday, by which Mr. Fuller's amendment was lost, and to lay the motion upon the table —

Mr. Gilbert — I understood Mr. Cassidy's motion to be that the vote taken upon this matter last Friday be reconsidered.

The President — Yes, it was to reconsider that vote, and to lay the motion to reconsider it upon the table. If the motion to lay upon

the table is lost, the question will then recur upon the motion to reconsider.

Mr. Gilbert — I do not understandf it yet.

The President — This is a motion to lay upon the table a motion to reconsider. If the motion to lay upon the table is carried, it can be taken up hereafter; if it is lost, the motion will then be on the motion to reconsider.

The vote was then taken and Mr. Cassidy's motion was carried, 61 voting in the affirmative and 50 in the negative.

The President — The motion to adjourn is now in order.

Mr. Deady renewed his motion to adjourn, and the President put the question, and it was carried.

Whereupon the Convention adjourned until Wednesday, August 1, 1894, at ten o'clock A. M.

Wednesday, August 1, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber at Albany, N. Y., August 1, 1894, at 10 A. M.

President Choate called the Convention to order.

The Rev. D. G. Rockefeller offered prayer.

Mr. O'Brien moved that the reading of the Journal of July 31st be dispensed with.

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

The President announced the order of presentation of memorials, and stated that a memorial had been received from various citizens of New York in reference to an amendment to the Constitution touching the laws of the State as to caucus meetings.

Referred to the Committee on Preamble and Bill of Rights.

Mr. Tucker offered the petition of citizens of New York city asking that the word "male" be stricken from the Constitution.

Referred to the Committee on Suffrage.

Mr. Deyo — Mr. President, I ask that Mr. Durnin be excused from attendance to-day on account of illness.

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

The President announced the order of communications from State

officers, and the Secretary read the following communication from the Superintendent of Salt Springs:

Communication from Hon. P. J. Brumelkamp, Superintendent of the New York State Salt Springs, which was ordered printed and referred to the Committee on Salt Springs (communication No. 20, Document No. 39, in response to resolution No. 146).

SYRACUSE, N. Y., *July* 30, 1894.

Hon. Charles E. Fitch, Secretary Constitutional Convention, Albany, N. Y.:

DEAR SIR.— In reply to the request contained in resolution of the Constitutional Convention adopted the 25th inst., asking the Superintendent of the Onondaga Salt Springs for a statement relative to all leases of salt lands in the Onondaga Salt Springs Reservation, I have to say:

The statutes relating to the Onondaga Salt Springs provide for two classes of leases of lands on the reservation for salt purposes, and they are distinguished as grants of lands for the purpose of the manufacture of coarse salt by solar evaporation and leases of fine salt lots for the purpose of the manufacture of salt by artificial heat. The grants of land for the purpose of the manufacture of coarse salt were made by the Commissioners of the Land Office, pursuant to the provisions of section 104 of title 10, chapter 9 of the first part of the Revised Statutes, and the amendments thereto. The grant consists of a resolution of the Commissioners of the Land Office that certain lands, the fee of which is in the State, described in the explanation of the parties seeking the grant be "set apart to the applicant for the purpose of the manufacture of coarse salt." There is no limitation as to the time such grants shall continue in force, contained in the grant itself or the statute authorizing it. The Commissioners of the Land Office have, from time to time, during the past seventy years, set apart various tracts of land containing in the aggregate about nine hundred acres. These lands are at the present time held and occupied by virtue of such grants by twenty-six different individuals and corporations, for the purpose of manufacturing coarse salt. The description of each particular grant can be found in the records of the Commissioners of the Land Office. The leases of lots for fine salt purposes were well issued by the Superintendent of the Salt Springs, pursuant to chapter 346 of the Laws of 1859, and all such leases expired by limitation, June 20, 1889, and none have been renewed. It appears from an examination of the books in this office that one hundred and ninety-nine fine salt

lots were leased and that most of them are still occupied by the lessees.

The leases for fine salt lots are required by statute to be recorded in the clerk's office of Onondaga county.

Yours respectfully,

P. J. BRUMELKAMP, *Superintendent.*

The Secretary also read the following communication from the Superintendent of the Banking Department, in answer to the call of the Convention for information as to the amount of unclaimed deposits in savings banks, and also the report of Superintendent of Banks on dormant accounts of savings banks, in response to the resolution of Mr. Kellogg.

Ordered printed and referred to the Committee on Currency, Banking and Insurance.

Communication No. 21, Document No. 40, in response to resolution No. 89:

DOCUMENT No. 40.

Report of Superintendent of Banks on Dormant Accounts of Savings Banks, in response to the resolution of Mr. Kellogg. Ordered printed and referred to Committee on Currency, Banking and Insurance.

STATE OF NEW YORK:

BANKING DEPARTMENT,

ALBANY, *July* 30, 1894.

To the Constitutional Convention, Albany, N. Y.:

GENTLEMEN.— In pursuance of your resolution of June twenty-seventh, reading as follows:

"Resolved, That this Convention request the savings banks or institutions for savings in this State to furnish to the Superintendent of Banking, upon his demand for the same, the amount of their unclaimed deposits without delay, and that when such report is completed, the Superintendent of Banking transmit the same forthwith to the Convention."

I had prepared and sent to the several savings banks and institutions for savings of the State a circular letter, which included the above resolution in full, a copy of which is hereto annexed.

I have the honor to transmit herewith a tabulated statement of the information furnished to me by said banks and institutions in response to said circular letter and in accordance with the requirements of said resolution, giving number and amount of dormant accounts, as there are no such accounts as unclaimed

deposits carried by the savings banks. Dormant accounts are always liabilities of a bank and payable on demand.

Some of the banks, however, have reported accounts of twenty years' standing and amounts under five dollars, not confining their statements to the accounts which they are required to report to the department by the provisions of section 28, chapter 689, Laws of 1892, to wit, those of twenty-two years' standing and over five dollars in amount.

Very respectfully yours,
CHARLES M. PRESTON, *Superintendent.*

(COPY OF CIRCULAR.)

STATE OF NEW YORK:
BANKING DEPARTMENT,
ALBANY, *July 2*, 1894.

GENTLEMEN.—I am in receipt of communication of which the following is a copy:

STATE OF NEW YORK:
CONSTITUTIONAL CONVENTION,
ALBANY, *June 27*, 1894.

On motion of Mr. Kellogg:

"Resolved, That this Convention request the savings banks or institutions of savings of this State to furnish to the Superintendent of Banking, upon his demand for the same, the amount of their unclaimed deposits without delay, and that when such report is completed the Superintendent of Banking transmit the same forthwith to the Convention."

By order of the Convention.
CHAS. E. FITCH, *Secretary.*

To the Superintendent of Banking:

The foregoing circular letter has been sent to the various institutions of savings of this State.

Yours respectfully,
CHAS. E. FITCH, *Secretary.*

Please furnish to me the information indicated so that I can tabulate the same for use of the Constitutional Convention.

By "unclaimed deposits" I understand "dormant accounts" is meant.

Very respectfully,

.....
Superintendent of Banks.

To.....

DORMANT ACCOUNTS OF THE SAVINGS BANKS OF THE STATE OF NEW YORK.

NAME OF BANK.	Amount of dormant accounts.	Number of dormant accounts.	Number of such accounts less than $50.	Amount paid on account of dormant accounts from 1890 when first report made to 1894 when last report made.
Albany City Savings Institution, Albany	$16,842 91	*	.....	....
Albany County Savings Bank, Albany	0	0	.....	.....
Albany Exchange Savings Bank, Albany	116 46	17	17	.....
Albany Savings Bank, Albany	23,610 29	*	.....	.....
Cohoes Savings Institution, Cohoes	13 98	1	1	.....
Home Savings Bank, Albany	0	0	.....	....
Mechanics and Farmers' Savings Bank, Albany	6,571 82	*	.....	.....
Mechanics' Savings Bank, Cohoes	0	0	.....	.....
National Savings Bank, Albany	0	0	.....	.....
Binghamton Savings Bank, Binghamton	0	0	.....	.....
Chenango Valley Savings Bank, Binghamton	0	0	.....	... .
Auburn Savings Bank, Auburn	2,580 86	*	.....	... .
Cayuga County Savings Bank, Auburn	504 16	*	.....	.....
Elmira Savings Bank, Elmira	0	0	.....	.....
Hudson City Savings Institution, Hudson	1,626 99	14	8	....
Cortland Savings Bank, Cortland	12 20	1	1	....
Fishkill Savings Institute, Fishkill	773 68	3	1	.....
Matteawan Savings Bank, Matteawan	0	0	.....	.....
Mechanics' Savings Bank, Fishkill-on-the-Hudson	194 33	2	1	....
Pawling Savings Bank, Pawling	0	0	.....	.....
Poughkeepsie Savings Bank, Poughkeepsie	10,353 82	*	.....	.....
Rhinebeck Savings Bank, Rhinebeck	1,275 20	8	6	$185 10
Wappingers Savings Bank, Wappingers Falls	0	0	.....	.....
Buffalo Savings Bank, Buffalo	12,701 20	*	.....	.....
Empire State Savings Bank of Buffalo	4,493 53	11	6	.....
Erie County Savings Bank, Buffalo	9,196 70	*	.....	.....
Western Savings Bank, Buffalo	2,016 89	*	.....	.....
Fulton County Savings Bank, Johnstown	0	0	.....	.....
Catskill Savings Bank, Catskill	260 23	1	.....	.....

Dormant Accounts of the Savings Banks of the State of New York — (*Continued*).

NAME OF BANK.	Amount of dormant accounts.	Number of dormant accounts.	Number of such accounts less than $50.	Amount paid on account of dormant accounts from 1890 when first report made to 1894 when last report made.
Jefferson County Savings Bank, Watertown	$330 88	3	1	.....
Watertown Savings Bank, Watertown	0	0	.....	.....
The Carthage Savings Bank, Carthage	0	0	.....	.....
Breevoort Savings Bank, Brooklyn	0	0	.....	.....
Brooklyn Savings Bank, Brooklyn	12,404 43	*	.....	.....
Bushwick Savings Bank, Brooklyn	0	0	.....	.....
City Savings Bank of Brooklyn	0	0	.....	.....
Dime Savings Bank of Brooklyn	10,352 30	254	226	$758 08
Dime Savings Bank of Williamsburgh, Brooklyn	611 41	*	.....	.....
East Brooklyn Savings Bank, Brooklyn	798 58	665	665	26 67
East New York Savings Bank, Brooklyn	0	0	.....	.....
Germania Savings Bank of Kings County, Brooklyn	37 50	*	.....	.....
German Savings Bank of Brooklyn	266 64	4	1	.....
Greenpoint Savings Bank, Brooklyn	0	0	.....	.....
Kings County Savings Institution, Brooklyn	842 88	11	8	.....
South Brooklyn Savings Institution	2,036 29	50	39	.....
Williamsburgh Savings Bank, Brooklyn	6,750 63	62	50	2,294 79
Oneida Savings Bank, Oneida	0	0	.....	.....
East Side Savings Bank, Rochester	0	0	.....	.....
Mechanics Savings Bank, Rochester	232 06	28	22	.....
Monroe County Savings Bank, Rochester	7,776 39	57	37	224 81
Rochester Savings Bank, Rochester	4,191 09	*	.....	.....
Amsterdam Savings Bank, Amsterdam	0	0	.....	.....
American Savings Bank, New York	0	0	.....	.....
Bank for Savings in the City of New York, New York city	707,743 67	*	.....	.....
Bowery Savings Bank, New York city	29,238 39	283	178	136,572 62
Broadway Savings Institution	2,449 82	19	.....	.....
Citizens' Savings Bank, New York city	8,300 36	65	47	7,847 24
Dollar Savings Bank, New York city	0	0	.....	.....

Dry Dock Savings Institution, New York city	8,518 93	81	49	682 80
East River Savings Institution, New York city	19,731 92	215	165	3,739 05
Emigrant Industrial Savings Bank, New York city	65,3:8 57	236	.....	.....
Equitable Savings Institution, New York city†	.....	.....	.....	.....
Excelsior Savings Bank, New York city	42 27	*	.....	.....
Franklin Savings Bank, New York city	1,657 49	19	10	3,964 55
German Savings Bank in the City of New York, New York city	62,598 76	236	90	3,822 83
Greenwich Savings Bank, New York city	37,000 00	310	199	9,715 00
Harlem Savings Bank, New York city	0	0	.....	.....
Institution for the Savings of Merchants' Clerks	8,211 07	42	.....	.....
Irving Savings Institution, New York city	4,865 35	97	84	.....
Manhattan Savings Institution, New York city	18,257 48	101	56	.....
Metropolitan Savings Bank, New York city	15,940 77	106	74	.....
New York Savings Bank, New York city	2,766 29	215	207	94 25
North River Savings Bank, New York city	5,922 89	*	.....	.....
Seamen's Bank for Savings, New York city	248,742 27	1,600	895	30,207 93
Twelfth Ward Savings Bank, New York city ‡	0	0	.....	.....
Union Dime Savings Institution, New York city	17,818 70	*	.....	13,443 08
United States Savings Bank, New York city	0	0	.....	.....
West Side Savings Bank, New York city	258 58	12	10	.....
Farmers and Mechanics' Savings Bank, Lockport	0	0	.....	.....
Niagara County Savings Bank, Niagara Falls	0	0	.....	.....
Oneida County Savings Bank, Rome	0	0	.....	.....
Rome Savings Bank, Rome	232 67	5	3	.....
Savings Bank of Utica, The, Utica	1,519 86	12	8	29 03
Onondaga County Savings Bank, Syracuse	7,656 31	152	121	1,467 17
Skaneateles Savings Bank, Skaneateles	0	0	.....	.....
Syracuse Savings Bank, Syracuse	1,147 35	15	10	.....
Cornwall Savings Bank, Cornwall	0	.....	.....	.....
Goshen Savings Bank, Goshen	10 61	4	4	.....
Middletown Savings Bank, Middletown	72 53	*	.....	.....
Newburgh Savings Bank, Newburgh	1,021 13	*	.....	.....
Walden Savings Bank, Walden	0	0	.....	.....
Warwick Savings Bank, Warwick	0	0	.....	.....
Fulton Savings Bank, Fulton	0	0	.....	.....
Oswego City Savings Bank, Oswego	93 00	*	.....	.....
Oswego County Savings Bank, Oswego	0	0	.....	.....
Putnam County Savings Bank, Brewster	0	0	.....	.....
College Point Savings Bank, College Point	0	0	.....	.....
Jamaica Savings Bank, Jamaica	53 79	*	.....	.....
Long Island City Savings Bank, Long Island City	0	0	.....	.....

DORMANT ACCOUNTS OF THE SAVINGS BANKS OF THE STATE OF NEW YORK — (*Continued*).

NAME OF BANK.	Amount of dormant accounts.	Number of dormant accounts.	Number of such accounts less than $50.	Amount paid on account of dormant accounts from 1890 when first report made to 1894 when last report made.
Queens County Savings Bank, Flushing	$1,148 04	30	3	.....
Roslyn Savings Bank, Roslyn	0	0	.....	.....
Manufacturers' Savings Bank, Troy	404 87	*	.....	.....
State Savings Bank, Troy	120 69	*	.....	.....
Troy Savings Bank, Troy	5,436 87	22	11	.....
Richmond County Savings Bank, West New Brighton	0	0	.....	.....
Staten Island Savings Bank, Stapleton	0	24	.....	.....
Schenectady Savings Bank, Schenectady	2,781 68	0	18	.....
Seneca Falls Savings Bank, Seneca Falls	0	0	.....	.....
Riverhead Savings Bank, Riverhead	0	0	.....	.....
Sag Harbor Savings Bank, Sag Harbor	250 24	*	.....	.....
Southold Savings Bank, Southold	268 56	*	.....	.....
Ithaca Savings Bank, Ithaca	0	0	.....	.....
Ellenville Savings Bank, Ellenville	29 38	3	3	.....
Kingston Savings Bank, Kingston	0	0	.....	.....
New Paltz Savings Bank, New Paltz	0	0	.....	.....
Rondout Savings Bank, Rondout	0	0	.....	.....
Saugerties Savings Bank, Saugerties	0	0	.....	.....
Ulster County Savings Institution, Kingston	8,147 87	27	.....	.....
East Chester Savings Bank, Mount Vernon	16 29	1	1	.....
Greenburgh Savings Bank, Dobbs Ferry	59 38	4	4	.....
Home Savings Bank, The, White Plains	0	0	.....	.....
Peekskill Savings Bank, Peekskill	668 85	2	.....	.....
People's Savings Bank, Yonkers	0	0	.....	.....
Port Chester Savings Bank, Port Chester	1,142 77	*	.....	.....
Sing Sing Savings Bank, Sing Sing	0	0	.....	.....
The Union Savings Bank of Westchester County, Mamaroneck	0	0	.....	.....
Westchester County Savings Bank, Tarrytown	5,811 40	*	.....	.....
Yonkers Savings Bank, Yonkers	568 97	*	.....	.....
Total	$1,443,808 97	5,122	8,332	$215,175 50

* Banks did not report number of accounts. † Closed. ‡ Revived or withdrawn since May 1, 1890.

The President — Unless the Convention desires the details of the statements of deposits to be read, this communication may be referred to the Committee on Banking.

Mr. Veeder — Mr. President, will it be printed?

The President — It will be printed if the Convention so orders.

Mr. Veeder — I think it is a very important document and that it ought to be printed.

The President — Mr. Veeder moves that the communication from the Superintendent of the Banking Department be printed.

Mr. Dean — Mr. President, I move to include in that the report from the Superintendent of the Salt Springs.

The President — Does Mr. Veeder accept the amendment of Mr. Dean, including the communication from the Superintendent of the Salt Springs?

Mr. Veeder — Mr. President, it is not at all germane, and I prefer that the gentleman make his own motion.

The President put the question on the motion of Mr. Veeder, that the communication from the Superintendent of the Banking Department be printed and laid upon the desks of the members, and it was determined in the affirmative.

Mr. Kellogg — Mr. President, I move that the communication from the Superintendent of Salt Springs be also printed and laid upon the desks of the members.

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

The President announced the order of notices, motions and resolutions, and the Secretary called the roll of districts.

Mr. Bowers — Mr. President, I ask that Mr. Bush be excused from attendance upon the Convention to-day. I have a telegram stating that he is detained by business engagements.

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

Mr. McClure — Mr. President, I call up the resolution offered by me yesterday relative to forest lands.

The Secretary read the resolution of Mr. McClure as follows (No. 156):

"Whereas, The preservation of the forests and watersheds of the State is of the greatest importance to all our people and to every interest within the borders of the State; therefore, be it

"Resolved, That the President of the Convention appoint a special committee of five members to consider and report what, if any, amendments to the Constitution should be adopted for the preservation of the State forests."

Mr. McClure — Mr. President, I desire to say only a word in reference to and in support of this resolution. I introduced it, as I stated yesterday, by request of a committee of the New York Board of Trade and Transportation; but it is a subject that has been called to my attention by very many good citizens, who regard the preservation of the State forests as of the first importance, and ranking with the preservation of the canals. I hope that the resolution will be adopted. I do not know, Mr. President, what provisions of the Constitution can be presented to the people by this Convention that will meet the difficulty, but I think it of the greatest importance that a committee should investigate the subject thoroughly. It has already been the subject of some action by the Legislature, which does not seem to have gone to the root of the difficulty, and if by any means we can adopt a provision in the Constitution which will save the State from the dangers which seem to be imminent of the destruction of the State forests, I think it would be our duty and a duty of the first importance that we should discharge. In introducing this resolution, Mr. President, I only desire to say that because of the fact that I introduce it, I do not seek or desire a place upon the committee. It is my wish that the President shall be entirely free in the selection of this committee, and not be at all affected by the fact that the resolution has been introduced by me.

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

Mr. Augustus Frank — Mr. President, I wish to ask to be excused after to-day, for the balance of the week, from attendance upon the Convention.

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

Mr. Nichols — Mr. President, I ask to be excused from attendance on Thursday and Friday of this week, on account of business engagements.

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

Mr. I. S. Johnson offered the following resolution:

R. 158.— Resolved, That the Superintendent of Banks be required to furnish this Convention with a statement of the condition of the trust companies of this State, as shown by their last report, showing amount of capital stock and resources, and also of profits and dividends during the last year.

Referred to the Committee on Banking, under the rules.

Mr. I. S. Johnson also offered the following resolution:

R. 159.— Resolved, That hereafter all proposed constitutional amendments, proposed or reported by any committee of this Convention, be prepared and printed in the manner required by the resolution of this Convention adopted on June 8th.

Mr. Johnson — Mr. President, I ask that this resolution have immediate consideration, from the fact that I have noticed that in many of the reports from the standing committees the rule which applies to members has not been adopted, and it is very inconvenient in examining the proposed amendments to find that we cannot tell what portions of them are amendments and what portions of them are originals. It seems to me the same rule should be applied in reports from committees as those proposed by individual members of the Convention.

The President — Mr. Johnson's resolution is in order for immediate consideration, inasmuch as it relates to the business of to-day, and every day. The rule referred to in the resolution of Mr. Johnson appears on page 208 of the Convention Journal.

Mr. Bowers — Mr. President, may we have the resolution read?

The President — The Secretary will again read the resolution.

The Secretary again read the resolution of Mr. Johnson.

Mr. Vedder — Mr. President, I believe this matter is one that was introduced by me, and I can enlighten the Convention in regard to it. It was simply this, that all new matter should be underscored and printed in italics, and all matter to be stricken out was to be included in brackets. That was all there was of it. That has not been obeyed. This resolution this morning calls attention to it and asks that it be obeyed.

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

Mr. I. S. Johnson — Mr. President, the Committee on Finance and Taxation also have under consideration the matters which are

referred to in the resolution which I offered first, and I would ask that that resolution be also referred to the Committee on Finance and Taxation.

The President — It may be so referred.

Mr. Jenks — Mr. President, I ask leave of absence for to-morrow, on account of business engagements.

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

Mr. Dean — Mr. President, I desire, at this time, to call up my resolution, offered July tenth, with a somewhat elaborate preamble, which I will waive the reading of — simply the resolution itself.

The President — The Secretary will read Mr. Dean's resolution, omitting the preamble.

The Secretary read the resolution as follows (No. 112):

Resolved, That this Convention, directly representing the people of the State of New York, and charged with the high duty of asserting the policy of the State, call upon the Attorney-General to bring an action against the Cataract General Electric Company, or take such other steps as may be necessary for the purpose of annulling the so-called contract and restoring to the people all the rights and privileges which they have by right in the canals of the state; and, be it further

Resolved, That the Secretary of this Convention serve a certified copy of these resolutions upon the Attorney-General of the State and upon the Cataract General Electric Company, to the end that it may have notice of the intended action, and that it may make no investments in good faith intended to give it any vested rights in the premises.

Mr. Veeder — Mr. President, is a motion to refer to a committee in order?

The President — I presume it is.

Mr. Veeder — Have we a Committee on Grievances?

The President — There is none by that name, but perhaps the Committee on Preamble will answer.

Mr. Veeder — Perhaps the Committee on Charities would be the appropriate one, but, sir, seriously, I move to refer this matter to the Committee on State Officers. I hardly think we ought to advise the Attorney-General about his duties. I think that there is some provision of law by which he may be brought up properly if he does not discharge his duty, and I think we had better refer

it to the Committee on State Officers or to the Judiciary Committee, to see whether we ought to do a thing of this kind.

The President — The Chair hardly sees what any committee has to do with it. It is for the consideration of the Convention. The motion is to refer it to the Committee on State Officers.

Mr. Bowers — Mr. President, I make the point of order that this Convention has no power to adopt a resolution of this character. It is not in the shape of a proposed amendment to the Constitution, and, therefore, cannot properly be referred to the committee. As I understand it it simply directs the Attorney-General to do certain things. I was not aware that this Convention had such power, and I, therefore, submit that this resolution should not be considered by the Convention.

Mr. Tekulsky — Mr. President, I move that the resolution be returned to the introducer, as it is not a matter for this Convention.

The President — That seems hardly germane to the motion of Mr. Veeder that it be referred to the Committee on State Officers, which motion is in order.

Mr. Alvord — Mr. President, I desire to say that I entirely agree with my friend from New York, who has just addressed the Convention, that we have no power whatever in the premises, as it is an act upon our part clearly outside of any of our duties, and can be treated, as it should be treated, by the Attorney-General, with silent contempt. But, in order to avoid all trouble in reference to the matter, I move you, sir, that the matter, for the present, lie on the table.

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

The President — Under the rule which goes into effect to-day, there will be no further call for constitutional amendments.

Mr. Roche — Mr. President, I would like to introduce an amendment. I understood the rule provided that amendments should not be introduced after the first of August.

Mr. Bowers — Mr. President, I assume that by unanimous consent a proposed amendment may be received.

The President — It can be received by vote of the Convention at any time; but Mr. Roche's point is well taken. The rule reads, "after the first of August." Mr. Roche is in order.

Mr. Roche offered a proposed amendment to the Constitution, for the abolition of tolls, and making public roads free.

O. 370.— Proposed constitutional amendment, to amend the Constitution by adding a new article abolishing tolls on roads.

Referred to the Select Committee.

Mr. Hedges offered the following:

O. 371.— Proposed amendment to article 2 of the Constitution, to be known as section 6, relating to the method of electing public officers.

Referred to the Select Committee.

Mr. A. H. Green offered the following (by request):

O. 372.— Proposed constitutional amendment to amend article 7 of the Constitution, relating to the creation and management of a State insurance fund for the aged.

Referred to the Select Committee.

Mr. Green — Mr. President, if we are to have a pension law, I think this would be a contribution to the literature upon that subject.

The President announced the order of reports of Standing Committees.

Mr. Vedder, from the Committee on Powers and Duties of the Legislature, to which was referred the proposed constitutional amendment introduced by Mr. Vedder, introductory No. 216, entitled " Proposed constitutional amendment to amend section 10 of article 3 of the Constitution," reported in favor of the passage of the same.

The President — This goes upon general orders.

Mr. Vedder, from the Committee on Powers and Duties of the Legislature, to which was referred the proposed constitutional amendment introduced by Mr. Vedder (introductory No. 330), entitled " Proposed constitutional amendment to amend section 16 of article 3 of the Constitution, as to restrictions on private and local bills," reported that the committee request that it be discharged from further consideration of the same, and that the matter be referred to the Judiciary Committee.

The President put the question on agreeing to the report of the committee, discharging the committee from further consideration of the amendment and referring the amendment to the Judiciary Committee, and it was determined in the affirmative.

Mr. Hirschberg — Mr. President, I present a unanimous report from the Committee on Privileges and Elections on the contest in the Sixth Senatorial District.

The President — The Secretary will read the report of the committee.

The Secretary read the report, as follows:

To the Constitutional Convention:

The Committee on Privileges and Elections, to whom was referred the petition of John C. Kinkel, Charles L. Pashley, William Deterling, J. Lott Nostrand and Charles J. Kurth, claiming that they were duly elected delegates to the Constitutional Convention from the Sixth Senatorial District of the State of New York, at the last general election, and are entitled to the seats in this body held respectively by James W. Riggs, Eugene Curran, George W. Roderick, William M. Mullen and Thomas W. Fitzgerald, respectfully report, that they have heard the proofs and allegations of the parties and have given to both parties ample opportunity to submit such evidence as they desired; that they have carefully considered the evidence; and that in the opinion of said committee the following facts are established by it:

As the result of the official canvass of the vote for district delegates to the Constitutional Convention from the Sixth Senatorial District, the board of canvassers certified, that the entire vote of said district was 225,058 votes, of which

James W. Riggs received	22,032
Eugene A. Curran received	22,032
George W. Roderick received	22,039
William M. Mullen received	21,794
Thomas W. Fitzgerald received	21,735
John C. Kinkel received	21,485
Charles L. Pashley received	21,481
William Deterling received	21,484
J. Lott Nostrand received	21,482
Charles J. Kurth received	21,489

A few votes were cast for other candidates and 317 votes were returned as blank and defective.

According to this certificate James W. Riggs's majority is 543; Eugene A. Curran's, 543; George W. Roderick's, 550; William M. Mullen's, 305; Thomas W. Fitzgerald's, 246, over Charles J. Kurth, the candidate for the same office who received the next highest number of votes, viz., 21,489.

The Sixth Senatorial District is composed of Richmond county,

and the towns of Gravesend, Flatbush, New Utrecht and Flatlands in Kings county, and the 8th, 24th, 26th, 28th and part of the 22d wards of the city of Brooklyn. The town of Gravesend was divided into six election districts in the spring of 1890, but the districts were all concentrated in a single room in the town hall by a curious manipulation, which will appear on an inspection of the official map of such division in evidence. This concentration was effected by running a little arm of land about fifteen feet in width, from each of the six election districts into the center hall or room of the main floor of said building, thus providing in said room, by the erection of portable partitions, a polling place twelve by fifteen feet in size for each of the six districts. This ingenious division was made by the town board of which John Y. McKane was chairman.

The registry of electors in the second election district of the town of Gravesend contained 2,465 names in the year 1893, nearly nine hundred in excess of the entire population according to the census of 1892. This registry of electors was not entirely made in accordance with the requirements of the statute. The names in numerous instances were collected by certain persons who went through the district in or about the month of August, and took the names of a great number of persons who were then temporarily within the district, without regard to the question of their legal right to vote. There was no proper compliance with the requirements of the statute as to the entry in said registry list of the residences of voters by street and number, nor was there the required brief description of the locality of the residences of the persons whose names were entered in said list. Election district No. 2, in the town of Gravesend, comprised a large part of Coney Island, a popular resort during the summer months for people living in New York and Brooklyn. In this district was a great number of hotels, saloons and places for the entertainment of people resorting to Coney Island, and these buildings were used only during the summer season and were closed about the first of September. The registry lists thus made up contained the names of a great many persons connected with such places of entertainment, as cooks, waiters and servants, who were accustomed to remain at Coney Island only during the period when these hotels, saloons and places of entertainment were in use. No copy of this registry list was posted as required by the statute, and the persons having control of it refused to allow the list to be examined by those seeking to make such an examination for the purpose of ascertaining if the same contained names which ought to be canceled or struck off in the manner provided by the statute. During a week or more preceding the election a persistent and organized

effort was made by citizens of the senatorial district to inspect this and the other registry lists in the town of Gravesend for the purpose of ascertaining whether or not they were made under the requirements of the law, and whether or not they contained the names only of legal voters. This effort was successfully resisted by concerted action on the part both of the police authorities and the inspectors of election, indicating the existence of a conspiracy to prevent inspection of the lists by the public. An action was brought in the Supreme Court against John Y. McKane, the chief of police of the town, and the inspectors of election, by the candidate for Supreme Court justice on the Republican ticket, and in that action an injunction order was granted, restraining the defendants from interfering with Republican watchers, duly commissioned to observe the conduct of the election. These watchers, together with challengers accompanying them, were violently assaulted and driven away from the polls on election morning, and in many instances were unlawfully arrested and placed in jail. By these high-handed and tyrannical means, all independent observation of the course and conduct of the election in the town was prevented.

An inspection of the registry list and the poll-list in the second election district of Gravesend has satisfied your committee that the return of 1,512 votes in that district does not honestly represent the votes cast on election day. The inference from such inspection is inevitable, that ballots were placed in the ballot-box in that district to the number of many hundreds without any voter being present to cast them, and that names were copied from the registry to falsely represent such pretended voters. The names on the poll-list occur in pairs, and in runs of three, four, five, and even more, in the same order as the names appear alphabetically on the registry list, indicating, if the returns were honest, that almost the entire body of voters presented themselves on election day to vote in the same order and sequence as they had previously been registered, which combination the committee think impossible to occur honestly the entire day. The number of votes returned as having been cast in the second district is remarkably large, and suggests the inquiry whether so many votes could be cast, in accordance with the requirements of the law, during the limited period of ten hours and twelve minutes. The evidence taken by the committee establishes the fact that only once or twice during the day a line was formed at the second election district polling place, and that no crowds of voters were seen going in that polling place at any time during election day. The absence of crowds, or, in such polling place as specially [illegible] at any time, of any person going [illegible] during the early

hours in the morning, after the opening of the polls; and yet one witness who testified before the committee that he voted between nine and ten o'clock is found on an inspection of the poll-lists to have been given a ballot numbered 633. The ordinary difficulties in the way of casting as many as 1,512 votes in a little over ten hours, under the requirements of the existing election law, are greatly increased where the voters are compelled to lose the time which would necessarily be consumed in ranging themselves in alphabetical order and with regard to a similar arrangement of their names on the registry list. These difficulties would be further enhanced if the voters had left Coney Island in September and were compelled to come from various other towns and cities when assembling to vote in the second district. Your committee, therefore, are of the opinion that it would have been physically impossible for 1,512 voters to have voted within the time named, under the circumstances proven in this case, in compliance with the law and in the order in which their names appear on both the registry and poll-lists in question.

There are other peculiarities which cast suspicion on the integrity of this list. Under each of the letters I, J, T, Y, and Z precisely the same number of votes are returned as are registered. Nearly six hundred votes are cast in succession without one name appearing under the letter E, and similar instances with respect to other letters appear where hundreds of votes are cast in succession without a single name appearing under the respective initial. In many instances two and even three different ballot numbers are ascribed to a single voter. In other numerous instances the same return shows that a ballot bearing a high number is voted prior to one of a much lower number. Erasures and alterations in the ballot numbers attached to the names of the alleged voters are quite common. In short the entire list bears on its face unmistakable evidence that it was made up to represent a fictitious and fraudulent vote, copied at random from the registry list. Your committee are unable to ascertain the precise number of fictitious votes thereby returned, but are convinced such number largely exceeds the highest majority accorded the sitting members above referred to. This view is confirmed by the result of the election held in the town of Gravesend in the spring of 1894. That election was hotly contested as is conceded by every witness examined before the committee, and it seems also to be conceded that a strenuous and successful effort was made to get out the entire vote of the town. Notwithstanding such efforts and the intense excitement which prevailed in that election and notwithstanding the fact that the voting at such election was

done with the registry lists made in the fall of 1893, as a basis, the entire vote recorded in the second election district was only 423. The illegal, fraudulent and criminal acts in the second election district in the fall of 1893, were of such extent and character as to conclusively impeach the return made by the inspectors. They render such return worthless as evidence of the honest vote and required that the same should be thrown out and disregarded under the law and the established practice in election cases. This return certifies that the 1,512 votes in question were cast for the office of delegate to the Constitutional Convention from the Sixth Senatorial District of the State, as follows:

James W. Riggs	1,512
Eugene Curran	1,502
George W. Roderick	1,502
William M. Mullen	1,502
Thomas W. Fitzgerald	1,502
John C. Kinkel	10
Charles L. Pashley	10
William Deterling	10
J. Lott Nostrand	10
Charles J. Kurth	None.

Deducting these votes from the result as certified by the Board of State Canvassers, it will appear that

	Votes.
John C. Kinkel received	21,475
Charles L. Pashley received	21,471
William Deterling received	21,474
J. Lott Nostrand received	21,472
Charles J. Kurth received	21,489
James W. Riggs received	20,520
Eugene Curran received	20,530
George W. Roderick received	20,537
William M. Mullen received	20,292
Thomas W. Fitzgerald received	20,233

Or that

John C. Kinkel received a majority of	938
Charles L. Pashley received a majority of	934
William Deterling received a majority of	937
J. Lott Nostrand received a majority of	935
Charles J. Kurth received a majority of	952

over the candidates for the same office having the next highest number of votes, viz., George W. Roderick, who received 20,537.

Your committee further report that frauds were proved to have been perpetrated in other election districts in the town of Gravesend and in the town of Castleton, Richmond county, which affected the result of said election, but, inasmuch as the result of the frauds in the second election district of the town of Gravesend calls, in the judgment of your committee, for the total rejection of the vote of that district, and is decisive of the result, your committee deem it unnecessary to examine particularly into the circumstances of the frauds in other districts, or the extent of the effect produced by them upon the general result.

Your committee, therefore, recommend the passage of the following resolutions:

First. Resolved, That James W. Riggs, Eugene Curran, George W. Roderick, William M. Mullen and Thomas W. Fitzgerald are not entitled, as delegates from the Sixth Senatorial District, to the seats now occupied by them in this Convention.

Second. Resolved, That John C. Kinkel, Charles L. Pashley, William Deterling, J. Lott Nostrand and Charles J. Kurth are duly elected delegates from the Sixth Senatorial District, and are entitled to the seats in this Convention now occupied by the said James W. Riggs, Eugene Curran, George W. Roderick, William M. Mullen and Thomas W. Fitzgerald.

Dated *July* 31, 1894. M. H. HIRSCHBERG,
Chairman.

The President — This report having been received and read, what action will the Convention take upon it?

Mr. Hirschberg — Mr. President, this report, as I stated in presenting it, is a unanimous report of the committee. Only eight members of the committee were present when the report was adopted at the meeting yesterday, but I have seen two of the members who were absent, and understand from them, that they concur in the committee's conclusions. The remaining member, Mr. Lester, is absent owing to illness. He was on the sub-committee which took the testimony and has expressed himself in the committee as in accord with the conclusion reached. It is, therefore, presented to the Convention as a report of the entire committee. The testimony has been printed and in the possession of the members some time. There is also a printed brief on either side. I would, therefore, suggest and move that as the evidence has all been in possession of the members of the Convention a sufficient time to

enable them to investigate the merits of the contest, and as this report will be printed and on the files of the members to-morrow morning, that the disposition of it be made a special order for the session to-morrow night.

Mr. Bowers — Mr. President, I offer as an amendment that the report be printed and made a special order for Tuesday night. I think it would be but fair that we should have some opportunity to read over the report and the evidence, with a view of disposing of the matter. I hope that as the matter has been so long delayed and as it is only reasonable and just, that we shall have until Tuesday night to determine the question on the adoption or rejection of this report.

Mr. Deady — Mr. President, as I consider it necessary that every member of the committee be present here when this report is acted upon, and as I shall have to ask the Convention to excuse me over Tuesday, I will ask to have Mr. Bowers's amendment modified, so as to make it a special order for either Wednesday or Friday of next week.

Mr. Bowers — Mr. President, I will accept the amendment that it be set down for Wednesday evening.

Mr. Alvord — Mr. President, we are approaching nearly the end of this Convention's labors. In this particular case there is a report from the committee unanimously in favor of rejecting the sitting members and putting in their places those who were legally elected. This testimony and the briefs have both been upon the files of this Convention for a long period of time. I believe that it is due to the Convention, and in the expectation of being able to present anything for the consideration of the people, that this long drawn-out contest should come to an end. I trust, therefore, that the motion of the gentleman who presented this report will receive the approbation of this Convention. Delays are dangerous, and they are dangerous in the direction of putting the whole mass of that which interests the people the most, and that ought to interest this Convention the most, in the very last hours of our meeting, giving it no sort of attention that we should, and leaving to the people to understand that we have broken up in the scramble to see who should pass the most amendments. I trust, therefore, that the proposition of the chairman of this committee will prevail in place of the amendment proposed by the gentleman from New York (Mr. Bowers).

Mr. Jesse Johnson — Mr. President, I desire to second what has been said by the gentleman from Onondaga (Mr. Alvord). More than or nearly three weeks ago this testimony was all in, and the

motion was made to print. At that time some suggestion was made of the importance of the case, and the attending circumstances. More than a week ago all the testimony in this case as well as the briefs on both sides were on the desk of every member of this Convention. Now, sir, there were circumstances attending this case known to every member of this body, as it was the public property of the community and of the State, which made it eminently proper, it seems to me, eminently the duty of every member of this Convention, when we have delayed during the time we have to get the printed record, that when that printed record was obtained, it should be utilized to bring to the information of the Convention the question whether or not it be true that there are five gentlemen sitting here amending the Constitution of the State of New York that are not entitled to seats. Sir, I think that if it is necessary for justice that this matter go over until next week, the Convention should adjourn until that time. We have here, as I understand, the unanimous report that by frauds without precedent in an election district, bold and unblushing, that shocked and startled the community, votes were returned for gentlemen without any fault of their own, which make their certificate to a seat. We are adopting constitutional amendments. We have already adopted some and rejected many. The final work of this Convention has been done as to many matters before it, and I submit that after the delay to have the testimony printed, after the time that it has been printed, after the well-known importance of this subject, which must and at least should attest the gentlemen's attention to this testimony, that it should not go over until next week. I think, sir, in view of what is written in that report, this should be speedily decided. It is a question of supreme privilege, and if there is any reason why it cannot be decided to-morrow night and it is put off until next week, the Convention should take a recess and not go on further, at least not until next week, without having its accredited members seated.

Mr. Smith — Mr. President, I congratulate this Convention and the people of the State of New York that thus far the hand of politics has not entered the Convention. This subject is the only one in which political bias or political feeling is likely to enter. In all the other deliberations of the Convention it is apparent to the people of the State that political considerations have had no place. I trust that we shall go on to the end without a suggestion from any quarter that political feeling has invaded the considerations of this Convention. This is a case; a case to be tried. It is an issue joined. This Convention is to sit in judgment and determine these

issues; determine them in accordance with the evidence and according to the doctrines of justice. Thirty-six members of this Convention are lawyers —

The President — How many?

Mr. Smith — Pardon me; one hundred and thirty-six are lawyers; everyone of whom, I am ready to believe, is competent to take his position on the bench of any court. As lawyers, we all know that when a case is called for trial, an important trial, a day is fixed for the hearing of it. If it be an equity case and the testimony has been taken in advance, no lawyer ever thinks of making up his brief and preparing for trial until some day is assigned for the hearing of the cause, and he asks delay for the very purpose of getting ready. We have all been engrossed in other duties here, and have not been called sharply to consider and prepare for this trial. Is it not right, therefore, that some little delay should be given, should be had here, to prepare for trial? I will most frankly state that while the testimony has been laid upon the desks of the members here, I have not found a single member who has been perusing it, because he has trusted that when the matter was brought to the attention of the Convention, some time would be given to get ready for trial, to arrange for trial. I trust that the gentlemen who are pressing this matter will take this view of it, and will allow a reasonable time for preparation. It is the common course of practice and courtesy in all the courts of the State and in all the tribunals of the country, and I trust it will be granted.

Mr. Crosby — Mr. President, it was my unpleasant duty to act as a member of the sub-committee that took the evidence in this case, and I stand here to bear witness to this Convention that the utmost courtesy, the farthest possible stretch of time that could be asked, has been given to the contestees in this matter. When the committee first met in this district to proceed with the discharge of its duties, there was a clamor throughout the city of Brooklyn that the verdicts of the courts, of the Senatorial committee, of the Assembly committee, that the decisions rendered upon their investigation were sufficient for the purposes of this Convention, and that a formal report alone should be rendered. The gentlemen who were occupying seats in this Convention insisted that they were entitled to have the case heard upon common-law evidence, to give the proofs that they were entitled to offer to sustain the position they occupy here. The sub-committee concurred with the view of the gentlemen demanding their rights, first, because they believed they were entitled to [illegible] treatment, and, second, because the gentle-

men occupying the seats demonstrated that they were entitled to fair consideration as gentlemen, as lawyers, and as men that had nothing to do with the alleged frauds and irregularities. All opportunity was given to them to produce testimony, and the case has finally come to the committee, and from the full committee to this Convention, not as a case standing upon disputed questions of fact, but with the contestees insisting that the contestants had not made out a case which entitles them to the seats. It is not, then, a question for the examination of conflicting testimony, for the weighing in the scales of justice the case as presented by each, but simply whether or not upon the evidence produced the contestants have established their rights here. Now, this testimony has been printed, and, with the briefs of each side, has been upon the desks of all the members of this Convention for ten or twelve days. To say that an individual member or a number of members have not read it, is not an answer to the motion made by the chairman of this committee. There are two sides to this question. There are two sets of gentlemen that are entitled to be considered. On the first day of the Convention the contestants were here demanding, what the report of the committee shows was their right, to be seated in this Convention. They have been attending upon all times, and upon all occasions insisting upon their right. We are drawing near the close of the Convention, and they are entitled as citizens of the State of New York, elected to the positions, to occupy their seats before this Convention adjourns.

It presents another question, Mr. President. The legislative contests when decided are in such a position that the legislative body may compensate the gentlemen who have successfully contested for their seats. It is a serious question and I believe it is held that this Convention has no power to pay the contestants for the time they were not seated here. If that is the law, and if after the trouble and expense of canvass and after the expense and delay and trouble of this contest, they cannot receive any compensation from the treasury of the State of New York, unless they get it through an act of the Legislature, it is time now that we should give them the right of seats in this Convention from this time on, so that they can be initiated to their full rights which the law and the facts give them.

There is no reason, if gentlemen have not read this testimony, why they should not read it before the time fixed by the motion of the chairman of the committee. I hope that this amendment will not prevail; that this business will not be crowded down in the few days that are left for us; that we will dispose of at least one question

a day; and that we will dispose of this question that we should have disposed of long ago.

Mr. Dean — Mr. President, the question before the House seems to me to be a very simple one. It is simply upon a question of fixing a special order for a special day. I, therefore, move the previous question.

Mr. Veeder — Mr. President, I ask the gentleman to withdraw his motion.

The President — Mr. Dean declines to withdraw. The question is, shall the main question be now put.

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

Mr. Veeder — Mr. President, our friend, Mr. Crosby, admits that there are two sides to this question, although there is a unanimous report. Now, seriously, if any gentleman in good faith asks for a postponement in order to consider this question, I think courtesy requires us to extend some time. Now, in respect to my friend from Kings (Mr. Johnson), that is easily understood, his extraordinary zeal. It is always so with new converts. Every man who joins a political organization is foremost in declaring its principles. In this case, it is only a question whether we will extend to gentlemen of the Convention, who want to consider the question further, the ordinary courtesies that are extended among gentlemen.

Mr. Crosby — Mr. President, in answer to what Mr. Veeder has said, I will state that what I said was that there were two sides to this question. I mean that there are two men demanding their rights. I mean that the testimony has been taken, offered on both sides and we have listened to both sides, but when we get down to the final report, there is only one side.

Mr. Veeder — I assumed from what you said there was only one side to the report, but you said that there were two sides to the question.

Mr. McClure — Mr. President, I desire to ask the chairman of the committee when the evidence was submitted to the committee?

Mr. Hirschberg — The tenth of July.

Mr. McClure — Now, it seems, Mr. President, that this question was of so much importance and so much doubt was involved in it, that it took the committee, some of whom sat and heard the testimony, and all of whom heard the arguments, from the tenth of July to the first of August, to reach a conclusion. They having heard the testimony from the witnesses, they having

before them the documents that were put in evidence, required from the tenth day of July to the first day of August to reach a conclusion in their report. Is it not unreasonable then, Mr. President, for the members of this Convention who have not heard the testimony, who have not seen these maps, who have not heard the explanation of the so-called confession which is put in evidence in this case, is it not unreasonable that we who have not had these opportunities, should be denied a fair and reasonable time to consider the matter before we vote out of this Convention five respectable, reputable men who have participated in the labors performed by the Convention? It does not seem to be such an easy case as the Buffalo case, and yet the Buffalo case was disposed of more than a month ago; at any rate some weeks ago. I hope the gentlemen will not press their objections to the amendment of Mr. Bowers. I think we ought to be afforded an opportunity to read this report coolly, quietly and calmly. I think the time of this Convention will be well spent. I urge upon this Convention that the sitting delegates be accorded the fairness in the consideration of this case, that they are entitled to and that it be not disposed of earlier than Wednesday night. They have been allowed to sit here all these days and months and take part in this Convention, and I am impressed very much that the case could not have been very clear against them, or the committee would have reported sooner.

Mr. C. B. McLaughlin — Mr. President, I sincerely hope that the motion made by the chairman of the Committee on Contested Seats, will prevail. This evidence was printed and laid upon the desks of this Convention, together with the briefs of respective counsel, something like ten days ago. Now, we are met here this morning with the proposition upon the report of this committee, with the evidence and the briefs of respective counsel in the hands of the members of this Convention for ten days, that there should still be a delay before action is taken, for several days. Now, as suggested by the gentleman from Syracuse, Governor Alvord, we are fast approaching a time when some action must be taken upon the propositions which are submitted to this Convention. Now, it does not meet the question by saying a few more days may properly be taken by gentlemen of this Convention to act intelligently upon this report. There is not, I believe, a delegate here but that has perused this evidence, scanned the briefs of counsel and is prepared this morning to listen to the discussion which is to be presented here for our final action. It seems to me that this question should not be delayed beyond the time asked by the Committee on Con-

tested Seats, and I hope the motion made by the gentleman will prevail.

Mr. Holcomb — Mr. President, I sincerely hope that the amendment offered by the gentleman from New York, Mr. Bowers, will prevail. I do not understand that the suggestion by the gentleman, who made this report that the testimony has been before us for many days, touches the further proposition that the report of the committee is before us this morning for the first time. It seems to me that the delegates in this Convention should have the right and have the privilege (they have the right, but they should enjoy the privilege) of reading the report made by this committee on contested seats in detail as it shall appear when it shall have been printed and laid before us on our desks. It is not so necessary that this matter be turned off with neatness and despatch as that it shall be turned off with deliberation. The few days time that must transpire, that must pass between now and next Wednesday, cannot be of any serious consequence. The vote can then be taken on Wednesday night and because I believe that in a matter of this sort, a matter of the highest consequence to the gentlemen whose seats have been contested, and a matter than which this Convention cannot consider one of any greater importance, I think this further time should be given, not as a matter of courtesy, not as a matter of simply bestowing an obligation upon these gentlemen whose seats are contested, but that we gentlemen in this Convention, whose seats are not contested, should have the right to consider this report in all its details. Therefore, I hope that Mr. Bowers's amendment will prevail.

Mr. Moore — Mr. President, I certainly hope that the motion made by Mr. Bowers will prevail. This is the first time that I have had the pleasure or opportunity of hearing this report upon these contested cases. I admit that the evidence has been upon my desk; I admit that I have had the briefs of the contestants and contestees; but, as this is the first opportunity that we have had of knowing what the contents of the report were, it seems to me that the time set by Mr. Bowers is none too short and is none too far ahead for the consideration of this case. I do not believe, Mr. President, that there is any politics properly in this case. I believe that it is a matter to be considered upon the broad principles of law and upon what is right and wrong in the matter. There is not a man upon our side of the house, nor a man upon the other side of the house, but that wants to do equal justice to the parties in dispute. We need some time to consider this. I at least do. Certainly, I do not pretend to be a genius in politics, nor a genius to know beforehand,

by some subtle process of clairvoyance, what is in the report until I have studied it carefully. I shall vote upon the ground that it is right, and I shall vote for the amendment of Mr. Bowers.

Mr. Powell — Mr. President, as a delegate from the county of Kings, which has within its borders that delightful section of the State of New York known as the town of Gravesend, I wish to give my hearty support to the views expressed by my colleague from Kings county, Mr. Johnson. In view of all that has transpired in our courts, in view of all that has been circulated in the public press, undenied by any man, I am surprised that there are gentlemen in this Convention whose consciences are so keen and whose judgments are so slow of movement, that they have not as yet discovered whether or not the last election held in the town of Gravesend was fraudulent. Is there any man in this Convention who will rise in his seat and for one moment state to this Convention that he believes the election held in the town of Gravesend in November last was an honest election; that it even approximated an honest election; that it was anything more than an election that was grossly fraudulent from the very beginning of the day down to the close of the count at the end of that day? I am also surprised that there are gentlemen here who find themselves in a position where it seems to be necessary for them to take up the evidence that has been published, or the briefs that have been presented by the contestants at this late hour. I, sir, have read the evidence over twice, and have had an abundance of time to read it over ten times since it was laid upon my desk. I have read the briefs of the contestees. I could have read them over again and again, and the reading would not have conflicted in the slightest degree with the performance of my other duties in this Convention. If there is any member in this Convention who has not read the evidence sufficiently, or who has not examined these briefs sufficiently, it is the result of his own fault, of his own deliberate negligence, and he has no right to come into this Convention and ask, as a matter of courtesy, that he shall have an extension of time because he has been negligent and guilty of gross laches. It has been stated, as a matter of courtesy, that we should set this matter down for some time next week. Has it occurred to the minds of the gentlemen who have had this idea in their brains that it is never the duty of a man, however anxious he may be to be courteous, to sacrifice justice on the altar of mere politeness. This is a matter of right and wrong. There is no doubt in the minds of this committee that has just reported. There is no doubt in the minds of a majority of this Convention that these contestants are entitled to the seats which they claim, and if they

are entitled to them they are entitled to them now, even at this very moment, this very hour. It has been suggested by some of the gentlemen that it is very essential that they should be permitted to read the report of this committee. There is not a fact stated in the report of the committee that cannot be found either in the evidence or else referred to in the briefs of one or the other of the parties to this contention, and they may take this report and read it forward and read it backward, and commence at the middle and read both ways, and I defy any man to find a single thing that is not referred to in the evidence and in the printed briefs. I contend that as a matter of justice, justice to the people of the Sixth Senatorial District, justice to the people of the great Empire State of New York, in justice to ourselves, it is our duty to vote down the amendment of the gentleman from New York, Mr. Bowers, and settle this matter once and forever immediately.

Mr. Storm — Mr. President, we hear so much here in regard to value of time; but I am surprised what valuable time is being taken up by nothing. We are now discussing the question of settling a day at which this shall be as it were tried, and it seems to me it is being tried twice. We listen here to remarks and speeches that belong only to a trial, and we are spending as much in time in fixing a day for trial as we would take up in the actual disposition of the whole matter. Now, I trust that there will be no more time taken up. It matters not to me when it is done. It is an unfortunate affair at the best. It is painful for this matter to come before this Convention; but, as it has to be dealt with, let us fix a time for the final disposition of the matter. I move you, sir, now the previous question.

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

Mr. Jesse Johnson — Mr. President, there was a personal reference made to myself, which, perhaps, makes it appropriate that I should be heard. I understand that it has been stated that there is something inconsistent in the position that I took here, being a recent convert. I desire, sir, to say that I am not a recent convert on this issue; that I have been consistent and so has my colleague from Kings. In October last, when it was known that over 6,000 votes were registered in Gravesend, where there were less than 2,000, I was then on the issue fighting that fraud, and my friend from Kings as well consistent as myself, was —

Mr. Veeder — If the gentleman will allow me to answer him, I will state, if he did not hear what I said, and will take my word for it,

I made no allusion to the gentleman's position on the Gravesend matter. I merely referred to him, because a man is liable to change his political opinions at any time —

The President — The Chair will remind the gentleman that the only matter before the House is whether this report shall be set down for to-morrow night or next Wednesday night.

Mr. Johnson — I accept all that my colleague says. It was reported to me as he states it, but I should hardly think, sir, that he would wander so far from the issue. Having fought that registration until the vote was in, having fought for the mandamus, having fought for the criminal arrests before election, and having fought it on the day of election when the sheriff was begged and besought to send his peace officers to that town, I stand where I stood then, and so stands my colleague from Kings, now, as then. But, sir, in reference to the zeal of the recent convert, I desire to say, sir, that twelve years ago —

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

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

Mr. Dean — Mr. President, my point of order is that the gentleman is discussing a question of privilege and not the question of fixing a day for this special order.

The President — The point or order is well taken. The only question under discussion is whether this shall be assigned for Wednesday or to-morrow night.

Mr. J. Johnson — I trust, sir, that a change in politics twenty years ago from the majority to the minority party will not affect the disposition of this subject.

Mr. Bowers — Mr. President, I shall be very brief. What I desire to say is that it must be conceded by the delegates in this Convention of both parties that there has been a consistent and honorable course pursued by every member in this Convention in the attempt to arrive at a correct conclusion upon this matter affecting the seats of delegates. This Convention is now in the possession of a report which is again unanimous, signed alike by members of the majority and minority party, all of whom have endeavored to deal with it upon the simple question of what the evidence justified. It is a reasonable presumption that the vote of this Convention will ultimately go upon such lines and upon such alone. I think that it is carrying the matter too far when any of the delegates in this Convention assume that it becomes their duty to press the minority to a vote upon a question of such grave importance, when the minority

only asks that they shall be granted five days, when the committee have had over twenty days since the case was submitted to them for their decision. I am a little surprised in view of the general course of affairs in this Convention, that gentlemen on the majority side should see fit to press for an immediate vote upon this resolution. All that was asked was that the matter should be delayed until next Tuesday night. There is no session Friday night. By vote of this Convention Friday night sessions were refused, and the earliest possible night was taken after the night asked by the chairman of the committee. At the request of a member of the committee, who would be unable to be here on Tuesday night, and at his suggestion, my amendment was changed to Wednesday night. The motion was originally made simply to give a complete opportunity to determine whether this report should be sustained, and, as I said, I am surprised that the majority of delegates in this Convention should, so many of them, have urged an immediate decision to-morrow. Does it mean that where the work of the Convention has been delayed until the present time, that while reports come in, we shall act upon them and without any consideration? I cannot believe it. It is true that the delegates from the county of Kings are especially well qualified to speak upon this question, and I presume from long experience they can determine immediately as to Gravesend frauds. If I am correctly informed, whatever frauds were perpetrated in Gravesend in 1893 were perpetrated as far back as 1888. We have heard no protests from these gentlemen from Kings against 1888 results. On the contrary —

The President — The gentleman will confine himself to the subject, Wednesday night or to-morrow night; which night shall this report be set down for?

Mr. Bowers — I am debating that question, and I am trying to reach the reason why the gentlemen are so anxious to reach a vote. In concluding, therefore, under the limitations imposed by the Chair, I desire only to say that it must be assumed that every delegate in this Convention looks at this question from the same standpoint — intends to vote as the evidence requires him to vote, and in all probability the report of the committee will be sustained. It will not be sustained if the evidence does not justify it, and there is no reason in the world why we should be pressed to such a vote until we have had full and complete opportunity to determine whether the report is right.

Mr. Veeder — Mr. President, I simply want to say that since my attention has been recalled to the fact that in 1888 the practices of

that town of Gravesend were accepted as legal and proper and the propriety of that election of 1888 was lauded to the skies at the inaugural demonstration in Washington —

The President — Mr. Veeder's remarks are not in order. The only question is whether this report shall be made a special order for to-morrow night or Wednesday night.

Mr. Veeder — Mr. President, I submit that I am in order, because I want to be satisfied whether this report is right or wrong, and with the report not before me, I certainly want more time.

Mr. Hirschberg — Mr. President, I rise to a point of order. My point of order is that the gentleman has no right to discuss the rulings of the Chair.

The President — The Chair rules that Mr. Veeder's remarks thus far are out of order. The only matter before the House is whether this report shall be considered next Wednesday night or to-morrow night.

Mr. Veeder — That is all there is about it. It is whether we shall act courteously towards gentlemen who want further time, or whether we shall crowd the matter. I desire more time.

Mr. Hirschberg — Mr. President, as every gentleman who desires to speak upon the question has spoken two or three times and the gentleman who has last addressed the Convention has spoken four or five times, I will take the liberty of saying a few words for the committee, in order that they may not be placed in a false position prior to asking for a vote on the report. The committee does not appear here pressing a vote to be taken on this contest to-morrow night nor has there a single word been said by anybody which entitles any gentleman to place that construction upon their action. I suggested to-morrow night, because I knew that it would furnish every member of the Convention ample opportunity to give the case such additional investigation as will probably be required, and because I knew that, if it would not furnish such an opportunity, some reason would be advanced by somebody why a more distant date should be fixed. No reason has been advanced yet by anyone. Gentlemen have risen in their places and asked for more time, but no man has stated a valid reason why such time should be given. One gentleman has stated, as I understood his argument, that the committee had taken considerable time in the investigation of this case. That is no reason, to my mind, why more time should be taken now. In other words, if the committee had acted hastily, if they had arrived at a conclusion without careful investigation, then it would be

incumbent upon the Convention to take a great deal more time upon the question of confirmation than it is when the proceedings before the committee had been characterized by careful deliberation, and where they have been characterized by an extreme desire to give a reasonable opportunity for both sides to be heard. Now, there are reasons why this matter should be taken up to-morrow night. There may be reasons that the matter may not be disposed of. There may be reasons why the Convention should have more time. If so, I do not know any reason why the Convention should not take it. But there are reasons that this matter be made a special order at the earliest possible date and the Convention take up its ultimate disposition. Now, the Convention commenced on the eighth of May. This committee commenced its work in the city of Brooklyn on the fifteenth of May, one week afterwards. The report by the sub-committee was presented to the full committee on the twenty-seventh day of June. At the request of the counsel for the contestees, July tenth was fixed upon as the time for the arguments and for the submission of printed briefs. After the arguments had been made, I presented to the Convention a resolution asking that the testimony be printed and placed upon the files of the members of this Convention for the reason stated at the time, that so much time had been necessarily consumed in examining the case, that it was desirable that the testimony should be printed and placed in the possession of the members in advance, in order that upon the coming in of the report of the committee the Convention would be prepared to dispose of the case. That action was taken by the Convention. The evidence has been here. The briefs have been here, and as has been well stated, if the members have failed to do their duty in examining the testimony and the briefs, it has been for the reason they they intended to be negligent in that behalf, or else they intended to rely upon the judgment of the committee.

Now, a few words, as to the time taken by the committee. It has been deemed desirable that each individual member of the committee should take his own time in investigating the case in his own way, so that the report when it came here should not only be the report of the committee in the aggregate, but that it should represent the individual judgment of each member, and the members were each and every one of them in accord. They come here with a unanimous report. They come here with a report on a case that has been investigated by the courts time and time again, on trials which have excited the attention of every reading man in the State, on testimony which has been printed over and over again, on a case

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which has been carried to the higher courts and received the approval of the higher courts on the facts. They come with a case which presents the fact that the questions involved have been the subject of criminal indictment and that the parties concerned have pleaded guilty to the charges contained in this report. While those facts may bear on the merits, they also bear strongly upon the question whether the Convention should delay in taking up the case for final action.

Now, Mr. President, the fact that the committee has been indulgent, the fact that they have given the sitting members all the time they desire, is no good reason why unnecessary time should be accorded now. If it is a reason at all, it is a reason the other way. I ask, therefore, that the resolution shall prevail which gives forty-eight hours, and at the end of that time requires that this case at least be taken up. We started the Convention in the spring. We are now advanced in the last of the summer months. We are almost at the finish of the time suggested by the act under which the Convention has been organized, and it seems to me that it is trifling with the time of the Convention to say that further and unnecessary delay shall be granted, when a unanimous report bearing the signatures or the assent of the members of the committee on both political sides, agrees in saying that those who are without this body were elected, and those that are sitting here were defeated, and if I shall seem to insist upon having this early disposition of the case, I wish to say to the Convention, through you, Mr. President, that I am doing so with the desire and in accordance with the desire of the members of the committee by whom I have been consulted on the subject and who will not be here at the time suggested by the gentleman who offered the amendment, and now I ask that the main question be put.

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

The President put the question on Mr. Bowers's amendment to make the report of the Committee on Privileges and Elections a special order for Wednesday evening at eight o'clock, and it was determined in the negative, 49 ayes, 89 noes.

The President — The question now is on the resolution offered by Mr. Hirschberg, making this report a special order for to-morrow evening at eight o'clock. The gentlemen will remember that this requires a two-thirds vote, and, unless so carried, the report is in order for immediate consideration.

The President put the question and announced that it was undoubtedly carried by a two-thirds vote.

Mr. Hamlin, from the Committee on Printing, presented a report in favor of the adoption of the following resolution:

R. 154.— Resolved, That one thousand copies of Document No. 15 be printed, with and including any additional rules that may have been adopted by the Convention; also including any corrections in addresses of members; and also including errors or omissions in the present document.

The President — The matter having been referred to the Printing Committee, and reported by them, is now in order.

Mr. Hamlin — Mr. President, the report is based on the resolution offered the other day that Document No. 15, which is the document containing the names and addresses of the members and the committees of which they are members and the numbers of their seats and the rules should be republished, for the reason that the number originally ordered has been exhausted. The committee deems it wise to have the document corrected, inasmuch as some new names will appear.

Mr. Cochran — Mr. President, will the reissue of this document include the rules which have not been numbered?

The President — The Chair presumes that it will.

The President put the question on the adoption of the resolution, and it was determined in the affirmative.

The President — General orders are now in order. The Secretary will call the list.

The Secretary announced general order No. 6, introduced by Mr. Alvord, relating to the Salt Springs.

It was not moved.

The Secretary announced general order No. 4, relating to the manner of elections, introduced by Mr. Hill.

Mr. Hill — Mr. President, I move that the Convention go into Committee of the Whole on general order No. 4.

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

The President called Mr. Veeder to the chair.

Chairman Veeder — The Convention is in Committee of the Whole on general order No. 4, being printed No. 289-303 (introductory No. 183), introduced by Mr. Hill — The question pending is upon the motion of Mr. Hawley to amend by striking out a substitute offered by

Mr. Chipp. The first question is on the amendment offered by Mr. Hawley.

The Secretary will read the amendment.

The Secretary read the amendment.

Mr. Hill — Mr. Chairman, I had a conference with the various gentlemen who have introduced proposed amendments relating to this subject, in order to see if the differences of opinion that seem to have existed might not be harmonized. As a result of this conference and in deference to the opinion of the other gentlemen who have proposed amendments relating to this subject, I submit, as an amendment to the amendment, as it now stands reported from the committee, the following: In line six of the proposed amendment strike out the words "secrecy in voting be preserved," and insert in place thereof "an opportunity freely to vote in secrecy be preserved," and I will send the amendment, as amended, to the desk, so that the Secretary may read it, as it now stands.

The Chairman — Does the gentleman offer that as an amendment to Mr. Hawley's amendment?

Mr. Hill — As an amendment to Mr. Hawley's amendment.

Mr. Chipp — Mr. Chairman, inasmuch as the amendment now presented by Mr. Hill complies substantially with the requirements which I urged as the basis of my amendment, I will withdraw my amendment in favor of the amendment now offered by Mr. Hill.

Mr. Foote — Mr. Chairman, I beg to call the attention of the gentleman who proposed this measure to the fact that the word "other," in line five, also should be omitted.

Mr. Hill — Mr. Chairman, from the proposed amendment which I have just sent to the desk I will ask the Secretary to strike out the word "other" before the word "method." Its retention was an oversight.

Now, Mr. Chairman, it seems hardly necessary, in view of the lengthy discussion we had on this matter last week, to take any more of the time of this Convention. Mr. Chairman, this proposed amendment now seems to embody all the provisions that were suggested by gentlemen who have introduced amendments on this same subject in the first instance, and that have been before the committee or before this Convention, and, if there be serious objection to this amendment in any form, as was urged on last Tuesday, in that it might interfere with federal elections, or that it might be expensive, or for any other reason stated, I shall ask an opportunity to be heard on such matters. I want to say here now, Mr. Chair-

man, that this proposed amendment is not designed to help any particular voting machine. It is not drawn in the interest of any particular man or set of men. It is broad in its provisions, and it seems to cover the subject fully. If any objections are seriously urged, I shall ask an opportunity later to reply thereto.

Mr. Vedder — Mr. Chairman, do I understand that in line five the word "other" should be stricken out?

Mr. Hill — Yes.

Mr. Vedder — Why? It seems to me that the word "other" should remain. The word "other" should be in there so as to make it distinct that it is other than by ballot.

Mr. Foote — Mr. Chairman, in reply to the suggestions of the gentleman from Cattaraugus (Mr. Vedder) I will say that the omission of the word "other" from this line five was in the interest of an improvement of the phraseology of the section, and the word was rejected as unnecessary. It does not, in our opinion, change the meaning of the section whether the word is there or is omitted. As it stands, its only purpose, it seems, would be to emphasize the statement of voting by ballot or such other method as the Legislature may authorize. Now, it may be that the Legislature will find some other method of voting otherwise than by ballot. With the word kept there in the section, the Legislature would be limited to voting by ballot or by another and a different method.

The Chairman — Will the gentleman allow me to ask a question? What will be the result, if the amendment is adopted, and, if the Legislature acts upon it and establishes a method other than by ballot? They have exhausted their powers and can change it afterwards.

Mr. Foote — In answer to the question of the Chairman, I would say that if this section is adopted in the form now proposed, the Legislature will be clothed with full power to prescribe and regulate methods of voting at any time; that the method adopted at one time may be changed at another. The whole subject will be in the control of the Legislature within the limitations of this section; that it can never authorize any system of voting which does not afford to the voter an opportunity to vote in secrecy and an opportunity to vote freely, and, that is, to vote for any candidate of his choice, whether a nominee of a party or not.

While I am on my feet, Mr. Chairman, I wish to say that there are already three different machines that have been brought to my notice, made as machines for voting, and which, in the opinion of the inventors, are an improvement in a great many ways on the sys-

tem of voting by ballot. I believe that there are other inventions. As the Constitution stands at present, it seems to be beyond the power of the Legislature to permit any machine, however valuable, however useful, to be used. Hence it seems to me to be highly proper that this Convention should put it in the power of the Legislature to adopt some other method of voting, if, in their opinion, it shall be an improvement upon the present methods.

I, therefore, hope that this amendment, in the form in which it is finally proposed by Mr. Hill, will prevail.

Mr. Hawley — If this new departure is to receive, ultimately, the approbation of this Convention, I deem it to be proper to do what we can before it shall reach a final vote, to place the proposition in some practicable and intelligent form, and I believe that we can well interest ourselves, without being committed at all to the feasibility of the project, first, upon questions of phraseology. To my mind the amendments which have now been proposed to the original one offered, are not amendments for the better, but involve its meaning in greater obscurity and uncertainty than before existed. The proposition, as it now stands, if I correctly understand it, is that "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 method as may be prescribed by law, provided that an opportunity to freely vote in secrecy be preserved." I would like to inquire of the proposer of this amendment, and to submit to the judgment of this Convention, whether, under that phraseology, town officers can be elected by the use of a voting machine? What is the force of the exception of town officers? Does not the phraseology of the section leave it at least a matter of serious doubt as to whether the operation of this section will not be confined to other than town officers, so far as the use of a machine is concerned? Town officers may be elected as shall be directed by the Legislature. Other officers may be elected, not by ballot, but by such method as may be prescribed by law, provided that freely voting in secrecy shall be preserved. And, so, Mr. Chairman, I insist that the true and simple way to meet this question, to cover the whole field which it is desired to cover, will be to adopt the amendment that I proposed the other day — to strike out the word "town" from the section of the Constitution, as it now stands. This amendment proposes to preserve a secrecy, which, at present, has no existence in the fundamental law of the State. There is nowhere in the Constitution any provision for secrecy of voting; and, as I suggested the other day, there has not yet been accomplished anywhere, as a practical fact, secrecy of voting; and the attempt to

accomplish that result in our own State has left us surrounded by the difficulties by which we are now encompassed at the polls. These efforts have thus far been unavailing, and this proposed amendment requires the preservation of a thing that does not now and never did exist. So it seems to me, Mr. Chairman, that in the interest of a plain expression of the principle which is sought to be introduced into the Constitution, in the interests of a common-sense recognition of facts, as they now exist and have always existed, that we shall more clearly and more efficiently express the idea that it is desired to express by preserving the familiar phraseology of the Constitution under which we have lived so long, and amending it only by strikng out the limitation.

Mr. Lincoln — It occurs to me, Mr. Chairman, that, as the section now stands, according to the substitute, it is unnecessarily involved. If it is intended by this proposed amendment to give the Legislature the right to prescribe some other method of voting than by ballot, I see no necessity for using the word "ballot" at all.

I propose this amendment, Mr. Chairman:

"All elections by the citizens shall be by such method as may be prescribed by law."

That will give the Legislature the right to prescribe a ballot, or it will give the Legislature the right to prescribe some other method. If we are to let down the bars and take away this privilege of an election by ballot and permit some other method, then we do not need to use both methods in the alternative, and mention both in the provision itself. It would hardly be worth while for us to say that the election shall be by ballot, or by such method; we might as well drop out the word "ballot" and say that it shall be by such method. This form makes it very brief; it leaves the entire subject to the Legislature, and, if they can find some way of getting around this federal statute that I referred to the other day, they, perhaps, will do that. That disposes, also, of this question of undertaking to preserve the secrecy of the ballot when there is no secrecy. We cannot have secrecy in balloting, actually, as an abstract fact.

Mr. Dean — It seems to me that we are trenching upon very dangerous ground when we undertake to extend to the Legislature the power to discriminate as to, and to manipulate, the ballot of this State further. In the last ten years we have been going through a process of mechanical reform — trying to make people good by machinery. The result has been that it required simply a little more physical force — a few more murders — to accomplish the same objects that were formerly produced by fraud and ballot-

box stuffing. I am decidedly opposed to any change in the balloting system which will drive out from the voting population the conservative, the intelligent, the patriotic elements in the country, who are driven away from the polls by all of these changes, which serve no good end, but are simply organized in behalf of the machinery of politics. It is wrong and vicious, and ought not to be encouraged by this Convention.

Mr. Hawley — May I make a single suggestion, by way of criticism upon the amendment which has just been proposed? I am rather gratified with the brief and terse phraseology and the clearness of expression of that amendment of Mr. Lincoln's.

The Chairman — Do you accept it?

Mr. Hawley — No; I do not accept it. I want to make a suggestion in regard to it, and that is, that it precludes the Legislature from passing a law which shall allow certain officers to be elected by the use of a balloting machine, and certain other officers to be elected by ballot. That is to say, I think that the phraseology of the amendment is such that the Legislature can indorse and authorize but one method for every candidate for office, whether town, county, State or nation; and, if I am right in that view, why, then, the whole action here may be nugatory, because there is facing us the question as to whether any such method as that can be adopted in voting on the occasion of a national election or an election of members of Congress.

Mr. Moore — With all due respect to the honorable gentleman who proposed this amendment (Mr. Lincoln) I think I must oppose it, on the ground that, if incorporated, the amendment would not preserve secrecy; that, while there may be no immediate danger of it, yet the Legislature may, under such an amendment as that, if adopted by the people, prescribe a *viva voce* form of voting, which, in my opinion, is opposed to our system of conducting elections. But, I do think, Mr. Chairman, that this amendment is in the direction of better and purer elections. I am in favor of presupposing that the Legislatures of this State have some intelligence and some patriotism. I am in favor of this amendment committing this power to the Legislature, as set forth in this amendment that we are at present considering; but I must oppose, as a matter of principle, founded upon the basic idea of our system of voting, the amendment as proposed by Mr. Lincoln. I hope it will not prevail.

Mr. Griswold — It is conceded that the Legislature of the State has entire power over the subject of suffrage under the Constitution, as it now stands. The Legislature of this State, so far as this

section or provision is proposed to be amended, has entire control. And it seems to me it is utterly impossible for this Convention discreetly to provide particularly for the mode of voting. It, therefore, seems to me that it will be better for this Convention to leave the Legislature unrestrained in its action. They have adopted various provisions — the paster ballot and the blanket ballot, and a great deal of confusion has ensued about that — but, in the main, the mode of voting must be left to the Legislature. It seems to me, then, more wise that this Convention should leave that to the Legislature, and, in accordance with the principle upon which the Convention has acted and voted heretofore, that the subject embraced by the amendment proposed should be left to the Legislature, and that there is no necessity for this Convention attempting to regulate that with which they cannot well do away. I am in favor of leaving the provision precisely as it now stands in the Constitution, and to trust something to the Legislature of this State in the regulation of the important subject of suffrage. Therefore, I am opposed to any amendment being made to the provision as it now stands in the Constitution.

The Chairman — The question is on the amendment offered by Mr. Hill. (To Mr. Hill): Do you offer that as a substitute for Mr. Lincoln's amendment?

Mr. Hill — I offer it as an amendment.

The Chairman — There are two amendments.

Mr. Hill — There were not at the time, I think, Mr. Chairman. I offer it as an amendment to Mr. Hawley's amendment.

The Chairman — Mr. Hawley's proposition is merely a substitute.

Mr. Hill — I offer it, then, as an amendment to my original proposition.

The Chairman — The last proposition is made by Mr. Lincoln, and, I think, it is proper that we should take a vote on that proposition first. The question is on the proposition offered by Mr. Lincoln.

Mr. Moore — I rise to a point of order. Mr. Hill has an amendment subsequent to that of Mr. Lincoln.

The Chairman — Mr. Hill's amendment is antecedent to Mr. Lincoln's. (The Secretary read the amendment as proposed by Mr. Lincoln.)

Mr. Foote — I am opposed to the proposition last read by the Secretary, for the reason that it makes no provision for preserving that degree of secrecy which the law gives in voting under the

ballot system. No one claims that that system affords, in all cases, absolute secrecy in voting, but it does afford an opportunity to vote in secret, and that, in my opinion, was the object sought in the adoption of the original provision in the Constitution, for voting by ballot; that such voting might be in secret, and that no law should permit of any other system less secret than voting by ballot. Now, I think, sir, the form of the proposition suggested by Mr. Lincoln is a good one, if it be coupled with the other provision, that an opportunity to vote in secret should be preserved. Therefore, I oppose the amendment in its present form.

Mr. Marshall — The question now before the House is one of the most important that can possibly be presented to this Convention, and, it seems to me, that we should not hastily change the phraseology of our present constitutional provisions on the subject of the method of voting, or adopt new language in addition to that which is now in the Constitution without having very carefully scanned the phraseology proposed. The amendment which is now under consideration, that of Mr. Lincoln, contemplates the striking out from the Constitution the words " by ballot," and merely provides that elections shall hereafter be by such methods as may be prescribed by the Legislature. It is very evident that that will overturn the system of voting which has obtained in this State for more than half a century, namely, by ballot. That is, it is within the power of the Legislature to overturn that method of voting; the language which is proposed by Mr. Lincoln would enable the Legislature to provide for *viva voce* voting. There would be nothing whatever to prevent the Legislature from adopting that ancient method, and a method which everybody now agrees is a very dangerous one. The tendency, in modern times, has been to devise new methods of voting, with two purposes in view: First, to preserve the independence of the voter by permitting him to vote in secret, so that his employer — if he is an employe — or his neighbor, may not supervise his voting and injure him in consequence of his having voted one way or another. The second great purpose that it is sought to subserve is to prevent bribery at elections, by means of the continuance of the secrecy of the ballot, so that a man when he casts his vote may cast it in such a manner that the person who is disposed to purchase his vote may not know that " the goods are delivered," to use the ordinary form of expression. For those reasons it is all important that the language of this Constitution shall be so framed that secrecy of voting shall be preserved; and, at the same time, it is important that the freedom of choice of the voter shall not, in any manner, be impaired. Now, the language

which has been to-day proposed by Mr. Hill, who has introduced this proposed constitutional amendment, adding to his original proposition the words "that an opportunity freely to vote in secrecy be preserved," I consider to be most unfortunate when we have these two fundamental ideas in mind which should actuate us in the framing of an article upon this subject; because, it seems to me, that if these words are placed in the Constitution, such a law, as the ballot-reform law, which is now on our statute books, would be clearly unconstitutional. Let me explain myself. The present ballot-reform law provides that no election worker, as he is called, shall go within 150 feet of the polls; that no voter, unless he is a disabled voter, shall take anybody into the booth with him while he is preparing his ballot. Now, under the language here proposed all that is required is that an opportunity shall be given to the voter to vote in secrecy — freely to vote in secrecy — but that opportunity is one which is for the benefit of the voter and he may waive any provision which is inserted in the Constitution for his benefit. If a voter should go to the booth and say: "It is true, I have the opportunity to vote in secret if I desire, but I do not wish to avail myself of that opportunity; I want to prove to my friend Smith that I am going to vote the Republican (or the Democratic) ticket, and I want him to go into the booth and see me prepare my ballot." I state here that it is my opinion that a law which would prevent that, under the phraseology which is here proposed, would be unconstitutional. Now, such a result as that would be a manifest absurdity; and, while we are attempting to reform the ballot, to keep it pure, to preserve it against bribery and to prevent any interference with the independence of the voter, we should be running right into the very evil which we are seeking to prevent. This being the situation of things, and it being very evident that we are not yet ready to frame an article upon this subject, I move that this committee now rise and report progress and ask leave to sit again.

Mr. Doty — I would ask the gentleman if he will give way with his motion until I submit an amendment?

Mr. Marshall — I will, merely for the purpose of allowing the amendment to be submitted.

The Secretary read the following amendment offered by Mr. Doty: "All elections by the citizens, except for such town officers as may be by law directed to be otherwise chosen, shall be by ballot or by such secret method as may be prescribed by law."

Mr. Forbes — May I be allowed to send up an amendment to be read in the same way that the last was read?

The Secretary read the following amendment, offered by Mr. Forbes: "All elections shall be by ballot or by other secret method, except for such town officers as may by law be directed to be otherwise chosen."

The Chair then put the question on the motion of Mr. Marshall, as stated, and it was determined in the affirmative. Whereupon the committee rose, and the President resumed the chair.

Mr. Veeder — Mr. President, the Committee of the Whole have had under consideration the proposed constitutional amendment, printed No. 303, entitled "proposed constitutional amendment, to amend section 5 of article 2 of the Constitution, relating to the manner of elections; have made some propgress in the same, but, not having gone through therewith, have instructed their chairman to report the fact to the Convention, and ask leave to sit again.

The President put the question on agreeing to the report of the Committee of the Whole and giving the committee leave to sit again, and it was determined in the affirmative.

Mr. Durfee — Mr. President, in view of the numerous amendments that have been proposed to the original proposed constitutional amendment in Committee of the Whole, and the difficulty of evolving out of such a number of amendments in Committee of the Whole a consistent and clear and well-guarded amendment to be considered by that committee, I move that the original proposed constitutional amendment and all the amendments offered thereto be referred back to the Judiciary Committee, retaining its place on general orders.

Mr. Foote — Mr. President, I would suggest to Mr. Durfee that this amendment is not from the Judiciary Committee.

Mr. Durfee — I am referring to the general order that is stated to have been reported from the Judiciary Committee.

Mr. Root — Mr. President, I think I can explain the fact to which the gentleman from Wayne refers. That amendment was originally referred to the Judiciary Committee by mistake. The Judiciary Committee, finding that it had upon its files this amendment which related to suffrage and not to the judiciary, asked to be discharged from the consideration of the amendment, and it was discharged and the amendment referred to the Suffrage Committee. In printing I noticed — and intended to have called the attention of the Convention to the fact — that in printing the amendment, as reported, the original reference was put upon the printed paper instead of the second reference to the Suffrage Committee, which, in fact, acted upon it.

Mr. Durfee — Mr. President, I will vary my motion to correspond to the fact stated by the chairman of the Judiciary Committee, and move that it be referred to the Committee on Suffrage, retaining its place on general orders, the original proposition and all the amendments to be referred to that committee for the purpose of a report thereon.

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

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

Mr. Doty — Mr. President, I move that the amendment proposed in Committee of the Whole to this proposed amendment, together with the substitute, be printed.

The President — Are you referring now to No. 4?

Mr. Doty — To No. 4; yes, sir.

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

General order No. 5 was not moved.

The Secretary called general order No. 7, introduced by Mr. Holls, to amend section 4 of article 2, relating to enforcing the duty of voting.

General order No. 7 was not moved.

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

General order No. 8 was not moved.

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

Mr. Marshall — Mr. President, I move to have this order reserved until the evening session.

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

The Secretary called general order No. 13, reported by the Committee on Cities, relating to home rule for cities.

General order No. 13 was not moved.

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

Mr. Mereness moved that the Convention go into Committee of the Whole on general order No. 14.

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

Whereupon the Convention resolved itself into Committee of the Whole, and Mr. Cornwell took the chair.

The Chairman — The Convention is in Committee of the Whole on general order No. 14, which the Secretary will read.

The Secretary read the proposed amendment to article 3 of the Constitution as follows:

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

Section 24 of article 3 is hereby amended so as to read as follows:

Sec. 24. Neither the Legislature nor the legislative department or auditing board of any civil division of the State, shall grant any extra compensation to any public officer, servant, agent or contractor, nor shall any law or ordinance be passed by them which shall operate to increase the salary of any officer during the term for which he was elected or appointed.

Mr. Mereness — Mr. Chairman, it seems to be the custom in this Convention for any gentleman who has had the audacity to propose to amend the organic law of the State, to come to the front whenever the matter comes up for consideration in Committee of the Whole and attempt to demonstrate to the representatives of the people that there is sufficient merit in the proposition to warrant its being put into the Constitution. The ordeal is a very severe one, as has been proved in a number of cases, and, I fear, that possibly such may be the case upon this occasion. But, with the indulgence of the Convention, I will endeavor, in a very brief manner, to state my reasons for introducing the amendment.

The amendment, as originally proposed by me, sought simply to create a uniform system, in reference to the question of official salaries. It occurred to me that the provisions of the present Constitution were very different, in respect to each other, and that it would be very proper to put into the organic law a provision which I thought recognized a very good principle, that when a person accepted an office for which there was a stated salary, it ought to be understood that that salary should remain fixed and permanent during the time that he should be discharging the duties of the office by virtue of that election. The provisions of the present Constitution, which, perhaps, have not been examined carefully by

many of the delegates in this body, I will call to the attention of the Convention, with its permission. The Constitution provides, in reference to members of the Legislature, as all are, doubtless, aware, that each member shall receive an annual salary of $1,500. It also provides that the Governor shall receive for his services an annual salary of $10,000, and that there shall be provided for his use a suitable and furnished executive residence. The Lieutenant-Governor shall receive for his services an annual salary of $5,000, 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. The State officers, embracing the Secretary of State, Comptroller, Treasurer, Attorney-General and State Engineer and Surveyor, shall at stated times during continuance in office receive for their services a compensation which shall not be increased or diminished during the terms for which they shall have been elected; nor shall they receive for their use any fees or perquisites of office or other compensation. By the provision, in reference to the Superintendent of Public Works, it is provided that he shall receive a compensation to be fixed by law. It is provided, in section 14 of article 6, that the judges and justices therein mentioned, who are the judges of the Court of Appeals and the justices of the Supreme Court and the judges and justices of City Courts, shall receive for their services a compensation to be established by law, which shall not be diminished during their official terms. Another provision of article 6 of the Constitution, in reference to the salary of county judges and surrogates, provides that "his salary and the salary of the surrogate, when elected as a separate officer, shall be established by law, payable out of the county treasury, and shall not be diminished during his term of office." The Constitution also provides that the clerk of the Court of Appeals shall receive a compensation which shall be fixed by law, to be paid out of the State treasury. And there is another general provision, section 9, article 10, that no officer whose salary is fixed by the Constitution shall receive any additional compensation; and 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 fee or perquisite of office or other compensation.

So, it will be seen that there are a number of different provisions, in reference to public officers provided for in the Constitution, in

reference to this question of a fixed salary during the term. The proposed Constitution of 1867 had a provision in article 3, section 17, that the Legislature shall not increase or decrease compensation, except of judicial officers, during the term of service. Whether the fact that that exception was made had anything to do with the overwhelming defeat of the proposed Constitution at the polls, of course, I am unable to say.

There is another provision of the Constitution upon this question which is a subdivision of section 18 of article 3, which provides, in the first part of the section, that "the Legislature shall not pass a private or local bill in any of the following cases," one of which is "creating, increasing or decreasing fees, percentages or allowances of public officers during the term for which said officers are elected or appointed." It would seem, from a casual reading, that the provision is broad enough to cover the question of all county officers at least, and that no bill could have been passed changing the salary of a county officer during his term, without being in conflict with that proposition. Such, at least, was the opinion of the Governor who was in office a short time after that amendment was adopted, Governor Cornell — I will say here, by way of parenthesis, that whatever else may be said about that Governor, his administration was as clean and as economical as any that the State has had within a long time — and I desire to call to the attention of the delegates very briefly his ideas about the matter.

There was a bill before Governor Cornell increasing the fees of the county clerk of Albany county, and in vetoing that bill he said: "Among the wisest provisions of the Constitution are those contained in the amendments adopted in 1874, restricting legislative power with reference to local affairs," one of these embraced in section 18 of article 3, which I have quoted. In another veto message, in reference to increasing the salary of the county judge of Seneca county from ten to fifteen hundred dollars, he said: "Whatever circumstances may justify changes in the rate of official salaries, these must be made to take effect from the expiration of the pending term of service." He also vetoed another act of the Legislature upon this same general question. It was an act respecting the pay of certain officers in Sullivan county. Their fees had been reduced, and the Legislature passed a law repealing the act reducing the salaries. The Governor said, in reference to that: "It would be unjustifiable to increase their burdens (the taxpayers') by adding to the compensation of public officers. If the present officials are not satisfied with the compensation now provided by law, they have an easy remedy in resigning, and there

need be no apprehension lest their places be not readily filled by others competent and willing to discharge all duties pertaining to them."

It is a well-known fact that it is a quite common practice for officials to go to the Legislature, after they have been elected to office, and during their term, whenever there has been an opening for such purpose, to get their salaries increased; and I think that there are gentlemen present in this room who know of the fact within a very recent time, within a few years, at least. It grew to be such an evil that the Senate of the State took action, or its committee upon that subject gave out that no more bills increasing salaries during the pending terms of service would be reported.

Governor Hill had a practice generally of refusing to give his approval to bills of that character, though, perhaps, for other reasons, he permitted a few of them to become laws without his approval.

So the principle has been generally recognized in the Constitution as being a good one; and my idea, as I said before, was to bring the whole subject into one harmonious provision so that there should be no question about it.

The Constitutions of a number of States, and notably those which have been more recently adopted, have contained this vital principle in the most explicit language, and I will call the attention of the delegates to a very few of them.

The Constitution of the State of Connecticut, by an amendment adopted within a very few years, provides that, " Neither the General Assembly nor any county, city, borough, town or school district shall have power to pay or grant any extra compensation to any public officer, employe, agent or servant, or increase the compensation of any public officer or employe, to take effect during the continuance in office of any person whose salary might be increased thereby, or increase the pay or compensation of any public contractor above the amount specified in the contract."

The Constitution of the State of Maryland contains a very brief provision upon this subject, quite similar to the one which has been reported by this Committee on Powers and Duties of the Legislature. Nearly all the constitutions contain the provision that no extra compensation shall be granted after the service has been performed; and in the Constitution of Maryland they have added substantially the same clause that has been reported by this committee, and which I did not see until I introduced the original proposition: "Nor shall the salary or compensation of any public officer be increased or diminished during his term of office."

I might call the attention of the delegates to the constitutional provisions of several other States, but I think what I have already alluded to will suffice. I will say only upon that subject that the Constitutions of fifteen States, including Illinois, Kentucky, Maryland, Michigan, Missouri, Pennsylvania, Washington, West Virginia and Wisconsin, all contain at the present time provisions substantially like the one which has been reported by this committee.

I alluded in the beginning of my remarks to the provision contained in section 18 of article 3, in reference to the passage of private or local bills, and in reference to fees and percentages. In connection with that matter, before I close, I would like to call the attention of the delegates to the fact that the Court of Appeals has given a judicial construction to this matter. The decision will be found in the case of Mangam v. City of Brooklyn, in the 98th volume of the Reports of the Court of Appeals, at page 585; and, as the statement is very concise, I will ask the indulgence of the Convention to read it.

"The provisions of the State Constitution (article 3, section 18), prohibiting the Legislature from passing a private or local bill, creating, increasing or decreasing fees, percentages, or allowances of public officers, during the term for which said officers are elected or appointed, does not apply to officers receiving fixed salaries; it includes only those irregular and uncertain modes of compensating public servants indicated by the words of like meaning with fees, percentages, etc.," and the Court of Appeals, in the opinion in that case, went through the various provisions in the Constitution and arrived at the determination that where there was a fixed salary per annum for the discharge of official duties, the provisions of section 18, article 3, did not prohibit the Legislature or the board of supervisors or the common council of a city from changing the salary during the official term.

Now, Mr. Chairman, I think I have explained the purport of the amendment sufficiently. My notion is this, that this is a vital principle; that it ought to be put into the organic law in one harmonious provision; that when a man goes before the people as a candidate for an office for which there is a fixed salary for a term, and solicits their votes and their support, and is fortunate enough to be elected, and takes the oath of office, that it ought to be held as a matter of implied contract at least, that he is under obligations to the people that elected him that he will serve them for the time for which he has been elected for the price that was fixed when they gave him their votes. (Applause.)

Mr. Spencer — I move that there be inserted in line seven, after the words "salary," the words "or compensation;" so that the second part, or the additional clause to the section, shall read as follows: "Nor shall any law or ordinance be passed by them which shall operate to increase the salary or compensation of any officer during the term which he was elected or appointed."

I propose this amendment for the sake of clearness, as I think the word "compensation" covers the methods of payment not included within the term "salary;" and with such amendment it strikes me that this proposed constitutional amendment is a proper one for our adoption here, provided that care is taken, in view of the large number of provisions contained in the Constitution as it now stands, that this be not found in conflict with any of them. From what I learn from the remarks of the gentleman who just preceded me, I judge that his object is to bring all of those provisions together, or to strike them out of the present Constitution and have this cover them all. Of course it is rather difficult to do this without a careful inspection of each of those provisions, word for word, and the objects there sought to be attained, and possibly some of the decisions of the courts bearing upon those questions; and as to that I am not prepared to speak. But the general principle which underlies this proposition seems to me to be a very proper one, and one that should be adopted.

Mr. Hawley — Will Mr. Mereness permit me, through you, Mr. Chairman, to ask for some information. I wish to inquire what is the meaning of the phrase, "civil division of the State." Does it mean an incorporated village? Does it mean a school district? What is the extent and the scope of that phrase?

And while I am upon my feet I will make the further suggestion, in addition to the amendment proposed by the gentleman last upon the floor, that after the word "officer," in line 7, there ought to be inserted the words, "servant, agent or contractor," so that the final member of the sentence shall correspond with the phraseology of the present Constitution, which is in the first member of the sentence.

The Chairman — Do you offer that as an amendment?

Mr. Hawley — It was merely a suggestion. I hope it will be offered by someone.

Mr. Doty — I desire to offer the following amendment:

The Secretary read the following amendment, offered by Mr. Doty:

"Add at the end of section 24, article [illegible] 3, 'nor shall the salary of

any public officer be increased or diminished during his term of office.' "

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

The Chair put the question upon Mr. Goodelle's motion, and it was determined in the affirmative. Whereupon, the committee rose, and the President resumed the chair.

Mr. Cornwell — Mr. President, the Committee of the Whole have had under consideration the proposed constitutional amendment, printed No. 378, entitled " Proposed constitutional amendment to amend article 3 of the Constitution, relating to public officers," 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 to the report of the Committee of the Whole, and it was determined in the affirmative.

Mr. Goodelle — Mr. President, I move that the Convention do now take a recess until this evening.

The President — Before that question is passed upon, the meeting of committees will be announced.

Mr. Goodelle, at the request of Mr. Hottenroth, withdrew, for the present, his motion for a recess.

Mr. Hottenroth — I want to present an excuse which, through some mistake in the telegraph office, did not reach me yesterday. It is from Mr. Ohmeis, who was ill yesterday and could not attend the Convention. I, therefore, ask that he be excused for his non-attendance.

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

Mr. McClure — A question of information as to the evening session. Is there a special order for this evening, or is general business to be transacted?

The President — No. 14, now under discussion, will be in order this evening, and will be followed by the amendment on future constitutional amendments.

Mr. McClure — Will the business of the evening session be limited to that proposition, Mr. President?

The President — No, I think not. No. 12 is also made a special order for to-night.

Mr. Turner — Mr. Porter has gone home sick, and wishes to be excused for the balance of the week.

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

The Secretary read the appointments for committee meetings.

The President put the question on the motion of Mr. Goodelle to take a recess, and it was determined in the affirmative.

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